

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Thursday, 5 August 2021 at 6.00 pm in the Council Chamber, Guildhall

Present

Councillors Scott Payter-Harris
George Madgwick
Benedict Swann

Also Present

Tracy Blair - Legal Advisor
Derek Stone - Principal Licensing Officer

Peter Rackham - Acting Police Sergeant
Jon Wallsgrove - solicitor representing the licence holder
Serkan Yaman - licence holder

30. Appointment of Chair

Councillor Payter-Harris was elected as chair. He welcomed everyone and explained how the meeting would work and the procedure that would be followed. Introductions were made by those present.

31. Declaration of interests

There were no declarations of members' interests. Before the meeting started the Legal Advisor explained that officers were aware that a representation had been made and sent to the Sub-Committee from Councillor Kirsty Mellor. Although representations can be considered at the full review hearing of the licence, today's meeting is only for the licence holder to make representations and any representations from other parties should not be taken into account. Mr Wallsgrove reiterated that any panel members who had seen the representation should disregard it.

32. Licensing Act 2003 - Premises Licence - Application for Summary Review - Duke of Devonshire, 119 Albert Road, Southsea, PO5 2SQ

Derek Stone, Principal Licensing Officer, explained that the purpose of the meeting is for the Sub-Committee to consider representations made by the licence holder in response to the imposition of interim steps pursuant to section 53B(6) of the Licensing Act 2003. The police had applied for a Summary Review as a result of incidents (described in the application for a review of the licence) on Friday 30 and Saturday 31 July 2021. Yesterday the panel had decided to suspend the premises licence as an interim step pending full review of the licence, and on being informed of the decision, Mr

Yaman (known as Tom) immediately said he wanted to make a representation.

There were no questions from members or the licence holder for the Principal Licensing Officer.

A/PS Rackham said that since yesterday Tom had sought legal advice and to put in place measures which would rectify issues (Mr Wallsgrove will explain how they impact on the licence). The police feel the conditions proposed by Mr Wallsgrove and the applicant will make the premises more accountable. A copy of the conditions are included as an appendix to these minutes.

The police had advised Tom it was up to him to say how he was going to operate the premises and reduce risk and harm emanating from the premises. The police feel if these conditions were applied to the licence they would go a long way to promoting the licensing objectives. Suspension of the licence is not a punishment but allows time for the premises licence holder (PLH) to put measures in place. The PLH is happy for the premises to remain closed over the coming weekend as it will allow him to implement the conditions which will mitigate harm and risk. If the PLH breaches the conditions he will have to close the pub as the premises would be trading unlawfully. Closing the premises for the coming weekend so that the conditions can be implemented is the aim of the summary review.

Questions from members

In response to questions from the Chair, A/PS Rackham confirmed that:

- If staff training was not implemented then the PLH would have to attend another hearing.
- There was evidence of a breach of health protection regulations during lockdown. On one occasion the PLH decided to close the premises during the restrictions. There was a lack of management of the premises with regard to the health protection regulations which led to a fine.
- From the police point of view having fully trained door staff would make the premises better managed. Tom and Mr Wallsgrove can explain how this would work.
- A condition about using plastic glasses could be added. Tom had moved to using plastic before when the police suggested it.

Tom has actively engaged in the review process but there have been issues in the past and there is concern about the trigger for recent events. The review has painfully focused Tom's mind on what happened over the weekend.

Questions from the licence holder

In response to questions from Mr Wallsgrove, A/PS Rackham said he had visited the premises in the third lockdown and they were OK apart from the incident leading to the fine and the occasion during a football match when the police suggested using plastic glasses. Regardless of discrepancies between the CCTV footage and the initial report to the police, there are still concerns

that a 17-year-old was able to consume alcohol and openly snort what is believed to be an illegal drug.

Licence holder's case

Mr Wallsgrove said in such cases the police have to respond immediately and investigations are still ongoing; the outcome could be worse or deflect from the seriousness of the incidents. With regard to the incident with the 17-year-old the CCTV footage does not support what was reported to the police. Tom's reaction was to remove her from premises. As to being left vulnerable it was very early in the evening and broad daylight. She was not on her own and the alleged perpetrator did not follow her out. There was no question of the licensee feeling the 17-year-old was in danger. She made no objection at the time though she was not happy at being ejected from the pub. CCTV shows her chatting to people and getting into a taxi. Tom still realises there are concerns over the consequences of this incident.

Tom and his wife Sam live upstairs over the premises and he works nearly 100 hours a week. The 17-year-old arrived at 5 pm and had left by around 6 pm. Tom has two 65" screens upstairs - one a TV, one linked to cameras in the premises - so when he spotted what was happening he went downstairs. Failure lies with the bar staff for not checking the 17-year-old's age. Mr Wallsgrove thought she looked older than 17 but younger than 25. There is a big Challenge 25 poster behind the bar. Staff had either not done or not followed training. The girl's cousin bought her a drink. Normally a team member would face a disciplinary process but this particular staff member has left as she has returned to university; the incident could have led to dismissal. The staff member said the girl looked older as she was with older women but did not check her age.

On Saturday it was not regular customers who caused problems. Tom and the head barman were assaulted during the incident. Tom restrained and removed a man, then a fight started outside so there were two incidents, one after the other. Door staff are voluntary as there is no condition requiring them.

Mr Wallsgrove met Tom straightaway to discuss how he could improve management of the premises. Tom understands he needs to tighten it up and staff need to be told breaching conditions is a criminal offence for which they can be personally liable, not just Tom. Tom apologises that the police and local authority have had to deal with the matter and wants to reassure them that the Duke of Devonshire is not a problem premises. This was "a freakish, isolated" event. The behaviour of the individual who caused the fight is "utterly appalling" and he should be prosecuted. The incident could lead to the loss of Tom's licence and home; the pub company will evict him without notice if he loses the licence. He has children aged four and six and his wife will also lose her job as she works at the premises. He has 20 years' experience in the licensed trade, including managing nightclubs. The premises is his own business and he has managed it for nearly three years with no trouble.

Tom suggested to Mr Wallsgrove that he could put in place relevant measures and close the premises this weekend in case the troublemaker returns.

Therefore, Tom and Mr Wallsgrove suggest suspending the premises licence until 11 am on Monday 9 August. All the proposed conditions have been implemented apart from the CCTV (the hard drive will be installed tomorrow) and the new ID wand-style scanning device (will arrive by Friday). The Sub-Committee is only dealing with the interim steps between now and the full review on 20 August. As these are interim steps the committee can have confidence that the premises will run properly. Regular customers are upset their local is shut.

Questions from members

In response to questions from members, Mr Wallsgrove said the man with the 17-year-old was ejected too as it looked as if he was taking a substance. The Chair thanked Mr Wallsgrove for his comprehensive summary. Mr Wallsgrove confirmed that the incidents had focused Tom's mind on training; they were a "live" example of what can go wrong. It is best to ensure the importance of training which is not just about serving drinks but observing people's behaviour and who they are talking to. Training is about anticipating incidents. According to the CCTV it does not look as if the girl is in trouble. Ask for Angela posters have now been put in the ladies' toilets. The Chair said that while members are more informed about the incident with the 17-year-old than before they should be mindful that it is still being investigated. Mr Wallsgrove agreed the investigation is ongoing and although he and Tom took issue with some points Tom is aware he needs to satisfy public standards. Mr Wallsgrove hopes the group of lads are dealt with as Tom could lose his licence.

Mr Wallsgrove said the key issue was the lack of a doorman on the Friday and Saturday evenings rather than problems with training. It was the first weekend with no doorman and the 17-year-old entered the premises before the doorman would have been there. A condition stipulating two SIA doormen would "knock on the head" any incidents like the fight. Scanning and keeping a log of customers' ID is a deterrent. The lack of a doorman was a catalyst for the events to get out of hand. Mr Wallsgrove has seen people enjoying themselves coming out of lockdown and taking advantage of alcohol consumption.

According to the CCTV the group involved in Saturday's incident looked as if they had been to a wedding; they were wearing suits and ties. The main person involved is alleged to have assaulted a woman. Her brother challenged the man who then head butted the brother. The barman intervened and then Tom; they were both assaulted. Tom took the man outside and said "I'll release you if you calm down." Then the others in the group left the pub and a fight started. After about two to three the minutes the man calmed down so the fight lasted about three minutes. The police arrived later and arrested the man away from the premises.

A/PS Rackham understood that one of the men was tasered outside the premises. Personally and professionally it does not matter where he was tasered, with which Jon Wallsgrove agreed. If there had been door staff they could have calmed the incident and not allowed it to escalate. Tom is SIA registered but was trying to manage the situation on his own. The Chair said it

did not matter where the man was tasered; it was a result of escalation of the incident in the pub.

Jon Wallsgrove said Tom was aware the girl in Friday night's incident was 17 when the police report was filed.

A/PS Rackham said the training was the industry standard that is offered throughout Portsmouth. The WAVE (Welfare & Vulnerability Engagement) package is offered to all businesses in the night-time economy in Portsmouth so that premises can safeguard vulnerable people. It is not specific to the Duke of Devonshire. The training has been in place since 2017. A seminar was offered physically to premises managers at the Guildhall, they are reminded of it at key events and it is on the Portsmouth Crime Reduction Partnership's website.

Mr Wallsgrove said it was not a case of the PLH simply ignoring the training package. It is that he cannot provide due diligence that staff have received it as it was not documented and there is no proof they have done it. The premises has a drugs and dispersal policy but it is not written down. A package of documentation could be compiled for the hearing on 20 August. Staff need written documentation, not just to be told. The Chair noted a written package would formalise existing practice. Mr Wallsgrove said the proposed conditions specify what the training should be, what the materials are and that it has been signed off. He advised training logs are usually kept for a year but bar staff are transient and often move on every few months.

The Chair reminded members they could only consider the facts before them and not hypothetical questions such as ascertaining if customers acted negatively as the licensing objectives were not being met. Mr Wallsgrove said Tom had dealt with the situation as a responsible licence holder. The police are usually critical of incidents building up but Tom and the barman acted promptly. Tom and the barman left the pub trying to calm the incident, then some of the customers came out, then punches and assaults started. The police did not arrive while the fight was going on. Tom has been criticised for not calling the police but he got the man out of the pub.

Questions from the police

In response to questions from A/PS Rackham, Mr Wallsgrove confirmed that Tom accepts the 17-year-old girl was on the premises; he accepts the girl was present when alcohol was purchased (if it can be proved she was 17; the staff were trained to ask ages but did not); he accepts the girl appeared to openly consume an illicit substance. In response to the question if he accepts there were 10 to 15 people fighting for seven minutes on Saturday night, Mr Wallsgrove would need to re-examine the CCTV.

In response to direct questions from A/PS Rackham, Tom:

- Agreed that A/PS Rackham had attended the premises the previous day.
- Agreed that he had shown A/PS Rackham the CCTV with footage of the fight.
- Said that at 19.21 he took the main perpetrator outside; the fight inside the pub had started at 19.19.

- Agreed he had shown the screenshot of calls to the police and ambulance 999 [Tom checked his phone]. Calls by a different staff member were made at 19.27 and 19.30. The incident started at 19.19.
- Did not accept that there were 10 to 15 people outside in the street; there were only four who were guilty. There were also two bar staff and another older man (Eddie), a regular from the pub, who was trying to calm people down. One of the men said they were not there to have a fight. The men were kicking people outside and Tom said staff needed to split them up; Tom was injured.

Mr Wallsgrove said he and Tom accept there was a serious incident but cannot say with certainty exactly what happened. The fight lasted four minutes with four to five people but Tom could not swear to it. A/PS Rackham agreed with the Chair that there is a discrepancy between Tom's and the police version of events. The CCTV could be shown to members at the full review hearing. Mr Wallsgrove said all staff had attended the premises the previous day for WAVE training by Sam who showed a Powerpoint presentation and two videos.

Summing up

The Principal Licensing Officer had nothing to add.

In his summing up, A/PS Rackham said that from the police and Superintendent's view crime and serious disorder had come from the premises. Investigations into both incidents are ongoing. The PLH had offered conditions, which if the Sub-Committee are satisfied will prevent crime and disorder, should be imposed as interim steps. On the other hand, the conditions could be imposed and the licence suspended until Monday 9 August. The Sub-Committee can say if they feel the conditions will not prevent crime and disorder.

In his summing up, Mr Wallsgrove said that the police and the PLH agree that the proposed conditions will promote the licensing objectives. The Sub-Committee has the discretion to impose the interim steps until 20 August. He implored the Sub-Committee to have confidence in the PLH. Tom said he accepted all the conditions from the police and will comply with and implement them.

The meeting ended at 7.25 pm and the Sub-Committee went into exempt session to consider the representations.

The Sub-Committee resumed at 7.54 pm.

Decision

On 2nd August 2021, an application was made by Hampshire Constabulary under Section.53A of the Licensing Act 2003 for a summary review of the premises licence for the Duke of Devonshire public house, 119 Albert Road, Southsea, PO5 2SQ.

The application was accompanied by a signed Certificate by a senior member of Hampshire Constabulary which states that in the officer's opinion, the Duke of Devonshire is associated with serious crime or serious disorder or both.

The Licensing Sub-Committee met on 4th August 2021 to consider whether it was necessary to take interim steps pending the full review of the premises licence. Having heard from A/PS Rackham and considered the certificate and application the sub-committee determined to suspend the licence with immediate effect.

The premises licence holder Mr Yaman was not present at that hearing but had been given advance notice of the application. Immediately following the meeting of the Sub-Committee, Mr Yaman was notified of the decision and of his right to make representations in respect of it. Mr Yaman chose to do so and a hearing was arranged for today for these to be considered by the sub-committee.

The Sub-Committee heard today from Acting Police Sergeant Rackham together with the Licensing Officer. Mr Yaman was also in attendance today and represented by his solicitor, Mr Wallsgrove. All parties were given the opportunity to present their cases and ask questions.

The Sub-Committee at this hearing is required to consider whether the interim steps are appropriate for the promotion of the licensing objectives; and determine whether to withdraw or modify the steps taken.

At all times, the Licensing Sub-Committee reminded itself that it must carry out its functions under the 2003 Licensing Act with a view to promoting the licensing objectives. The licensing objectives engaged are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In determining this matter, the Sub-Committee has taken into account the oral and written evidence available to it today from the police and premises licence holder, and considered the Council's statement of licensing policy, the relevant sections of the Licensing Act 2003 and Regulations made thereunder, the Guidance issued by the Secretary of State under section 182 of the Act including the specific guidance issued in relation to section 53A and the licensing objectives, the Human Rights Act and the Equality Act.

The Sub-Committee accepted legal advice that it should disregard any other representations put to it from any other parties, such representations can be considered in due course at the full review hearing.

The Sub-Committee considered all available options and concluded that the appropriate action in this matter was to retain the interim step of suspension of the licence until Monday 09th August 2021 at 11 am and modify the

conditions of the current premises licence for the Duke of Devonshire as set out in the document provided by Mr Wallsgrove.

Whilst the Sub-Committee initially felt that the suspension should remain in place until 11th August 2021 in order that all the necessary steps could be taken, having heard further from Mr Wallsgrove, it agreed that the suspension will remain in place until Monday 9th August 2021.

Upon the police and licensing authority being satisfied that all these new conditions are in place, the interim step of suspension of the licence shall be removed.

The Sub-Committee considered that the measures described above are necessary to ensure compliance with the four licensing objectives and are a proportionate response to the concerns raised in the application.

A full review of the licence will be held on 20th August 2021 at 2.30pm.

There is no right of appeal to a magistrates' court against the licensing authority's decision at this stage.

Appendix - Duke of Devonshire conditions:

1. The premises licence shall be suspended until 1100 on Monday 9th August.

2. A recording CCTV system will be installed and fully operational at all times. The system will be maintained and serviced within at least 12 monthly intervals. The system clock will be checked regularly for accuracy taking account of GMT and BST. The CCTV system will have sufficient storage capacity for 31 days. Police and authorised Officers of Portsmouth City Council shall have access to data from the system quickly and easily and therefore provision will be made for someone to be present at all times the premises are open who has access, is able to operate the equipment and to supply footage in a format which can be easily viewed by police for the purpose of the prevention and detection of crime, as long as the request is lawful and complies with the Data Protection Act.

3. All staff shall receive comprehensive training in relation to the sale of alcohol. No member of staff shall be permitted to sell alcohol until such time as they have successfully completed this training. Training shall cover:

- Sale of alcohol to persons under 18
- Challenge 25 and acceptable forms of ID
- Signs of Drunkenness
- Refusal Register and when/how to use
- The Licensing Objectives

This training shall be documented and records kept on the premises. Police and Licensing Authority shall have access to an individual's training records upon request. Training shall be refreshed at least every six months and

records held for 12 months.

4. An incident log shall be kept at the premises, and made available on request to an authorised officer of the City Council or the Police. It must be completed within 24 hours of the incident and will record the following:

- (a) all crimes reported to the venue
- (b) all ejections of patrons
- (c) any complaints received concerning crime and disorder
- (d) any incidents of disorder
- (e) all seizures of drugs or offensive weapons
- (f) any faults in the CCTV system, searching equipment or scanning equipment
- (g) any refusal of the sale of alcohol
- (h) any visit by a relevant authority or emergency service.

5. There shall be a minimum of 2 SIA licensed door supervisor on Friday and Saturday evenings from 1800 until close.

6. On Fridays and Saturdays from 18:00 hours the premises will use a device to scan and store customers' ID. Any customer refusing to have their ID scanned will be refused entry. The data from this scan will be stored for a period of at least 7 days and made available to the Police upon lawful request, compliant with the Data Protection Act.

7. Any person appearing to those engaged in selling or supplying alcohol to be under the age of 25 and who is attempting to buy alcohol will be required to produce satisfactory photographic identification as proof of age. Acceptable ID shall be a valid passport with hologram; valid UK photo card driving licence, PASS approved ID and Military ID with date of birth.

8. The premises licence holder will have a written policy on the ejection of customers and the refusal of entry of customers, reference to which will be made in staff training.

9. The premises licence holder will have a written drugs policy supporting a zero tolerance to drugs, reference to which will be made in staff training.

10. On Friday and Saturdays from 1800 no person under the age of 18 shall be permitted on the premises.

11. The premises shall be a member of a local crime reduction partnership (for example Portsmouth Business Crime Reduction Partnership) where one is in operation and the premises welcome to be a member.

12. The premises shall be a member of a local pub watch where one is in operation and the premises is welcome. The DPS shall attend each pub watch.

13. The licence holder shall ensure that every member of staff receives Welfare And Vulnerability Engagement training and that this is documented.

Staff shall not work at the premises until they have received and understood the training.

The meeting concluded at 8.01 pm.

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Chair