

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Thursday, 27th September, 2007.

Present: Cllr Maurice Perry, Cllr Roy Rix, Cllr William Woodhead.

Officers: M Vaines (DNS); J Nertney (LD).

Also in attendance: Cleveland Police (Applicant): Sergeant Keith Daley, PC Sue Icceton, PC Vicky Davis (represented by Miss Phillips, Barrister); Trading Standards: Miss Allwood (Trading Standards Officer); Respondents: Mrs V Lee Premises Licence Holder, Mr Victor Lee, Mr Andrew Cullum (Designated Premises Supervisor) (represented by Mr Clive Harvard, Solicitor)

Apologies: None

LSC Appointment of Chairman

14/07

RESOLVED that Councillor Woodhead be appointed Chairman for this meeting only.

LSC Declarations of Interest

15/07

There were no interests declared.

LSC Moby Grape, Calverts Lane, Stockton on Tees - Application for a Review of a Premise Licence under the Licensing Act 2003

16/07

The Chairman introduced all persons who were present and explained the procedure to be followed during the hearing.

Mr Harvard, on behalf of the Respondent made a preliminary application for late evidence to be submitted. Mr Harvard indicated he had recently obtained a witness statement from Kirstine Walton, a member of staff at the premise. He had not previously been aware that she could make comments on the statement of Heather Metcalfe which had been produced by the Police. Mr and Mrs Lee only thought about Miss Walton after reading Mr Andrew Cullums statement. Mr Harvard submitted that Miss Walton's statement was relevant and put Heather Metcalfe's statement in context. He could arrange for Miss Walton to be present if the Committee required her to attend.

Miss Phillips on behalf of the Police stated that Miss Heather Metcalfe's statement had been provided by the Police right at the start of this review and that it should have been starkly evident whether the respondent wished to produce evidence to rebut her. The statement produced by Miss Walton was simply a character assassination of Miss Metcalfe. Miss Metcalfe had not been given the opportunity to comment on the statement. The statement had only been served on the Police on the day of this meeting and it would be grossly unfair to permit the inclusion of that evidence at this late stage. Miss Waltons statement did not go to the root of the issue as the Polices case was clear, there had been three under age sales. Miss Walton's statement had, in the view of the Police, been submitted by the respondents merely to cloud the issue.

All parties withdrew while the Committee considered the application.

When the parties returned the Committee informed those present that the statement would not be admitted due to its late delivery and in the interests of natural justice it should not be admitted. The respondent had ample opportunity to prepare their case and it was unacceptable for them to seek to submit statements on the morning of the hearing.

A copy of the report and witness statements had been provided to all those persons present and to members of the Committee. Members noted that this review of a premises licence was made at the request of Cleveland Police. Representations in support of the review had also been submitted by Trading Standards and The Local Safeguarding Children Board who were both in support of the Police's review application.

Miss Phillips, Barrister, represented Cleveland Police and stated that in their view the licence should be revoked. The removal of the Designated Premises Supervisor (DPS) would not be appropriate in this instance as the premises licence holder had demonstrated they could not manage the premise. The review was brought on the basis that the premise was undermining the Crime and Disorder objective and was a danger to children i.e. undermining the protection of children from harm objective. Furthermore at this time the Police did not feel that it was appropriate to attach conditions to the licence as revocation was the most appropriate remedy. The licensing objectives were not getting promoted as there had been three under age sales in 33 days. After the first under age sale when a Fixed Penalty Notice was issued to the member of staff there was still no further or adequate training. No adequate steps had been taken to address the failings of the management of this premise. Miss Phillips asked the Committee to note that this application was supported by both Trading Standards and the Local safeguarding Children Board.

Mrs Lee the Premises Licence Holder was undermining the licensing objectives in particular the prevention of crime and disorder and the protection of children from harm. In the Police's view the only reasonable steps which could be taken would be to revoke the licence.

Miss Phillips called evidence from PC Iceton who read her witness statements presented her exhibits SI/1 to SI/10 which included the witness statements of the Bar Staff.

PC's Iceton was cross-examined by Mr Harvard, Solicitor for the premises licence holder, the respondent in this matter.

Miss Allwood stated that Trading Standards had submitted a representation as they had concerns over the fact that the premise had made sales on three occasions to persons under age. Trading Standards fully supported the Police's stance on this issue. Trading Standards had suggested a number of conditions that should be attached to the Licence which would assist in preventing such sales in the future.

Miss Allwood stated that she had noted from Mr Harvard's submission that the management of the premise had now introduced training. She was concerned to note that this new training was being put forward as best practice and to demonstrate that the premise was now operating diligently. However Miss

Allwood asked the Committee to note that the authorisation to supply alcohol provided by Mr Cullum to his staff had been dated the day before the staff had been trained. In her view staff should be trained before been authorised to sell alcohol and these records showed this had not been the case.

Mr Harvard confirmed that his client would agree to all of the conditions proposed by Trading Standards been attached to the licence.

The Committee noted that a representation had been received from the Local safeguarding Children Board which supported the Polices application for a review of the licence.

Mr Harvard then called evidence from Mrs Lee, the Premises Licence Holder and Mr Andrew Cullum, the Designated Premises Supervisor. It was noted that Mr Harvard led Mrs Lee through her evidence as the majority of Mrs Lees answers were 'yes' or 'no'. Miss Phillips objected to the manner in which Mr Harvard was leading Mrs Lee. Mr Harvard stated that he felt this was appropriate as Mrs Lee was very upset. Mrs Lee became distressed on a number of occasions during the meeting.

Albeit Mrs Lee had given 'yes' or 'no' answers her evidence could be summarised as follows:-

Mrs Lee stated that she and her husband are the Directors of the Company that owns the premise. Mrs Lee confirmed that they run a restaurant in Middlesbrough and that she holds a personal licence. She stated that prior to obtaining the Moby Grape they had no experience of running public house. Mrs Lee stated that when taking over the premise she had a meeting with Andrew Cullum in June 2006. She believed the premises were been run satisfactorily and would visit them almost every day. She confirmed that she did not really talk to Mr Cullum about training staff as she thought he knew already. She did not realise she had to be proactive and thought Mr Cullum would do everything. Mrs Lee stated that she knew about the licensing objectives. Mr Cullum told Mrs Lee about the test purchase on 18th May 2007. Mrs Lee told Mr Cullum to be very careful to ensure it did not happen again and to make the staff aware. She confirmed that she did not do anything to check what had happened i.e. what action Mr Cullum had taken. A further test purchase had been refused a sale on 22nd May but on 7th June a member of the bar staff made an under age sale. Mr Cullum informed Mrs Lee of this second under age sale. Mrs Lee told Mr Cullum to warn the staff again and to tell them to check identification of customers. Stickers were placed on tills after the sale by Heather Metcalfe on 18th May 2007. Further training sheets were placed in the training manual kept behind the bar. The staff were informed that if they served anyone under age they would be dismissed from the Company. Mr Cullum told all staff members to check for identification. Mrs Lee referred to page 57 of the bundle which was a document produced in PC Icetons statement, exhibit SI/3 and was headed "Key Points That All Bar Staff MUST Remember". Mrs Lee stated that she was not sure whether staff were told to read this document when they commenced their employment. Mrs Lee stated that she thought that staff had sufficient training. However Mrs Lee conceded that the training that was in place did not work as there was a further sale on 20th June. Mrs Lee stated that she was aware that Mr Cullum had now received a copy of the good practice training DVD produced by Trading Standards entitled Responsible Retailing Guide on Age Restricted

Sales. Both Mr Cullum and Miss Walton now had one to one training sessions with staff and these would continue should the Committee allow the premise to retain the licence. If the licence should be revoked there would be a substantial financial loss to Mr and Mrs Lee.

Clarification was sought as to whether Mrs Lee had obtained her personal licence under the new licensing regime i.e. since introduction of Licensing Act 2003. Mrs Lee confirmed that this was the case and she had done a licensing qualification.

Miss Phillips, Barrister for Cleveland Police then cross-examined Mrs Lee on her evidence.

Miss Phillips suggested to Mrs Lee that she had been negligent in fulfilling her duties and responsibilities under licensing law. Mrs Lee confirmed that she should have done more and should have been more careful and that there was a general lack of communication in the running of the premise. Mrs Lee confirmed that she had attended a Pub Watch meeting recently but had not done so before the under age sales. Mrs Lee confirmed that she had never sought to clarify the training issue with any of the staff and had relied on assurances given by Mr Cullum. Mrs Lee agreed that staff only had training records from August and September 2007. Mrs Lee stated that she had warned staff they could be dismissed if they sold to under age sometime after 4th July. Miss Phillips made the point that Mrs Lee had taken no action against the bar staff.

Members of the Committee noted that in Mrs Lees letter at page 65 of the bundle, exhibit SI/10 of PC Icetons statement she had stated that "I will also introduce and apply Moby Grape spot checks where we will test the staff ourselves to see if they are asking for I.D". It would appear that this document was submitted by Mrs Lee at the start of August 2007. Members asked whether any spot checks had taken place. Mrs Lee stated that they had but that she did know when and had no records of this.

Mr Harvard then called evidence from Mr Andrew Cullum, the Designated Premises Supervisor.

Mr Cullum stated that he had no recollection of having received the DVD training pack at the Pub Watch meeting on 7th September 2006. A document was produced marked CPB 2 which was an exhibit from the statement of Craig Barnes licensing officer with the Council. It was clarified that this document sought to demonstrate that Mr Cullum had been provided with a DVD training pack at the Pub watch meeting on 7th September 2006, Mr Barnes had signed to confirm this was the case.

Mr Cullum stated that as he had no recollection of receiving the DVD training pack in 2006. He had made efforts to obtain a further copy which he received about a month ago. Mr Cullum stated that he now took the staff through this training pack but previously had given verbal instruction to the staff at least every two weeks. Mr Cullum stated that every member of staff, including the three who sold, knew it was illegal to sell to under age. Mr Cullum stated that if he could turn the clock back he would record with dates etc whenever he did training.

Miss Phillips, Barrister for Cleveland Police then cross-examined Mr Cullum on his evidence.

Miss Phillips asked how often Pub Watch meetings were held. Mr Cullum confirmed that they were held every quarter. Miss Phillips suggested that Mr Cullum would know therefore whether he was at the meeting in September 2006. Mr Cullum stated that he thought he wasn't there but he could've been there. As far as he knew he didn't take a training pack with him. Miss Phillips suggested that Mr Cullum had initially said in his statement that he was "confident" the staff had received training but now seemed to be very sure. Mr Cullum stated that he did train staff but didn't have anything signed. Miss Phillips suggested that Mr Cullum had relied quite heavily on staff life experiences and that he had been lazy in the training of the staff. Mr Cullum did not accept that was the case. Mr Cullum could provide no explanation for why there had been three under age sales in a 33 day period.

The Committee felt that clarification needed to be sought on the circumstances surrounding the Pub Watch meeting on 6th September 2006 and requested that Mr Barnes be called to the meeting.

Mr Barnes attended the meeting and explained that he had been present at the Pub watch meeting on 6th September 2006 as a representative of the Councils Licensing section. Mr Barnes confirmed that he had been provided with a quantity of training packs to be distributed to Pub watch members at the meeting. Mr Barnes confirmed that he had recorded him providing a pack to Mr Andrew Cullum at the meeting. Mr Barnes confirmed that he did know Mr Cullum so would not have made a mistake over this. Mr Barnes could not recall whether he had given any presentation to the meeting about the packs that were distributed.

Mr Harvard asked Mr Barnes whether there was a separate record of attendance. Mr Barnes stated that he could not answer that question as Pub Watch was run by the Licence Holders. Mr Barnes confirmed that it was his handwriting on the document produced as CPB 2. Mr Barnes stated that there was a long line of people waiting to receive the packs. Mr Harvard asked when Mr Barnes wrote the names on the sheet, was it before or after the meeting. Mr Barnes stated that he would wait till someone approached him and ask for their name and then write it on the sheet.

Members noted that management had indicated disciplinary action would be taken against staff who sold to the under aged. They asked what action had been taken against staff.

Mr Cullum indicated that verbal warnings had been given.

Members asked whether there was any written confirmation of this.

Mr Cullum indicated that there was not.

Miss Allwood was given an opportunity to ask questions of Mr Cullum.

Miss Allwood asked why the training record produced for staff showed that they

had been authorised to provide alcohol before they had received training. Miss Allwood suggested this should have been done the other way round. Mr Cullum stated that he did not know why this was the case and perhaps they had forgotten to sign the documents. Miss Allwood also asked why Jamie Gibson had been authorised to supply alcohol but there was no record of him having received training. Mr Cullum could provide no explanation.

Miss Phillips stated that from the evidence presented and heard, it was patently obvious that this was a shambolic operation. There had been three under age sales in a very short space of time which was extremely serious and undermined the Licensing Objectives. After the first sale alarm bells should have been ringing with the management but little appeared to have been done. Any training given to staff was wholly inadequate. As had been stated previously in the Police's view the Committee should consider revoking the Premises Licence. This was proportionate because of the manner in which the premise had been run. Conditions were not appropriate as there had already been failures in the system. Everything that the premise had done had been reactive and nothing has been proactive.

Mr Harvard stated that the owners took over the premise in June 2006, before this they had no experience of running a public house. They relied solely on Mr Cullum. Mr Cullum had explained that he gave training on an informal basis every two weeks. The staff did not seem to have realised what was being said to them was training. It was difficult to judge if training was working until something went wrong. It should be noted that during the Police's operation one under age sale was refused so something must have been working. It was accepted that they had been reactive in what they had done. Mrs Lee was a very frightened young lady and the Committee had seen her in distress. It would be a financial disaster if the Licence was revoked.

Mr Cullum's evidence indicated that he had had experience at the premise for some time. He may have been slow on picking up the training issues with the DVD pack. Training had now been done with all staff and will be done with any new staff.

Mr Harvard stated that the premises would promote the Licensing Objectives in the future and the response of the Committee should be proportionate. At the moment there were five staff at the premise but this would increase when University returns. They had shown they can train staff and Mr Cullum took reasonable steps and did what he thought was working.

Mr Harvard submitted that the premise should retain its Licence perhaps with a period of suspension. They would then return with the need to protect the Licensing Objectives in mind.

In considering their decision Members had regard to the evidence which had been presented to them. The Committee also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

It was noted that the evidence put before the Committee was based on the Crime and Disorder and Protection of Children from Harm licensing objectives.

It was clear that the Premises Licence Holder had no due diligence in relation to the training of their staff and had substantial failings in relation to the promotion of the licensing objectives. It was clear that the licensing objectives had been undermined by the premises licence holder. The only defence submitted by the premises licence holder was one of ignorance and/or gross negligence. The premises licence holder had relied solely on Mr Cullum, the Designated Premises Supervisor. The Committee were also concerned that the training documents supplied in support of their case still had flaws such as the fact staff had been authorised to supply alcohol before being trained and training documentation was still missing for a member of staff who had been authorised to supply alcohol. The Committee were greatly concerned by the fact that the premise had three under age sales. As was pointed out one was of concern, two was of great concern and three showed a complete disregard for their obligations and that any systems and practices they did have were completely failing.

The Committee noted that the Premises Licence Holder had confirmed that he was willing to attach a number of conditions to the Licence which would assist in improving standards at the premise. In most cases this would be welcome and the suggested conditions were clearly good practice. However given that the Premises Licence Holder had shown little awareness of their responsibilities it was not deemed appropriate to deal with this review by the imposition of conditions.

The Committee also gave consideration to whether Mr Cullum should be removed as the DPS. The Committee had concerns that Mr Cullum had not been proactive in promoting training at the premise. It was clear that staff did not perceive that they had received any training. Mr Cullum stated that he provided training on a fortnightly basis but there was no documentation to confirm this. It was clear that any training provided by Mr Cullum was not perceived as such. As had been outlined above the premise had no due diligence in training their staff and their systems and procedures were sadly lacking. The Committee found that Mr Barnes had provided Mr Cullum with a training pack at the Pub watch meeting on 6th September 2006 but for whatever reason Mr Cullum did not appreciate the importance of this. This pack had been provided to assist licensed premises. The Committee were of the view that the obligation was on the premise to ensure it had due diligence with or without the training pack. After considering all of the issues on this point the Committee felt that this was not a situation where the removal of the DPS would have a positive impact on the operation of the premise. The Committee noted in particular paragraph 11.20 of the Section 182 Statutory Guidance that "poor management is a direct reflection of poor company practice or policy and the mere removal of the Designated Premises Supervisor may be an inadequate response to the problems presented". The responsibility for the failings at the premise was mainly borne by the premises licence holder who had failed to ensure that the licensing objectives were not undermined. The Committee hoped that Mr Cullum had learned a valuable lesson from this unfortunate situation.

Any training provided at the premise was a case of "closing the stable door after the horse has bolted". It was evident that Mr Harvard as legal adviser would have given robust advice as to what documentation and training should be in place, this had obviously been done after the three under age sales and during

the review process. The Committee felt that the premises licence holder and to some extent Mr Cullum still did not appreciate the seriousness of the situation in which they found themselves. The Committee had concerns over the future running of the premise given that there were discrepancies in the evidence that had been provided by Mrs Lee, in that she would carry out spot checks, when there was no evidence these had been done. There were also concerns over the training records as was evidenced in the points raised by Miss Allwood from Trading Standards.

The Committee felt that suspension was not appropriate given the wholesale failings at the premise and the fact that there had been three under age sales.

RESOLVED that the Premise Licence be revoked.