

LICENSING ACT 2003 SUB-COMMITTEE 2

TUESDAY, 21 AUGUST 2018

Present:

Councillors Dennis (Chairman), Prowse and Winsor

Officers in Attendance:

Trish Corns, Democratic Services Officer

Hayley Carpenter, Licensing Officer

Marie Downey, Solicitor

1. MINUTES

The Minutes of the meeting held on 18 September, 2018 were approved as a correct record and signed by the Chairman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. APPLICATION FOR A NEW PREMISES LICENCE LADY'S MILE HOLIDAY PARK, EXETER ROAD, DAWLISH

3.1 Introductions

The Chairman introduced the Members of the Sub Committee, Legal Adviser, Licensing Officer, Democratic Services Officer and explained their respective roles.

The Chairman advised that the Sub Committee would take into account the merits of the application against the four licensing objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm, in addition to the Home Office Guidance and the Council's Licensing Policy.

3.2 Procedure to be followed

The Legal Adviser referred to the procedure to be followed for the Hearing and those present wishing to make verbal submissions. There had been no requests from any other party to speak at the hearing. The procedure was as previously circulated to all interested parties with the Notice of Hearing. All parties had been sent an agenda.

3.3 The Council's Licensing Officer's Report

The Assistant Licensing Officer referred to the report previously circulated with the Notice of Hearing and the agenda, which contained full details of the application. The Licensing Officer referred to the current conditions, circulated with the agenda.

Zone 6 is already licensed for the supply of Alcohol, Playing of live and recorded music and performance of dance, Monday to Sunday 10 am – 00.30 am and has been included in this application to enable the whole site to be licensed under one premises licence.

The Council has received one letter of objection from a local resident objecting to the application on the grounds of public nuisance, in particular noise from regulated entertainment. The objector was not in attendance at the Hearing.

3.4 Address by Interested Parties

3.4.1 Applicant's Representatives

Mrs Scranage, on behalf of the Applicant advised that the marquee would have a bar and event would mainly consist of acoustic music between the hours of 1700hrs to 2300hrs. Events organised and managed by external organisations could involve live music and over 1500 people. These events would be limited to six per annum.

In response to questions, the Sub Committee were advised that the marquee would hold 200 people. At the peak of the season some 3,000 individuals could be staying at the site. The marquee would be in situ between the months of March to mid October, and less than the period which could require planning permission.

3.5 Adjournment

At this point the Committee adjourned to debate its decision.

3.6 Decision

On reconvening the Chairman announced:

“We have carefully considered all the written material on behalf of the Interested Parties and Applicant and also the oral submission from the Applicant.

The Council's Licensing Policy states that terminal hours will normally be approved when the applicant can show that the proposal would not adversely affect the licensing objectives, unless after hearing relevant representations, the Council believes it necessary, proportionate and reasonable to restrict the hours required. We do not consider that it is necessary, proportionate or reasonable

to restrict the hours, because we have not seen any evidence which would support doing so.

We note that the premises has been operating with a licence for Zone 6 of the site. Only one objection has been received in relation to the current application. There are no other objections from immediate neighbours.

We are satisfied that the Applicant company is experienced and responsible and we are satisfied, on the balance of probability, that the proposed use of the marquee will not cause an unreasonable nuisance to local residents.

In the circumstances, after giving full consideration to the licensing objectives, we grant this application as detailed in the report, with the condition limiting external events to six per annum.”

Rights of Appeal

This decision does not take effect until the period for making an appeal has expired, or if an appeal is made, until that appeal has been determined. An appeal may be made by the applicant for the review, the licence holder or any person who made relevant representations in relation to the application.

If you wish to appeal you must give notice of appeal to the Clerk to the Justices at the South Devon Magistrates' Court, 1st Floor, Riviera House, Nicholson Road, Torquay TQ2 7TT, within the period of 21 days beginning with the day on which you were notified of the decision.

Should there be problems associated with the event the Council's Environmental and Safety Department has powers under the Environmental Protection Act 1990 to take action against statutory noise nuisances.

4. REVIEW OF PREMISES LICENCE - THE COURTENAY, COURTENAY PLACE, TEIGNMOUTH, TQ14 8AY

4.1 Introduction

The Chairman introduced the Members of the Sub Committee, Legal Adviser, Licensing Officer, Democratic Services Officer and explained their respective roles.

The Chairman advised that the Sub Committee would take into account the merits of the application against the four licensing objectives: the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm, in addition to the Home Office Guidance and the Council's Licensing Policy.

4.2 Procedure to be followed

The Legal Adviser referred to the procedure to be followed for the Hearing and those present wishing to make verbal submissions. There had been no requests from any other party to speak at the hearing. The procedure was as previously circulated to all interested parties with the Notice of Hearing. All parties had been sent an agenda.

4.3 The Council's Licensing Officer's Report

The review application was made by the Police Licensing Officer, Devon and Cornwall Police Constabulary, which is a Responsible Authority, to review the Premises Licence under the Licensing Act 2003. The Police Licensing Officer had concerns of the behaviour and stability of the Designated Premises supervisor Mr Neil Homan, following an incident at the premises in February 2018, in which he was involved. The incident reflected that the licensing objective of the prevention of crime and disorder was not being promoted.

The full details of the review application are set out in the report and appendices circulated with the Agenda.

When determining this application, the Committee is required to take one of a number of steps only if it considers it is necessary to do so to promote the licensing objectives. Those steps, which are set out in Section 52 of the Licensing Act 2003 are as follows:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence.

Copies of the application and the current licence were circulated.

4.4 Address by Interested Parties

4.4.1 Applicant's Representative

The Police Licensing Officer (PLO) showed CCTV footage of the incident and submitted that the case was unusual in that normal circumstances the Police would ask for the designated premises supervisor (DPS) to be removed. However, there are no other concerns, the DPS appears to have been doing a good job running the premises and there were no complaints regarding his management.

The Police considered the licensing authority should be informed of the matter in order that a decision can be made, whether to take any further action as referred to in paragraphs 11.17 and 11.19 of the Section 182 guidance as circulated with the agenda. Mr Homan was issued with a

Caution by the Police following the incident which is now a spent conviction and he no longer needs to declare this. The PLO circulated a list of recommended additional conditions which would improve the running of the premises, particularly with the promotion of the Licensing objectives: *the prevention of crime and disorder*, and *the protection of children from harm*, and avoid a similar situation arising in the future. The Licensing Authority should consider whether this was a one off incident, and whether it would be concerned about the long term future of the premises.

4.4.2 Designated Premises Supervisor (DPS)

Mr Homan submitted that the incident involved the boyfriend of one of the barmaids. He intended to hit the bar surface with the pool cue to warn the man and snap him out of his rage, but not the man himself. Unfortunately he accidentally hit the man.

Questions

In response to questions Mr Homan advised the man had been barred from the premises, and the barmaid was no longer an employee of the premises.

The PLO advised that Mr Homan had been informed of the national and local licensing guidance. The Panel would be justified in giving Mr Homan a written warning in accordance with paragraph 11.17 of the guidance. Should the Panel decide to remove Mr Homan as the DPS the Premises Licence Holder may not find another suitable DPS to run the Premises.

In response to further questions, Mr Homan advised that the man became aggressive towards him when he mentioned that the price of beer was expensive in another licensed premise in the town. Mr Homan was asked if he had been drinking and in a bad mood when the incident happened. Mr Homan replied that he was neither drunk or in a bad mood. He had returned to the premises in a good mood having won a pool match, and had only consumed a couple of drinks. Customers' pool cues were often behind the bar because the premises is a big pool playing pub.

4.4.3 Representative of the Licence Holder

Mr George, on behalf of the Premises Licence Holder Enlighten Inns Limited submitted that he had held the position of Area Stock Taker since 1999. The premises had a bad reputation with lots of issues until Mr Homan became the DPS. The premises has, since that time been managed as well as any other pub in the town, and it was a pleasure working with Mr Homan.

4.5 Summaries

The PLO summarised that Mr Homan had managed the premises well since he had been the DPS.

4.6 Adjournment

At this point the Committee adjourned to debate its decision

4.7 Decision

On reconvening the Chairman announced:

“We have very carefully considered all the written and verbal evidence and submissions from all the parties. Three representations have been received from local residents in support of the premises stating the premises have been turned around since the current designated premises supervisor has been in place.

We acknowledge that the DPS has breached condition 8(b) on the premises licence. However, on the evidence that we have read, and also heard at the Hearing today in support of Mr Homan’s good character, we consider there is insufficient evidence to take action against the DPS. After giving full consideration to the licensing objectives we are satisfied that Mr Homan remains as the DPS subject to the conditions of the licence being modified as circulated by the Police Licensing Officer to promote the Licensing objectives, and specifically that the DPS receives refresher training in relation to this matter, as follows:

1. Training for the DPS

- Condition 8(b) on the premises licence states “Staff are trained to deal with potential situations in a calm and controlled manner with the emphasis on nipping the problem in the bud before it escalates.”

Police request that Mr Homan receives refresher training in relation to this matter to ensure the condition is met.

In addition, Mr Homan to receive training on the use of the CCTV camera.

2. Additional Licence Conditions

Prevention of Crime and Disorder

- The DPS to receive training in the use of the CCTV system.
- CCTV footage to be shown on request to the Police or a Licensing Officer.
- When CCTV footage download is requested by the Police, this shall be supplied within 7 days.
- Refresher training in respect of recognising signs of drunkenness, signs of drug abuse/dealing, the Challenge 25 Policy, and how to deal with potential incidents shall be completed by staff/DPS on a six monthly basis.
- Records of staff training shall be kept on the premises for a period of 12 months, and produced to any representatives from the Responsible Authorities on request.

Protection of Children from Harm

- The premises shall operate a Challenge 25 Policy whereby any individual who appears to be under the age of 25 shall be required to produce an approved form of photographic identification.”

Rights of Appeal

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Should there be problems associated with the premises, the Council's Environmental and Safety Department has powers under the Environmental Protection Act 1990 to take action against statutory noise nuisances.

CHARLIE DENNIS
Chairman