

Licensing Sub Committee

A meeting of Licensing Sub Committee was held on Tuesday, 4th January, 2011.

Present: Cllr Alan Lewis, Cllr Roy Rix and Cllr Bill Woodhead.

Officers: J Allwood, C Snowden, M Vaines, S Wolleter (DNS); J Nertney (LD).

Also in attendance: PC Icton (Represented by Mr Abrahams, Barrister at Law), Mr Russell - Premises Licence Holder (not represented). Also in attendance - Mr Wilson and Mr Dixon who were called as witnesses by the Respondent, Mr Frost (Designated Premise Supervisor).

Apologies: None.

**LSC
40/10** **Appointment of Chairman**

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

**LSC
41/10** **Declarations of Interest**

There were no interests declared.

**LSC
42/10** **Exclusion of the Public**

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

**LSC
43/10** **The Courtyard Hotel, 39A High Street, Stockton on Tees - Application to Vary Licence to Specify Individual as a Premise Supervisor under the Licensing Act 2003**

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

A copy of the report and supporting documents and statements had been provided to all those persons present and to Members. Members noted that the Police had lodged a notice of objection to the application for Mr Frost to be specified on the licence as Designated Premises Supervisor.

Mr Abrahams on behalf of Cleveland Police stated that the Police objected to the application to name Andrew Frost as the Designated Premises Supervisor.

The Polices objections to the application were summarised as:-

1. Mr Frost will be a front man for the premise and Mr Russell will remain in control.

2. If Mr Frost was in day to day control the Police feel there are exceptional circumstances to object as Mr Frost has a number of conviction and other antecedent matters which are of concern to the Police and they feel the crime and disorder objective will be undermined.

The antecedent history for Mr Frost related to a short period of time (April to October 2010) which was of concern to the Police.

Mr Frost stated that he had retrained the staff at the premise and felt he would be a responsible and strong Designated Premises Supervisor.

All parties present were given an opportunity to sum up their case.

In considering their decision Members had regard to the evidence which had been presented to them in both written and oral form from the witnesses and representatives. Members also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

Members were mindful that the Police could only sustain an objection to a DPS in exceptional circumstances. The Police had explained why they deemed there to be exceptional circumstances in relation to Mr Frost and this premise.

After considering all of the evidence Members were satisfied that exceptional circumstances applied in relation to the application and that the crime prevention objective would be undermined.

Members noted that in the last year Mr Frost has received a caution and a conviction which were deemed relevant. As these had been received in a relatively short period of time in 2010 this indicated a chaotic lifestyle on the part of Mr Frost. Members were particularly concerned given the history of the premise and that it had been subject to two applications for a review of the premise licence. Members were satisfied that if granted Mr Russell would remain in control of the premises and Mr Frost would merely be a front man.

RESOLVED that the application to Vary Licence to Specify Individual as a Premise Supervisor under the Licensing Act 2003 be refused.

**LSC
44/10**

The Courtyard Hotel, Green Dragon Yard, 39A High Street, Stockton on Tees - Application for Review of a Premise Licence under the Licensing Act 2003

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

Mr Russell (Premise Licence Holder) made a preliminary application to the Committee, namely:-

1. To introduce CCTV evidence on a video cassette in relation to the under age sale which took place at the premise on 22 October 2010;
2. To introduce photographs of signage on display at the premises;

Mr Abrahams on behalf of the Police stated that the production of the CCTV footage was not relevant as the Fixed Penalty ticket that had been issued in relation to the incident had been paid. Mr Abrahams had no objection to the photographs been produced to the Committee.

Members considered the application and were of the opinion that a copy of the

CCTV footage should have been provided to the parties prior to the hearing. The Committee had no facilities to view the footage as it was held on video tape. Notwithstanding this Members were of the view that the footage was not relevant to their deliberations as an under age sale had taken place on 22nd October 2010 and this was not in dispute. Members could not go behind that incident.

Two photographs showing signage displayed at the premise were shown to the parties and presented to Members by Mr Russell.

A copy of the report and supporting documents and statements had been provided to all those persons present and to Members. Members noted that this review of the premises licence was made at the request of Cleveland Police. Representations in support of the review had also been submitted by the Councils Trading Standards and Environmental Health Sections.

Mr Abrahams on behalf of Cleveland Police stated that the application for a review of the premises licence had been made as the premise had a further positive test purchase for under age sales of alcohol.

Mr Abrahams noted that the premise had been subject to a review in September 2009 and at the time the Committees decision had been a "shot across the bows" for Mr Russell. Given the previous decision of the Committee all options in Section 52 of the Act had been tried and in the Polices view revocation of the licence was now the most appropriate sanction.

Mr Abrahams drew Members attention to the witness statement prepared by PC Iceton. Mr Abrahams called evidence from PC Iceton.

PC Iceton detailed that a visit was undertaken at the premise in August 2010 which was approximately 11 months after the review hearing before the Licensing Sub Committee. During that visit Mr Russell was spoken to by PC Iceton and it was noted that a number of conditions which were attached to the licence were still not being complied with. It was noted that the conditions had been complied with when a further visit was carried out by PC Iceton on 21st September 2010.

PC Iceton detailed that the test purchase operation had taken place on 22nd October 2010 and involved two 14 year old girls who entered the premise and were served two glasses of wine by a member of the bar staff. It was noted that following the last review hearing a condition was attached to the licence that the premise must operate a Challenge 21 policy. Subsequently the member of bar staff attended Stockton Police Station and was issued with a fixed penalty ticket which he paid.

PC Iceton stated that in the opinion of Cleveland Police the premise was not been run appropriately and that Mr Russell was the root cause of the problems.

Mr Russell was invited to ask questions of PC Iceton.

Miss Allwood stated that Trading Standards supported the Police application for a review of the premises licence and that they were also concerned that there had been another under age sale at the premise even though the premises had

already been subject to a review in 2009.

Mr Russell had no questions of Miss Allwood.

Environmental Health had lodged a representation in relation to the review as they had a history of noise complaints relating to the premise which mainly involved noise nuisance from the outside seating area and from noise escaping from the premise itself. In the opinion of the Environmental Health section this indicated bad management at the premise.

Mr Russell was invited to ask questions of the Environmental Health representatives.

It was accepted by Mr Snowdon (Environmental Health) that the complaints about the premise were primarily received from one complainant.

Members noted that a representation had been received from the Georgian Theatre/Tees Music Alliance but no one had attended to give evidence.

Mr Russell then gave evidence regarding the running of the premise.

Mr Russell accepted that records were not always kept up to date. Mr Russell stated that a key member of his staff had removed some records in error. Mr Russell did not accept the Police's assertion that he had "no documents" but that it was an issue concerning the availability of the documents.

Mr Russell called evidence from Mr Dixon, an employee at the premise and Mr Wilson, a resident of the hotel.

Mr Abrahams asked questions of Mr Russell.

All parties present were given an opportunity to sum up their case.

In considering their decision Members had regard to the evidence which had been presented to them in both written and oral form from the witnesses and representatives. Members also had regard to the statutory guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy.

Members were mindful of the findings of the previous review hearing when the members found that:-

"Mr Russell was totally inadequate to operate as the DPS. The Committee had little or no faith that if they allowed Mr Russell to remain as DPS that there would be any change in the management of the premise".

In the view of Members and even after the previous Committee's decision to remove Mr Russell as DPS there had been little improvement in the management of the premises and as such it was apparent to Members that the sole cause of the problems at the premise was the involvement of Mr Russell.

It was noted that at the previous review hearing the Members had:-

"considered whether the premises licence should be revoked. Two under age

sales at an individual premise could, in the Committees view, reasonably lead to the revocation of a premises licence. However in balance and considering that this was the first application for a review of the premises licence the Committee did not feel it would be reasonable to revoke the licence at this time. However Mr Russell should be in no doubt that he is extremely fortunate that the premises licence was not revoked and that it was a borderline decision".

After considering mitigation and all of the evidence Members were satisfied that the licensing objectives were being undermined at the premise. In particular Members were concerned that crime and disorder was being undermined at the premise as there had been a further successful test purchase. Members agreed that the premise licence be revoked. This was deemed to be proportionate given the seriousness of a further underage sale at the premise and the fact that previous action had not had the desired effect in improving standards and practices at the premise. In the opinion of Members since the previous review hearing Mr Russell had merely paid lip service to the requirements for sustainable and real improvement to the management of the premise. As had been found in the previous review hearing there continued to be a lack of understanding shown by Mr Russell as to the importance of legal obligations being fulfilled at the premise.

Members balanced their decision to revoke the licence against the potential financial impact for Mr Russell and noted that Mr Russell also had the hotel business to run. The revocation of the licence was therefore deemed to be proportionate.

RESOLVED that the Premises Licence for the Courtyard Hotel be revoked.