

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Monday, 27 February 2023 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Scott Payter-Harris (in the Chair)

Councillors Dave Ashmore
Stuart Brown

13. Appointment of Chair

Councillor Scott Payter- Harris was duly appointed as Panel Chair.

14. Declarations of Members' Interests

There were no declarations of interest.

15. Exclusion of Press and Public

It was agreed that the following motion be adopted:

Supporting papers have not been published in accordance with the provisions of Section 100A of the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985, on the grounds that the report contains information defined as exempt in Part 1 of Schedule 12 A to the Local Government Act 1972 under the following exemption paragraph numbers:

1. Information relating to an individual
2. Information that is likely to reveal the identity of an individual
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).

The Sub-Committee determined that the public interest test was met in accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Regulation 14, and that the press and public should be excluded from the hearing.

The parties agreed that the exempt session would allow parties to give evidence freely and that the decision might be published if suitably worded and accordingly the decision for each item is attached.

16. Agenda Item 4 - Licensing Act 2003, review application, Chimney Bar, 11 Clarendon Road, Southsea PO5 2ED

The Sub Committee had to determine whether the hearing ought to be held in private session, with the press and public excluded. There was some discussion on the matter and on the basis that third parties are identified in the papers (as yet unpublished) and to enable parties to give evidence freely, it was determined that the meeting be held in private, and the decision be drafted and agreed by the parties with a view to release/publication. It was determined this was in the public interest in accordance with regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

The Sub Committee has considered very carefully the application for review of a premises licence at the Chimney Bar. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub Committee considered the relevant representations, both written and given orally at the hearing, by all parties. Human rights legislation and the public sector equality duty had been borne in mind whilst making the decision.

The Sub Committee determined that it was appropriate, given all the circumstances and the history of failing to engage with various regulatory services and repeated breaches of the premises licence over a lengthy period, to revoke the premises licence.

Reasons

The application for review had been submitted by the Licensing Authority and representations had been received from the police, environmental health (regulatory services) and planning. Having heard from planning the Sub Committee noted and accepted legal advice that it was to focus upon the licensing objectives only but noted the irregularities and history. Correspondence from the premises licence holder offering means of settling the review in advance had been circulated to the Sub Committee.

The premises licence holder requested that the transcript of the interview of the premises licence holder be made available to Sub Committee and a short adjournment was allowed for this to be produced and read. The premises licence holder was also given an opportunity to take advice privately and this was taken up.

For the premises licence holder, the Sub Committee heard (amongst other points):

- The premises and the business do not belong to the premises licence holder, but rather his brother.
- The *Hall & Woodhouse v Poole Borough Council* case has established (in essence) that the premises licence holder is only liable if conducting the licensable activity - it is not automatic that the premises licence holder is liable.

- Family problems at time of the issues were raised.
- The operations manager was responsible for opening and sales after hours and was stealing from the business by privately purchasing alcohol and selling for private gain. He has now been sacked, although it was accepted he was kept on until after Christmas.
- Only one sale of alcohol took place at these premises after authorised hours.
- The premises licence holder had mistakenly understood that an amendment of the plan had been approved by variation.
- The proposed steps to settle (e.g. removal of on-sales, removal of DPS and suspension etc.) are appropriate and proportionate as a response and would tackle the issues raised.
- The premises had been closed since New Years Eve and would remain closed until sold.

The Sub Committee must assert that its function is not to determine guilt or liability for criminal offences. Accordingly, the cited case had limited relevance in so far as considering responsibility in accordance with the Act for licensable activities at the premises, which ultimately rests with the premises licence holder. It was accepted that the Act sets out little detail as to the role of the DPS, however, the statutory guidance makes it clear that the DPS should be the first point of contact for the responsible authorities and is responsible for ensuring the licensing objectives are properly promoted and conditions attached to a licence are adhered to.

Whilst only one sale is accepted to have taken place after permitted hours it is clear the premises were open for business on at least one other occasion. CCTV, when requested could not be accessed, despite the requirements of the licence conditions.

The premises had been associated with noise nuisance and formal action was required in the form of an abatement notice, despite warning.

The Sub Committee were satisfied that the premises had a prolonged and extensive history of non-compliance with almost every regulatory regime. At best this was due to mismanagement and a lack of due diligence and at worst wilful refusal.

Every option set out in the report was considered, including the proposed actions on behalf of the premises licence holder. However, given the repeated warnings and opportunities provided to engage the Sub Committee could not accept them as appropriate. It excluded considerations of commercial saleability of the premises, likewise assertions that the premises would remain closed.

There is a statutory right of appeal which must be lodged at the Magistrates' Court within 21 days of receipt of formal notification of this decision. Formal notification of the decision shall set out that right in full.

RESOLVED to revoke the premises licence.

17. Agenda item 5 Licensing Act 2003, review application - Sunday Post Lounge Cocktail Bar, 92 Osborne Road, Southsea PO5 3LU

The Sub Committee had to determine whether the hearing ought to be held in private session, with the press and public excluded. Noting that the point had been previously discussed and agreed it was determined that it proceed in private session with the decision worded in a way that might be published and this was in the public interest in accordance with regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005. This would enable parties to give evidence freely and prevent detail of third parties being released.

The Sub Committee had considered very carefully the application for review of a premises licence at The Sunday Post Lounge Cocktail Bar. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub Committee considered the relevant representations, both written and given orally at the hearing, by all parties. Human rights legislation and the public sector equality duty had been borne in mind whilst making the decision.

The Sub Committee determined that it was appropriate to revoke the premises licence in this instance.

Reasons

The review application was submitted by the Licensing Authority and had attracted a representation from the police.

Issues raised relate to sales after hours on six occasions, the use of an unlicensed door supervisor and CCTV footage that was not entirely accessible.

Correspondence from the premises licence holder offering means of settling the review in advance had been circulated to the Sub Committee.

The premises licence holder had, in the previous agenda item, requested that the transcript of the interview of the premises licence holder be made available to Sub Committee and a short adjournment had been allowed for this to be produced and read. The premises licence holder was also given an opportunity to take advice privately and this was taken up.

For the premises licence holder the Sub Committee heard (amongst other points):

- Objections at the time of grant of the licence had resulted in very restrictive hours for the type of venue.
- The premises licence holder had been completely unaware of issues until the 1st November 2022. On learning of them the manager had been warned.
- Family problems at time of the issues prevented visits to the premises.
- The operations manager was responsible for opening and sales after hours and was stealing from the business. He has now been sacked, although it was accepted he was kept on until New Years Eve.
- The proposed steps to settle (e.g., removal of DPS and suspension etc.) are appropriate and proportionate as a response and would tackle the issues raised.
- The premises had been closed since New Years Eve and would remain closed until sold.
- No other issues had arisen until October and the manager was entirely responsible.

The Sub Committee must again assert that its function is not to determine guilt or liability for criminal offences. Accordingly the *Hall & Woodhouse v Poole Borough Council* case had limited relevance in so far as considering responsibility in accordance with the Act for licensable activities at the premises, which ultimately rests with the premises licence holder. It was accepted that the Act sets out little detail as to the role of the DPS, however, the statutory guidance makes it clear that the DPS should be the first point of contact for the responsible authorities and is responsible for ensuring the licensing objectives are properly promoted and conditions attached to a licence are adhered to. In this case the premises licence holder is also the DPS.

Whilst it was claimed the manager of the premises was entirely to blame and had been sacked as a result, the Sub Committee could not accept that the premises licence holder bore no responsibility. The behaviour being allowed to continue despite written warning of criminal offences meant the Sub Committee could not entertain further warning or opportunities to be provided now. This accorded with the statutory guidance which suggested that a stepped approach should be implemented with warnings not simply being repeated (paragraph 11.18 refers).

The number of incidents and the period during which they had occurred meant that the Sub Committee was satisfied that revocation was an appropriate and proportionate approach.

Police evidence indicated that further restriction or amendment of the licence would not likely result in compliance and the Sub Committee noted the weight that should be attached to such representation as the expert in their field.

Every option set out in the report was considered, including the proposed actions presented on behalf of the premises licence holder. However, given the repeated warnings and opportunities provided to engage the Sub Committee could not accept them as appropriate. This was despite representation that they were the most proportionate response. As before, the Sub Committee excluded considerations of commercial saleability of the premises, likewise assertions that the premises would remain closed until sold.

There is a statutory right of appeal which must be lodged at the Magistrates' Court within 21 days of receipt of formal notification of this decision. Formal notification of the decision shall set out that right in full.

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RESOLVED to revoke the premises licence.

The meeting concluded at 4.24 pm.

Councillor Scott Payter-Harris
Chair