

Statutory Licensing Sub Committee

A meeting of Statutory Licensing Sub Committee was held on Thursday, 22nd October, 2020.

Present: Cllr Paul Kirton (Chairman), Cllr Evaline Cunningham, Cllr Ken Dixon,

Officers: Nathan Duff (PH), Stephen Donaghy, Stephanie Landles (DA&H), Jonathan Nertney (HR,L&C), Polly Edwards, Michael Henderson, Leanne Maloney-Kelly, Kirsty Wannop, Sarah Whaley, John Wynn (MD)

Also in attendance: Cllr Lynn Hall, Applicant: Cleveland Police: Acting Sergeant Andrew Thorpe, PC Emma Westmoreland, Ms Joan Smith, Barrister representing Cleveland Police. Premise Licence Holder and Designated Premise Supervisor Gary Cooke, Duncan Craig (Barrister) representing Gary Cooke. Interested Party, Star Pubs and Bars – Lance Green (Area Manager), Andrew Cochrane (Solicitor) representing Star Pubs and Bars

Apologies:

SLS Declarations of Interest

11/20

There were no declarations of interest

SLS LICENSING ACT 2003

12/20

**APPLICATION FOR REVIEW OF A PREMISES LICENCE
THE PENNY BLACK
LANGTHORNE GROVE
STOCKTON-ON -TEES
TS18 5PU**

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee were asked to consider an application for a review of a premise licence from Cleveland Police on the grounds of the prevention of crime and disorder, prevention of public nuisance and public safety objectives.

The Chair introduced all persons who were present and explained the procedure to be followed during the hearing. It was noted that this was a remote meeting and all parties were in attendance via Microsoft Teams either by video link or via the telephone. All parties confirmed that they could see and/or hear each other.

A copy of the report and supporting documents had been provided to all persons present and to members of the Committee.

Members noted that the review of the premises licence was made at the request of Cleveland Police. Representations had been received from other responsible authorities including Licensing, Environmental Health and Public Health. Representation had also been made by Councillor Lynn Hall, the Ward Councillor.

Miss Smith, Barrister, addressed the Committee on behalf of Cleveland Police.

Miss Smith noted that the members of the Committee had read the background papers to the review which detailed the grounds for seeking the review and the evidence presented in support.

The most concerning incident was in May 2020 when persons were found on

the premise drinking alcohol, which at the time was prohibited under COVID-19 regulations.

Miss Smith called evidence from Acting Sergeant(AS) Andrew Thorpe and PC Emma Westmoreland.

It was acknowledged that the premise had only been of concern to the Police over the last 7 months. Prior to that time there had been few, if any matters which had come to the attention of Cleveland Police. It was quite clear that something had gone seriously wrong at the premise over the last 7 months. In the view of Cleveland Police, the introduction of regulations following lockdown in March had led to the start of the issues. The Police started to receive complaints about the premise and visits were undertaken. There was a considerable lack of conditions on this licence. One of the issues had been a distinct lack of CCTV including a time when Mr Cooke reported a burglary at the premise. Police would expect a responsible licensee to have CCTV at a licence premise. Mr Cooke was advised that CCTV could be of great benefit to him as it could potentially demonstrate that there was no substance to complaints that customers were drinking on the premise in breach of COVID-19 regulations.

On 15th May 2020, the Police received a further report of customers drinking on the premise. AS Thorpe and PC Westmoreland visited the premise and found customers drinking alcohol in breach of COVID-19 regulations. PC Westmoreland's body worn camera footage was played to the Committee. PC Westmoreland informed the Committee that she had been deeply shocked when she had entered the premise and it was operating as if COVID-19 was not an issue. Following this incident and because of the serious breach on 19th May 2020 a Prohibition Notice was served on Mr Cooke by Environmental Health.

AS Thorpe stated that when he had spoken to Mr Cooke, he appeared to take the issues on board but did not then take any proactive steps to take action and address them.

The Committee were also informed that nitrous oxide cannisters were found in the vicinity of the premise and complaints were received that customers were using these. AS Thorpe informed the Committee of the Polices concerns over their use.

Miss Smith noted that she had received some proposed conditions from Mr Cooke's legal representative (Mr Duncan Craig). These were welcomed but the Polices view remained that the premise licence should be revoked.

Members of the Committee and all interested parties were invited to ask questions.

Ward Councillor Lynn Hall addressed the Committee and stated that the Penny Black had operated in that location for approximately 50 years. The premise was surrounded by bungalows and was in a residential location. Councillor Hall confirmed that she had received several complaints from residents. Councillor Hall stated that in her view the Committee were only receiving a snapshot of the problems which had been associated with the premise.

Licensing Team Leader, Mrs Leanne Maloney-Kelly, informed the Committee

that the proposed condition circulated by Mr Duncan Craig did address some of the issues which had led to licensing submitting a representation. Mrs Maloney-Kelly stated that she had also discussed possible conditions with other responsible authorities and had e-mailed Mr Craig with some additional suggested conditions. During the hearing Mr Craig was given an opportunity to take instructions from his client and he confirmed that he had no objection to the additional proposed conditions.

Environmental Health Manager, Stephen Donaghy made representation on behalf of Environmental Health which the Committee noted.

Health Improvement Specialist, Mr Nathan Duff made representation on behalf of Public Health which the Committee noted.

Andrew Cochrane, Solicitor representing Star Pubs and Bars, stated that they were an interested party in this review as they were the freehold owner of the premise. Star Pubs and Bars were extremely sorry that the premise had caused issues for residents.

Mr Cochrane stated that they were mindful that Mr Gary Cooke (Premise Licence Holder and Designated Premise Supervisor) had operated the premise for two and a half years without incident and in their view a final warning would be the appropriate means to deal with this review. Star Pubs and Bars would agree that the proposed conditions should be attached to the licence. Star Pubs and Bars were happy to have the premise licence transferred into their name so that they could exercise a degree of control over the premise.

Mr Craig, Barrister, addressed the Committee and noted that Mr Cooke acknowledged that his management of the premise was unacceptable. Mr Cooke had taken the review process extremely seriously and had retained legal representation. Mr Cooke had already taken proactive steps to implement change at the premise and ensured that the issues of concern were addressed.

Mr Craig stated that Mr Cooke was an experienced licensee and was of good character.

Mr Craig provided an explanation on behalf of Mr Cooke in relation to the incident which was at the heart of this review when customers were found to be drinking alcohol on the premises in breach of COVID-19 regulations. Mr Cooke had come downstairs and had found people drinking, he had then sat down at the bar while he decided how to deal with the issue and at that point the Police entered. It was fully accepted that this did not look good and reflected very badly on Mr Cooke.

Mr Cooke addressed the Committee and apologised that his management had led to the review process being commenced. Mr Cooke gave his personal assurance to the Committee that he would continue to fulfil the promises that had been made on his behalf and ensure the premise operated in a responsible manner in the future.

Mr Craig informed the Committee that the review could be dealt with by imposing a suspension of the licence. The Committee were also invited to amend the premise licence and attach conditions proposed on behalf of Mr

Cooke and which had been circulated to the Committee and the parties.

The Members of the Committee and all parties were invited to ask questions.

All parties present were given an opportunity to sum up their case with the premises licence holders representative given the opportunity to make the final submission.

Members had regard to the Committee papers, evidence and submissions, which had been circulated prior to the hearing and presented to them, in addition to the oral submissions made by those present at the meeting. The Committee decided the matter based on its merits and considered the evidence on the balance of probabilities.

Having carefully considered those matters brought before them and in reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the Guidance Issued under Section 182 of the Licensing Act 2003 (as amended) and the Council's Licensing Policy.

The Committee considered the evidence on the balance of probabilities and noted the following:-

- Mr Cooke's management of the premise which resulted in this review process was unacceptable. The Committee were very concerned that such management failings had occurred at a period of national crisis during the COVID-19 pandemic. The Committee felt that the serious incident when customers were drinking alcohol on the premise, which was in breach of the COVID-19 regulations, would have been justification to revoke the premises licence;
- The Committee noted that many complaints had been received by the Police, the Councils Licensing Service and Ward Councillor Hall. The residents had lived in close proximity to the premise for many years and had never experienced a period of such mismanagement at the premise;
- It appeared that the client base of the premise had changed recently and there were a larger number of younger persons frequenting the premise which had led to an increase in the number of incidents and complaints being received. Mr Cooke had failed to properly manage the premise and his customers and the responsibility for this failure rested solely on Mr Cooke;
- Mr Cooke had failed to act and take action despite the early intervention of the Police, Licensing and Environmental Health. Mr Cooke had been given the opportunity to address the failings at his premise but had not heeded that advice. On the contrary the situation had got worse which culminated in the visit to the premise by Cleveland Police Officers when customers were found on the premise in clear breach of COVID-19 regulations. Following that incident, a formal direction had been served on Mr Cooke.
- The explanation put forward by Mr Cooke for failing to prevent his customers from drinking in breach of COVID-19 regulations was fanciful and the Committee rejected this. Mr Cooke could be seen on the Police Officers body worn CCTV camera sitting at the bar with a pint in front of him while customers

were present. There were also members of staff behind the bar and it was accepted that alcoholic drinks had been served to customers.

The Committee when considering what action to take in relation to this review had regard to the following points which were deemed to be mitigating factors: -

- The Committee noted that Mr Cooke had been a licensee for many years and had run successful venues including nightclubs and public houses. This was the first time that Mr Cooke had appeared before Stockton Councils Licensing Committee. It was accepted by the responsible authorities that prior to the matters that led to this review Mr Cooke had not been a cause for concern;
- The Committee took into consideration the fact that Mr Cooke had addressed them and given an apology and his assurance that if he were permitted to retain his licence, he would ensure that there were no further similar failings in the future. Mr Cooke explained to the Committee that he had taken on board all the concerns raised and appreciated that his management at the time was sadly lacking and he would ensure he would not repeat this in the future.
- Mr Cooke had taken proactive steps to address some of the issues which were of concern to the responsible authorities. It was noted that the premise licence did not currently have a CCTV condition. Mr Cooke had recently invested a large sum of money in the installation of an up to date CCTV system which covered the interior and exterior of the premise.
- The Committee noted the undertaking given by Mr Cochrane, Solicitor, who represented the leasehold owner of the premise Star Pubs and Bars Limited. Mr Cochrane informed the Committee that the company were willing to transfer the premise licence into their name. This would allow them to exercise a further degree of control over Mr Cooke and act as a new point of contact for the responsible authorities, Ward Councillors and local residents.

The Committee considered revoking the premise licence and felt on balance that they could take a step back from this ultimate sanction. The Committee took into consideration that if they were to revoke the premise licence then the current COVID-19 pandemic posed a particularly difficult time for the pub and leisure industry. There was the distinct possibility that if the premise licence was revoked then the premise could be boarded up and potentially become a magnet for anti-social behaviour or vandalism. The Committee were mindful that the local residents, who had lived as neighbours to the premise for many years, wanted a well-run establishment which did not cause nuisance. This was something which the Committee also wanted, and they considered what steps would be appropriate to achieve this. The Committee took a step back from revoking the premise licence and considered what steps would be required to ensure Mr Cooke could live up to the assurances he had given to the Committee. The Committee did not feel it appropriate currently to remove Mr Cooke as the Designated Premise Supervisor. If Mr Cooke was to live up to the commitments, he had given to the Committee then he should remain as the DPS in order to do so.

Mr Cooke should be in no doubt that if he was to exhibit similar management failings in the future then firmer action was likely to be considered which could include the Committee removing him as DPS or the revocation of the premises licence. It was noted that Star Pubs and Bars Limited had also stated that they

would also take a dim view should further complaints be received concerning the management of the premise.

The Committee confirmed that they agreed that the premise licence should be transferred from Mr Cooke to Star Pubs and Bars Limited. The Committee wished to thank Mr Cochrane for his help in agreeing to facilitate that step and noted that he would do so forthwith.

After considering all of the evidence the Committee resolved to: -

- Suspend the premise licence for a period of two months. This period must be used by Mr Cooke to ensure that all conditions were properly introduced and implemented. Given the background to this review the Committee felt it particularly important that staff were properly trained in ensuring they complied with any regulations relating to COVID-19;

- The Committee attached the following conditions to the premise licence. These conditions included those proposed by Mr Craig and the conditions suggested by Mrs Maloney-Kelly. The Committee also made some minor amendments to the proposed conditions which they felt were appropriate and addressed issues relevant to their findings:-

1. An incident book must be kept on the premises at all times. The book will detail in brief, incidents of injury/ejection/refusals/drug misuse/seizure/age challenge. Such matters will be timed, dated and signed by the author and produced to Police and other Responsible Authorities immediately upon request.

2. The DPS and all other members of staff must ensure that no open vessels are taken by customers out of the licensable area, save for the external, seated, smoking area next to the front entrance (as shown on the submitted plan).

3. The external, seated, smoking area next to the front entrance (as shown on the submitted plan) shall have a terminal hour for its use by customers of 22:00 hours and staff must ensure that this area is cleared of all customers by this time.

4. All staff must be fully trained and retrained on a 3 monthly basis in relation to the laws relating to the sale of alcohol to underage persons, persons buying on behalf of under 18's (proxy sales), persons appearing to be under the influence of alcohol and also the operation of the associated "Challenge 25" policy. Training must also be given to all staff on any legal requirements relating to the operation of licensed premises during the Covid-19 pandemic and each time the regulations relating to licensed premises are amended. Staff must receive refresher training at least every 3 months.

5. The business will maintain a refusals book, to be kept on the premises at all times, which will record all instances where the sale of alcohol has been refused. This shall include the date and time of the attempted sale, together with a description of the incident. The Designated Premise Supervisor/Premises Manager/Business Owner will check and sign each page and the refusals book will be made available to the Licensing Authority and/or Responsible Authorities upon request.

6. Training records, to be kept on the premises at all times, must be signed by both the staff member and the Designated Premise Supervisor/Premises Manager/Business Owner will be retained for future reference and shall be updated at least every 3 months. All staff training records must be made available to the Licensing Authority and/or Responsible Authorities upon request.

7. The business must maintain an incident book to record all instances where the staff deal with people who have been unruly, drunk, abusive, aggressive or have committed criminal acts or have had to call police for such incidents. This shall include the date and time of the incident, together with a description of the incident and whether the police were called/attended. The Designated Premise Supervisor/Store Manager/Business Owner must check and sign each page and the incident book must be made available to the Licensing Authority and/or Responsible Authorities upon request.

8. A digital Closed Circuit Television System (CCTV) must be installed and maintained in good working order and be correctly time and date stamped. The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed, whilst complying with the Data Protection legislation. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition. Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs. There must be a minimum of 30 days recording. The system must record for 24 hours a day. The system must incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer. The digital recorder will have the facility to be password protected to prevent unauthorised access, tampering, or deletion of images. There must be at all times a member of staff on duty who is trained in the use of the equipment and upon receipt of a request for footage from a governing body, such as Cleveland Police or any other Responsible Authority, be able to produce the footage within a reasonable time, e.g. 24hrs routine or immediately if urgently required for investigation of serious crime.

9. All persons under the age of 18 must be escorted by an appropriate adult or legal guardian and must be entering the premises for food and soft drinks only and will have vacated the premises by 21.00 hours.

10. Patrons must not be allowed to congregate in the car park after leaving the premise and must be encouraged to leave the area as soon as possible.

11. A "Challenge 25" policy must be implemented with all staff insisting on evidence of age from any person appearing to be under 25 years of age and who is attempting to buy alcohol. There shall be notices displayed at all points of sale and at all entrances and exits to inform customers and remind staff that the premises is operating a "Challenge 25" policy.

12. Only valid passports, UK "photo card style" driving licence, PASS approved proof-of-age cards or Ministry of Defence "Form 90" identification cards shall be accepted as proof of age.

13. There must be a minimum of two notices displayed on the premise indicating that the sale of alcohol to those under the age of 18 is illegal and that those adults who buy alcohol for immediate disposal to those under the age of 18 are committing an offence.

14. There must be a minimum of two notices displayed in the premise, with one being easily visible on the way out of the premise, asking customers to leave the premise quietly and respect the nearby residents.

15. Notices stating that CCTV is installed and in operation must be displayed throughout the premise, in the external seating area and in the car park.

16. A written drugs policy must be prepared and maintained at the premises which shall include a zero-tolerance policy towards drugs which must be enforced at all times. Notices informing customers that the premise operates "zero tolerance" on drugs must be displayed in the premises including the toilets.

17. All staff must be provided with suitable training in respect of their responsibilities under the premise drugs policy, Staff will receive refresher training at least every 3 months.

18. There must be a minimum of two notices displayed outside the premise, with one being easily visible in the external seating area and one being easily visible on the way out of the carpark, asking customers to leave the premise quietly and respect the nearby residents.

RESOLVED that the Statutory Licensing Sub Committee:

- 1) Suspend the premise licence for a period of two months
- 2) Conditions be attached to the licence as detailed above.