

Licensing Sub-Committee

Minutes - 9 March 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Keith Inston

Conservative

Cllr Patricia Patten

Employees

Jacky Bramley
Paul Fantom
Rob Edge

Legal Executive/Assistant
Interim Democratic Support Officer
Section Leader - Licensing

Item No. *Title*

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence in respect of The Talisman, Wildtree Avenue, Wolverhampton WV10 8LL

In Attendance

For the premises

Mr Steve Nation – Premises Licence Holder

Mr John Coen – Partner, Weightmans LLP – Counsel on behalf of the Premises Licence Holder

Mr Peter Thacker – Designated Premises Supervisor

Responsible Authority

Sgt Jake Flanagan – West Midlands Police

PC Mitch Harvey – West Midlands Police

The Chair, Cllr Alan Bolshaw, introduced the parties and outlined the purpose of and the procedure to be followed at the meeting.

Rob Edge, Section Leader (Licensing) outlined the report submitted to the meeting, which had been circulated to the parties in advance.

Sgt Flanagan outlined the application for an expedited summary review of the premises licence due to the opinion of the West Midlands Police that the Premises Licence Holder and the Designated Premises Supervisor (DPS) had demonstrated a failure to uphold the conditions of the premises licence or sufficiently uphold the licensing objectives and cited intelligence of crime arising from the operation of an organised crime group and the sale and use of drugs at the premises and its car park. A warrant under S23 of the Misuse of Drugs Act having been granted by magistrates, on 4 March 2016 a police operation involving in excess of 40 officers and sniffer dogs had been carried out. This had led to the recovery of £800 of Class A drugs, namely cocaine, and digital weighing scales, and £600 of Class B drugs, namely cannabis. Self-seal bags containing drugs had been found on the premises and numerous discarded and empty bags were found on the floor and in the male toilets. Hydroponic equipment that could be used to cultivate drugs had been found in the cellar of the premises. Also found at the premises were non-duty cigarettes and tobacco and non-duty spirits.

Sgt Flanagan confirmed that the DPS had been arrested at the scene and had been bailed pending further investigation. He added that the DPS had not cooperated with

the Police's investigation and that he had declined to answer questions under caution. Sgt Flanagan emphasised that he was not suggesting that the DPS was dealing drugs but stressed that the DPS must have known that such activity was being carried out at the licenced premises. He stated that the Chief Constable was seeking to seriously disrupt this and was therefore applying for an immediate suspension of the licence.

At this point, a video recording of the police operation on 4 March 2016, derived from the Express & Star website, was played for the benefit of the Sub-Committee and attendees.

Cllr Alan Bolshaw enquired about the steps required to eliminate the dealing of drugs from the premises car park. Sgt Flanagan responded by stating that the Police had been advised that such activity was a regular occurrence and, furthermore, that a number of deal wraps had been found in the residential area of the premises, which was used by the DPS.

Cllr Alan Bolshaw sought clarification on the recovery of the drugs, it having been confirmed that cocaine had been discovered in the pocket of a high visibility jacket found in the bar area of the premises. The digital scales were also found in this jacket. Sgt Flanagan noted that the owner of the jacket had felt sufficiently confident in leaving the jacket and its contents unattended.

Cllr Alan Bolshaw asked who had access to the hydroponic equipment, which featured provision for irrigation, lighting and heating, with it being suggested by the Police that this was used for the cultivation of cannabis.

At this juncture, Mr Coen pointed out the residential premises and the cellar were not areas covered by S53(A) of the Licensing Act 2003 and, therefore, he asserted that they should be discounted from the Sub-Committee's deliberations.

Proceedings were adjourned from 14.15 pm to 14.26 pm to enable further legal advice to be sought. Upon re-adjournment, Jacky Bramley confirmed that having considered the matter carefully, the Sub-Committee had determined that there was a sufficient link between the bar area, the residential area and the cellar at The Talisman for all the evidence to be considered.

Having heard the evidence of the Police, the Sub-Committee invited questions.

Mr Coen enquired whether the Police were aware of Mr Thacker's record as a DPS, adding that he had been the DPS for The Talisman for 21 years, during which time the Police had only been called 6 times. Mr Coen asserted that the level of Police attendance was not indicative of badly-run premises.

With regard to the Police operation on 4 March 2016, Mr Coen asked whether any of the Police officers attending The Talisman had witnessed anyone smoking cannabis at this time. Sgt Flanagan responded by pointing out that officers had noted a pungent odour consistent with cannabis having been smoked recently and discarded cannabis cigarettes had been found on the floor of the bar area.

In responding to a question from Mr Coen concerning the herbal cannabis found in the residential area of The Talisman, and whether the estimated value of £600 was indicative of a large amount of this drug, Sgt Flanagan confirmed that all of the drugs seized during the Police operation had been sent for evaluation.

Mr Coen questioned whether the high visibility jacket within which was found cocaine and digital weighing scales belonged to a customer of The Talisman. Sgt Flanagan stated that CCTV evidence was being reviewed to identify the ownership of the jacket. Mr Coen enquired whether the estimated value of the cocaine of £600 signified that this was a high value. Sgt Flanagan stated that the cocaine would be cut with other substances, thereby increasing its supply value and that the digital scales would be used during this process.

Mr Coen asked whether the Police had witnessed anyone at the premises dealing or exhibiting behaviour consistent with dealing drugs. PC Harvey responded on this point, confirming that a man believed to be in the process of dealing had been arrested and bailed. Sgt Flanagan added that the quantity of used deal bags, drugs and digital scales constituted evidence of drug dealing taking place at the premises.

Mr Coen sought clarification regarding the storage area and cellar beneath the premises and the items of equipment stored there. He noted that the ownership of such items was not illegal. PC Harvey described the area in which the hydroponic equipment had been found. He indicated that officers from Wolverhampton City Council's Trading Standards team had been in attendance on 4 March 2016, when pouches of Golden Virginia tobacco, quantities of cigarettes and spirits, and items of clothing had been found at the premises. It was contended that these were either non-duty paid or counterfeit items, since the packaging did not bear the UK markings. In response to Mr Coen's point that these items had been purchased during foreign holidays and were for personal use, Sgt Flanagan stated that IOU notes for their sale were attached to these items. Sgt Flanagan responded to Mr Coen's remark that it was not illegal to own counterfeit clothing by confirming that it was an offence per se to possess goods that were counterfeit. PC Harvey advised the Sub-Committee that on 4 March 2016, there had been four arrests and one street caution. Mr Thacker and another employee of The Talisman had been arrested on suspicion of possessing a controlled drug with intent to supply; one customer was arrested for possession of a Class A substance; another customer was arrested for failing to appear at Court; and the issuing of the street caution was to a customer for possession of cannabis.

Mr Nation asked the Police officers whether, given that there was a belief that there was organised crime involvement, they had been disappointed by the limited quantities of drugs recovered. Sgt Flanagan stated that Police intelligence had named organised crime groups and individuals concerned with the supply of drugs as being active at The Talisman. The name of the DPS had also been given in this intelligence.

Cllr Alan Bolshaw enquired as to the numbers of customers in the pub during the time of the Police operation on 4 March 2016. PC Harvey reported that there were 5 or 6 customers in the front bar and between 15 to 20 customers in the rear area.

Mr Coen made his representations to the Sub-Committee. He emphasised that Mr Thacker was 65 years old, was receiving treatment for prostate cancer and asserted that he did not have the profile of a drug dealer. Mr Thacker had been the tenant of The Talisman for 21 years during which time the Police had only been called to the premises on six occasions, and that a tenancy of this longevity was a rarity. Mr Thacker lived in the upstairs residential area and that this was freely accessible to the four employees and other visitors. Mr Coen argued that Mr Thacker should not be blamed for the actions of some of The Talisman's customers, and that he would not tolerate behaviour such as smoking on the premises and would ask customers doing so to leave. In regard to the alleged contraband, Mr Coen maintained that Mr Thacker had brought the cigarettes back from a holiday in Spain and that he had receipts for the bottles of alcohol, which it was stated had been purchased from Asda (not produced).

Mr Coen made reference to the Sentencing Guidelines and the probable sentence to be incurred should Mr Thacker be convicted of the offences with which he had been charged. He queried whether a sentence of over three years would be attracted given the test of whether this constituted a serious crime, and he believed that this test would not be satisfied.

Having heard the evidence from the premises, the Sub-Committee invited questions.

Cllr Alan Bolshaw enquired about the overpowering odour of cannabis and whether this would have permeated the building. Furthermore, he asked if other people in the pub have been aware of this. Mr Thacker offered his opinion that his customers would have complained and that the Police were portraying the situation as worse than it was. He added that it was possible that the smoke could have entered the premises from people smoking outside the building.

Sgt Flanagan advised the Sub-Committee that Mr Thacker had not cooperated with the Police's investigation and had not answered questions. Mr Thacker replied, stating that this was due to an impending hospital appointment in relation to his treatment for prostate cancer.

Cllr Alan Bolshaw queried why with deal bags and cannabis cigarettes littering the premises, these had not been seen or cleared away by the employees of The Talisman. Mr Coen responded by suggesting that these items had been discarded by customers when the Police arrived.

Cllr Patricia Patten asked Mr Thacker what action he would take if he encountered one of his customers who was carrying out drug dealing at The Talisman. Mr Thacker's response was that he would throw them out immediately.

Sgt Flanagan asked Mr Thacker to account for the cannabis found in the residential area of The Talisman. Mr Thacker stated that there were no keys and, due to his illness, he had left the area open. Consequently, anyone could walk up the stairs and into this area. Sgt Flanagan also questioned the use of the hydroponic equipment, with Mr Thacker stating that until brought to his attention, he had been unaware of its existence on the premises.

There was discussion of events at The Talisman on New Year's Eve when despite a fracas involving twelve people that was described as a scene from the Wild West, the Police had not been called for assistance. Mr Nation noted that The Talisman was amongst the most challenging premises managed by Punch Taverns, a factor which was attributable to the clientele, being male orientated and economically-challenged. He stressed his respect for Mr Thacker and the manner in which he had executed his responsibilities as DPS throughout the duration of his time at The Talisman.

There was a brief adjournment from 3.40 pm to 3.45 pm.

Cllr Alan Bolshaw raised the question of whether there was a policy at The Talisman of not calling the Police to respond to disturbances. Mr Nation confirmed that although Mr Thacker was self-employed as the DPS, he was required to adhere to the codes of practice operated by Punch Taverns.

At this juncture, all parties were afforded an opportunity to make a closing statement.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

5 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during consideration of the application.

6 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows.

7 Announcement of decision

An application was received from the West Midlands Police on 8 March 2016 for an Expedited Summary Review in respect of the Talisman, Wildtree Avenue, Wolverhampton WV10 8LL. The review application cited an incident of serious crime on the premises on 4 March 2016.

The Chief of Police had provided a certificate under Section 53A(1)(B) of the Licensing Act 2003, stating that the premises were associated with serious crime and requesting that interim steps be applied to the premises licence pending a full review hearing.

The Sub-Committee heard from the West Midlands Police that:

1. Intelligence having indicated that drug dealing activity was occurring at The Talisman, with organised crime involvement, a Police operation took place on 4 March 2016.
2. During this Police operation the following were recovered from the premises:
 - £800 of Class A drugs (cocaine) and £800 of Class B drugs (cannabis)
 - Digital weighing scales
 - Hydroponic equipment that could be used in the cultivation of cannabis
 - Quantities of Golden Virginia tobacco pouches, cigarettes, spirits and clothing, which were suspected to be either counterfeit or non-duty paid items.
 - Deal bags and wraps and discarded cannabis cigarettes.
3. Four persons had been arrested and one had been issued with a street caution during the Police operation.
4. The DPS, Mr Thacker, had not cooperated with the Police during the operation and had not replied to questions asked during caution.
5. If convicted of these offences of possessing with intent to supply a controlled Class B drug, the DPS and his staff could reasonably be expected to be sentenced to a maximum of 14 years imprisonment.

The Sub-Committee heard from and on behalf of the Premises Licence Holder that:

1. The DPS had substantial experience, being based at The Talisman for 21 years, and that during this time assistance from the Police had only been requested on six occasions.
2. The DPS was unaware of the existence of the Class A and Class B drugs recovered from the premises and that these could have been brought onto the premises by customers or other persons.
3. The DPS was unaware of the hydroponic equipment found in the cellar of The Talisman.
4. The tobacco and spirits had been brought back from foreign holidays for personal use, that the spirits had been purchased legitimately, and that the items of clothing were in the ownership of the DPS.
5. The failure to call for Police assistance, for instance at the time of the fracas on New Year's Eve, and the standing of The Talisman in its community was reflective of the clientele that used the premises.

The Sub-Committee was satisfied that a serious crime had occurred on the premises. Serious disorder was to be given its plain ordinary meaning and as such the Sub-Committee was satisfied that serious disorder had occurred on the premises.

Based on the information before the Sub-Committee, consideration was given to whether it is appropriate to take interim steps pending determination of the review and, in accordance with Section 53(B)(3)(d) of the Licensing Act 2003, in order to secure the promotion of the licensing objectives the decision of the Sub-Committee was to suspend the premises licence with immediate effect pending the full review hearing.