

Statutory Licensing Sub Committee

A meeting of Statutory Licensing Sub Committee was held on Monday, 21st October, 2019.

Present: Cllr Paul Kirton (Chairman), Cllr Eileen Johnson, Cllr Bill Woodhead (MBE)

Officers: Jonathan Nertney David Crosby (HR,L&C), Michael Henderson, Sarah Whaley, John Wynn(DCE), David Crosby (Communications Team)

Also in attendance: Sergeant Paul Higgins (Cleveland Police), Ms Joan Smith Barrister (representing Cleveland Police, Public Health, Trading Standards and Licensing), Craig Harker (Premise Licence Holder & Designated Premises Supervisor), Members of the Public and Press

Apologies: None

SLS 5/19 Evacuation Procedure

The Evacuation Procedure was noted.

SLS 6/19 Declarations of Interest

There were no declarations of interest.

SLS 7/19 Minutes from the Statutory Licensing Sub Committee meeting which was held on 20th August 2019

Consideration was given to the Statutory Licensing Sub Committee minutes from the meeting which were held on the 20th August 2019 for signature.

RESOLVED that the minutes be signed as a correct record by the Chairman.

SLS 8/19 LICENSING ACT 2003 APPLICATION FOR REVIEW THE GEORGE PUB & GRILL, 102 HIGH STREET, STOCKTON ON TEES TS18 1BD

Members were asked to consider an application for a review of a premise licence from Cleveland Police for The George Pub & Grill, 102 High Street, Stockton, on the grounds of the prevention of crime and disorder.

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

It was noted that Mr Harker the Premise Licence Holder & Designated Premise Supervisor had made a request to film the meeting and live stream via Facebook. The Chair invited any member of the public who did not wish to be filmed to indicate for arrangements to be made that they be moved to a seat where filming would not take place. There were no objections to being filmed.

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee considered the application, full details of which appeared before the Members in their agenda and background papers.

Members noted that the review of the premises licence was made at the request of Cleveland Police. Representations had also been received from other

responsible authorities including, Public Health, Trading Standards and Licensing.

A copy of the report and supporting documents and statements had been provided to all persons present and to members of the Committee. Mr Harker had also submitted a bundle of documents in response to the evidence served on him. Some further documents including character references had been submitted by Mr Harker over the weekend and copies of these were also circulated to the Committee and representatives.

Ms Smith, Barrister (representing Cleveland Police, Public Health, Trading Standards and Licensing) made submissions on behalf of Cleveland Police and also called Sergeant Higgins to give evidence.

The Committee were informed by Ms Smith that Mr Harker had shown a distinct lack of responsibility and had been shown not to be acting in a manner which promoted the licensing objectives. Ms Smith made it clear that this was not about Mr Harker's running of eating competitions or freedom of speech but about his behaviour or condoning of behaviour which was offensive and inappropriate. Despite being given advice, guidance and warnings, Mr Harker had failed to change the manner in which he operated or promoted his business and that it undermined the licensing objectives.

Ms Smith took the Committee through the documentary evidence which included screen shots of Facebook postings made by Mr Harker and the premises, which were derogatory and which led to comments from members of the public encouraging abuse and violence. Mr Harker on behalf of the premises had then liked the comments which was an aggravating factor. One of the comments liked by Mr Harker on behalf of the premises was one referring to the murder of a planning officer by Albert Dryden.

As a licence holder Mr Harker should uphold and promote the licensing objectives. He should also be working with officers but instead he had been derogatory and abusive.

The Polices evidence consisted of the following;

- Statement of Sergeant Higgins dated 4th September 2019 plus exhibits PH/1 – PH/18D);
- Statement of PC Johnson dated 6th September 2019

Sergeant Higgins gave evidence to the Committee.

The Committee were informed that the Advertising Standards Agency (ASA) had held the Facebook advertising to trivialise and condone domestic violence. The ASA ruling had been brought to the attention of the Police and they had ruled it must not appear again. Mr Harker was spoken to by the Police following this and reminded of his responsibilities as a licence holder. Mr Harker was totally unrepentant. In 2019 Mr Harker again ran an advert referring to punching your ex but changed the word "parmo" to "steak". The Metropolitan Police got in touch with Cleveland Police following two members of the public contacting the National Hate Crime Unit. The ASA contacted Facebook and requested that the

advert be removed. It was greatly concerning that Mr Harker thought that his actions are totally acceptable despite the ASA ruling. Members of the public engaged with the post making inappropriate comments such as “punch her, I would make sure she was never found”. It was correct that Alex Cunningham MP became aware of the post and made a statement that it should be taken down.

Sergeant Higgins gave evidence on the history of Mr Harker abusing public employees in the course of their duties including Trading Standards officers, Planning officers and an enforcement agent. These postings again led to members of the public posting abusive and hateful comments which were liked by Mr Harker. It was outrageous that the premise would allow comments referring to the murder of a planning officer and then like that comment. A responsible operator would not act in that way. If Mr Harker had a complaint about a Council officer then he could follow the complaints system and should not be positing on social media which led to trial by mob rule and the generation of hate and abuse. It seemed to be a pattern that if Mr Harker didn't like something then he would post about it on social media. While Mr Harker engaged in this activity, officers were liable to be named and shamed and get abuse from people sitting at home with no idea as to whether they would carry out their threats.

Sergeant Higgins also referred to other issues such as Mr Harker's non-compliance with licence conditions including attendance at Pubwatch for example.

Sergeant Higgins stated that the Police did not bring reviews lightly but a point had been reached where Mr Harker needed to stop engaging in this activity.

Mr Harker was given the opportunity to ask questions of Sergeant Higgins but did not do so.

Ms Smith confirmed that in the course of the review proceedings, discussions had been had with Mr Harker as to whether any compromise position could be reached. A condition had been proposed however Mr Harker did not feel it was appropriate. With the agreement of the parties a copy of an e-mail from Mr Harker to the Police dated 7th October 2019 was provided to the Committee.

Other Responsible Authorities;

Ms Smith made submissions on behalf of Public Health, Trading Standards and Licensing who had all made representations that Mr Harker was undermining the licensing objectives.

Copies of their representations were included in the Committees papers.

Mr Harker had no questions but noted that the representation from Public Health did not have an officer's name included and PC Johnson's statement dated 6th September 2019 had no signature. Ms Smith confirmed that these were electronic copies.

Premise Licence Holders Submission as follows:

Mr Harker made submission as the Premise Licence Holder and Designated Premise Supervisor.

Mr Harker was of the view that the review process was commenced after Alex Cunningham MP made reference to the “punch your ex....” advert on Twitter. Mr Harker was of the view that this was political.

Mr Harker explained that he had never heard of Albert Dryden and that he likes all Facebook posts made by members of the public as this increased his marketing interaction. Mr Harker stated that he did not have time to read all the posts and gave an example of one which had 54,000 comments.

Mr Harker stated that he was not aware of anyone who had followed the advertising campaign by punching their ex and coming to the premises.

Mr Harker stated that in his view his advert in 2019 was different as it referred to ‘steak’ rather than ‘parmo’. The ASA got in touch and he took it down from Facebook and in his view that should have been the end of it but it had been raised on Twitter. Mr Harker stated that he would not repeat the advert in future.

Mr Harker confirmed that he had a CCTV system in place at his premises which was in compliance with his conditions. Mr Harker stated that he did not support Pubwatch for his own personal reasons.

Mr Harker discussed his sex toy advertising campaign and stated he would not have offered the prize to a child.

Mr Harker informed the Committee that he should not have posted the enforcement agents photo on Facebook and that his anger got the better of him. He tendered an apology.

In relation to the planning matters, Mr Harker confirmed that he would remove the banner and apply for the necessary planning permission.

Mr Harker informed the Committee that he felt Sergeant Higgins had a personal issue with him.

Mr Harker stated that his target audience visited his page for food and laughs.

Mr Harker also intended to create the UK Competitive Eating League.

Mr Harker stated that he sponsored boxers and football teams and did a lot of good work in the community.

Mr Harker referred to the character references that had been provided and invited the Committee to consider them.

Members of the Committee asked questions of Mr Harker.

Ms Smith was given an opportunity to ask questions but confirmed she did not have any.

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

Harker having the final submission.

The Committee had regard to the extensive bundle of written evidence, which had been circulated prior to the hearing and presented to them, in addition to the oral evidence given by Sergeant Higgins and submissions made to them by Mr Harker at the meeting.

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 noted that the Police had been clear that this was not about seeking to revoke Mr Harker's premises licence. This was the first time that Mr Harker as premises licence holder had appeared before the Licensing Committee and it was acknowledged that the premises was not one which caused the Police concern in relation to incidents of disorder or violence.

It was accepted that the premises was, as Mr Harker explained, food led in its business model. However as a premises licence holder and designated premises supervisor Mr Harker had responsibilities and legal obligations under the Licensing Act 2003.

The Committee noted that there was a broad range of issues of concern presented to them by the Police which included marketing gimmicks used by the premises such as the competitive eating competitions and the provision of a sex toy as a prize. The Committee noted that the promotion of eating competitions or promoting high calorie meals etc. may not be socially responsible but did not in itself undermine the licensing objectives especially given the fact that there is currently no public health objective.

The main issues which the Committee had to consider concerned the advertising campaigns using the wording "would you punch your ex in the face...." and the posts aimed at council officers undertaking their lawful duties.

Mr Harker through his social media posts had referred to Council Trading Standards officers undertaking their lawful duties in derogatory terms. Mr Harker had also posted correspondence received from the Council Planning Department with the officer's name, direct telephone number and e-mail address. This has led to members of the public engaging with Mr Harker's posts and being abusive and derogatory to officers and in one case suggesting that they be murdered by making a reference to Albert Dryden. Mr Harker had also posted a photograph of a council enforcement agent who was undertaking his lawful duties. Mr Harker referred to him in derogatory terms and stated that all Council employees are barred from his premises and are "scum". It was not in dispute that Mr Harker as premises licence holder was responsible for the advertising promotion or that he had made the derogatory comments and allowed comments made by members of the public to remain on his premise's Facebook page. The responsibility for that rested solely with Mr Harker as he was responsible for monitoring and moderating his social media accounts linked to the premises. It was shocking that a premise licence holder would act in such a way and think it appropriate to do so.

The Committee were satisfied that Mr Harker's actions in running advertising campaigns on behalf of the premises which trivialised domestic violence were offensive and inappropriate. As noted above the responsibility for that rested solely with Mr Harker as the Premise Licence Holder and Designated Premise Supervisor.

The ASA were quite clear in their conclusion that the adverts "trivialised and condoned domestic violence and concluded that the ad was not prepared in a socially responsible manner". Contrary to Mr Harker's misconstrued belief that there was some political conspiracy, that was clearly not the case as the ASA had reached their own independent conclusions in 2017 and 2019. Cleveland Police had been contacted by the Metropolitan Police after two people had contacted the National Hate Crime Unit. Comments on the issue had been made by members of the public on social media and had expressed their views that the advert was offensive and inappropriate.

One of the questions for the Committee to determine was whether the ASA rulings on the adverts were matters which were relevant to Mr Harker's premises licence and his role as Premise Licence Holder and Designated Premise Supervisor. The Committee were satisfied that it was relevant given the statutory requirement for the promotion of the licensing objectives. Trivialising and condoning domestic violence was, in the view of the Committee, undermining the crime and disorder objective

The Committee noted that the premises was generally well run, and did not for example, have any history of violent incidents connected with the premises. Mr Harker explained that he was a family friendly food led pub and probably had the most expensive pint on the High Street. It was also noted that Mr Harker had presented a great deal of personal mitigation in relation to the charity work he undertakes, his sponsorship of boxers and football teams and other commendable activities. Mr Harker had also submitted character references from a number of persons many of which focused on his ability in running businesses in Stockton. The Committee noted those and agreed that all parties wanted a successful and vibrant business community within the High Street and wider Borough. That did not mean that Mr Harker as a premise licence holder had free reign to conduct himself in an offensive and inappropriate manner as he sees fit and in a manner which undermines the licensing objectives. As Mr Harker is both the Premise Licence Holder and the Designated Premise Supervisor he bore responsibility for the manner in which the premises marketed itself on social media. At no time did Mr Harker dispute that he was responsible for the advertising campaigns ran on behalf of the premises.

It was noted that this was the first occasion that Mr Harker had appeared before the licensing Committee in relation to the operation of the premises. Mr Harker had suggested that the review process was a waste of all parties' time and resources. The responsibility for these issues rested solely with Mr Harker. It was Mr Harker who had run the offensive and inappropriate advertising campaign on the premises Facebook wall. It was Mr Harker who had posted derogatory and offensive comments aimed towards Council officers. It was Mr Harker's followers who had posted offensive and hateful comments on the premises Facebook page. It was Mr Harker who was in control of the premises social media account and bore responsibility for what was posted on it. It was

not acceptable to suggest that he did not have time to read each post made by a member of the public. Mr Harker's explanation was inconsistent as he had also confirmed that if members of the public made comments on the premises Facebook page which he did not like then he would delete these. This was evidenced by a member of the public who had complained about the offensive "would you punch your ex in the face..." advert. The member of the public had made a comment expressing the view that it was inappropriate and in bad taste. Mr Harker or someone acting on his behalf had deleted the comment so it was not viewable publically. Mr Harker could not have it both ways, he needed to take responsibility for monitoring and deleting comments made by members of the public which were offensive, inappropriate and which could be reasonably construed as undermining the licensing objectives. Although Cleveland Police had confirmed they would be happy to give guidance to Mr Harker if necessary it was the sole responsibility for Mr Harker to ensure that he as Premise Licence Holder and Designated Premise Supervisor effectively monitored the premises Facebook page or any other social media accounts operated by the premises.

It was a matter of concern to the Committee that Mr Harker had been inconsistent in his understanding or awareness of his responsibilities. On the one hand he acknowledged the findings of the ASA and provided assurance that this would not happen again. He acknowledged that on occasions his temper had got the better of him and he had posted matters on social media which, with the benefit of hindsight, he should not have done. He had expressed an apology to the Council Officers to whom he had been offensive or who had been subject to online abuse on the premises Facebook page but this was only after the review process had been commenced. If Mr Harker had acted in the manner of a responsible Premise Licence Holder he would have acted to address the issue and offered an apology immediately when challenged. Again the responsibility for this rested solely with Mr Harker. Therein lies the problem, if Mr Harker holds himself out to be a social media marketing expert then he has responsibilities publishing posts. It would clearly be in Mr Harker's best interests to reflect or take advice from other professional persons who understood the responsibilities of the licensing regime before posting on social media comments or images which were offensive, inappropriate and undermined the licensing objectives. As was pointed out on behalf of the Police this was not about freedom of speech but about ensuring Mr Harker acted responsibly and in accordance with the licensing regime and legislation. What may constitute banter between groups of friends discussing something in a pub was totally different when the views were expressed on the social media account of a licensed premises with an audience of tens of thousands of persons. As a Premise Licence Holder and Designated Premise Supervisor this carried both social responsibility and responsibility under the licensing legislation not least of which was the responsibility to promote the licensing objectives. Mr Harker should consider introducing a system of effective moderation of his social media posts to ensure that offensive or derogatory posts which undermine the licensing objectives were not made by him or by members of the public.

The Committee did not feel that it was appropriate at this time to revoke the premises licence or to impose a suspension of the licence. It was necessary and proportionate to deal with this review in the hope that the written warning and imposition of conditions would lead to Mr Harker appreciating, acknowledging and complying with his legal responsibilities. If Mr Harker should fail to do so in future and there was not an immediate improvement in the

manner in which Mr Harker conducted himself then he should be in no doubt that a Committee may give consideration to imposing further sanctions should further review proceedings take place in the future.

The Committee expressed concern that the apology tendered by Mr Harker was only made by him after the review process had commenced. Despite some of the assurances given to them by Mr Harker that he would not act in a similar manner in future or run advertising campaigns similar to “would you punch your ex in the face...” he still did not seem to understand the responsibility which he held as a Premise Licence Holder. The Committee hoped that this process would go some way to him finally understanding his responsibility. If some awareness of this had dawned on him sooner, then much time and effort by all parties could have been saved. Only time will tell whether Mr Harker ensured that he acted in an appropriate manner and promoted the licensing objectives and that he did not act in a manner which undermined them like he had done in the past.

The Committee resolved that:-

- Given the findings as detailed above Mr Harker receive a formal written warning from the Licensing Sub Committee for failing in his responsibility as a Premise Licence Holder and undermining the licensing objectives, in particular that of crime and disorder;
- Mr Harker consider introducing a written social media policy which addressed his wider social responsibility and ensured that any social media posts or other forms of communication were properly moderated and did not undermine the licensing objectives;
- As part of the written warning Mr Harker be reminded that he must comply with the existing conditions of his licence which currently required the premises actively participating in Pubwatch. If he no longer wished to be part of the Pubwatch scheme then he should make an application for that condition to be removed from his licence;
- That the following conditions be attached to the premises licence:-
 - (i) The licence holder, designated premise supervisor or a representative of the premises acting in the course of their employment or on behalf of the premises must not conduct or promote any advertising or marketing communications in connection with the premises that condone or encourage violence, anti-social behaviour or any other criminal offence;
 - (ii) The licence holder, designated premise supervisor or a representative of the premises acting in the course of their employment or on behalf of the premises must not unfairly portray or refer to anyone in an adverse or offensive way unless that persons has given their consent to do so;

The Committee found it reasonable and proportionate to attach condition (i) in order to ensure that the licensing objectives were promoted and that advertising campaigns which undermined the licensing objectives, such as those found to be in breach of standards by the Advertising Standards Authority or similar,

were not promoted by or on behalf of the premises on social media or any other means of communication;

The Committee found it reasonable and proportionate to attach condition (ii) in order to ensure that the licensing objectives were promoted and the premises did not post, promote or host on social media or any other means of communication, comments or postings which were aimed at individuals which were targeted and generated hate and abuse towards an individual without their consent.

RESOLVED that ;

1) Mr Harker receive a formal written warning from the Licensing Sub Committee for failing in his responsibility as a Premise Licence Holder and undermining the licensing objectives, in particular that of crime and disorder;

2) Mr Harker consider introducing a written social media policy which addresses his wider social responsibility and ensures that any social media posts or other forms of communication are properly moderated and do not undermine the licensing objectives;

3) As part of the written warning Mr Harker be reminded that he must comply with the existing conditions of his licence which currently require the premises actively participating in Pubwatch. If he no longer wishes to be part of the Pubwatch scheme then he should make an application for that condition to be removed from his licence;

4) That the following conditions be attached to the premises licence:-

(i) The licence holder, designated premise supervisor or a representative of the premises acting in the course of their employment or on behalf of the premises must not conduct or promote any advertising or marketing communications in connection with the premises that condone or encourage violence, anti-social behaviour or any other criminal offence;

(ii) The licence holder, designated premise supervisor or a representative of the premises acting in the course of their employment or on behalf of the premises must not unfairly portray or refer to anyone in an adverse or offensive way unless that persons has given their consent to do so.