

M MINUTES

meeting: **LICENSING SUB-COMMITTEE**

date: **25 JANUARY 2013**

PRESENT:-

Councillors N Patten (Chair), Angus and Mrs Patten

IN ATTENDANCE:-

- L Banbury - Democratic Support Officer, Delivery
- S Hardwick - Senior Solicitor, Delivery
- R Edge - Section Leader (Licensing), Education and Enterprise

Wolverhampton
City Council



PART I – OPEN ITEMS

Election of Chair

23. Resolved:-
That Councillor N A Patten be elected as Chair for this meeting.

Licensing Act 2003 – Review of a Premises Licence – Empire Suite [Edda Lounge], Ward Street, Wolverhampton (Appendix 10)

24.

In Attendance

For the Premises

D Campbell	-	Legal Representative
D G Phillip	-	Premises Licence Holder
J Hays	-	Designated Premises Supervisor
B Downing	-	SIA Door Supervisor

Applicant for the Review

WPC Holt &

PC S Williams	-	West Midlands Police
L Culley	-	Counsel

Responsible Authorities

E Moreton	-	Licensing Authority
J Freeman-Evans	-	Environmental Health (Commercial)
J Bradley	-	West Midlands Fire Service

Witnesses for Environmental Health (Commercial)

L McPherson & A Brian

The Chair introduced the parties and outlined the procedure to be followed at the meeting. No declarations of interest were made.

The Section Leader (Licensing) briefly outlined the report submitted to the meeting and circulated to all parties in advance. The hearing had initially been scheduled to take place on 5 December 2012, but had been deferred as one Member of the Sub-Committee had declared an interest due to the premises being located in his Ward. Additional paperwork had also been submitted on behalf of the West Midlands Police, Environmental Health (Commercial) and the Premises Licence Holder. The meeting was re-scheduled for 11 January 2013, but further adjourned due to the illness of Premises Licence Holder. Mr Campbell, Solicitor acting on behalf of the Premises Licence Holder, confirmed the accuracy of the contents of the report.

At this juncture, Ms Culley summarised the application for review of the Premises Licence, which was detailed at Appendix 3 to the Licensing Officer's report. She acknowledged that the appointment of a new Designated Premises Supervisor was a step in the right direction to improving the situation, particularly if the new appointee was prepared to work proactively with the Responsible Authorities. She added that it was the applicant's expectation that concerns could be resolved by way of additional conditions on the operating schedule.

A further witness statement, dated 24 January 2013, was circulated at the meeting. Mr Campbell had received a copy of this document prior to the commencement of the hearing. He had no objections to the submission of this additional statement, but stressed that it should be considered as hearsay, given that the witness was not present. Ms Culley expressed the wish that the statement be considered, albeit that appropriate weight could be attached to it.

Ms Culley drew attention to the 19 proposed conditions, which were detailed at Appendix 3 to the Licensing Officer's report. She advised that the Premises Licence Holder had agreed to numbers 1, 2, 3, 6, 10, 11, 13, 14, 18 and 19. With regard to the remainder of the proposals, she advised that in terms of:-

4. the applicant would agree to amend the time to 2330 hours;
5. this was a key area of dispute – other venues in the City had volunteered conditions;
6. the applicant was prepared to delete the last line;
8. contrary to the Premises Licence Holder's view, the applicant felt that the last line of this condition was necessary;
9. the applicant believed that this condition was necessary in order to fulfil the licensing objectives;
12. the Premises Licence Holder was in agreement to this condition in principle, but wished to serve Champagne from a glass bottle;
15. the applicant was happy for this condition to be removed;
16. the applicant believed this condition to be necessary, and
17. the applicant advised that this condition related to concerns regarding the issue of gangs and intelligence received by the Police in this respect.

Responding to the proposed conditions, Mr Campbell advised that, in terms of condition:-

6. the condition should not be open ended and that regular meetings should not be necessary in the future;
8. condition should not be required;
9. would prefer entrance after 0230 hours being allowed on a case by case basis;
- 15./16. 'Challenge 21' requested, and
17. wished to retain this facility.

Counsel accepted, on behalf of the applicant, that there was no evidence to insist on a strict policy in regard to under 25's.

Responding to Mr Campbell's questions, the applicant and her legal representative advised that:-

- regular contact either face to face or via the telephone, between the premises and the Police and licensed premises, was normal practice;

- from her memory, WPC Holt believed that Ms Haye had indicated that the venue was aimed at an older crowd. Historically, gang members tended to range between the ages of 18 and 25;
- the reference to 'any private event/function' was intended to encompass all events at the premises (Mr Campbell disputed this);
- in some cases no notification was received of planned events – there was an expectation that premises would work with the Police with a view to alleviating potential problems at events and to ensure the safety of patrons;
- it was normal practice to speak to premises where there were allegations of injury, irrespective of the source of the allegation, and
- the proposed last entry time to the Premises was aimed to ensure an element of control for the premises.

On a point of clarification, Mr Edge (Section Leader, Licensing) advised that the Licensing Authority were aware of some ambiguities in the conditions on the current Premises Licence and that it was hoped that today's hearing could provide some clarity. WPC Holt confirmed that this was one of the reasons behind the request for review.

At this juncture, the Environmental Health Officer questioned whether her witnesses could make their representations, as they had other commitments. The Sub-Committee acceded to this request and Mr Campbell indicated that he had no objection to varying the procedure. Mr McPherson drew attention to ongoing concerns regarding intermittent loud music which sometimes did not cease until 0600 hours. He had a disabled son, whose sleep was disturbed by the loud music and the family had been forced to vacate the front living room in view of the noise. He had now stopped complaining as, in the past, the music had been turned down only to increase in volume again some 20 minutes later. He stated that he had no desire for the premises to close, only for the music to be turned down. Mr Campbell advised that he had no questions to put to the residents and they withdrew at this point.

At this juncture, Mr Campbell advised that Mr Downing had another commitment and it was agreed to take his evidence at this point. Mr Downing advised that he had worked in the capacity of a door supervisor for some thirty years and had been employed a number of venues in the City, include Yates and Chicago. He stated that the Empire Suite had less problems than other venues at which he had been employed and that the Police were only called if there was a major incident. He indicated that he was on duty on 24 January 2013 and that there were seven door supervisors on duty with three on hand at the premises. There were no injuries incurred following the incident outlined in the witness statement and the event had continued with no further problems.

Responding to questions, he advised that he would not hesitate to call the Police if he felt they were needed and that common sense had to be used. He was not at the front of premises so could not dispute the witness statement. The incident had occurred at 0310 hours. He advised that a clicker system was in operation and that approximately 250 patrons would have been present on the night in question. Ten door supervisors had been present as it was a busy night and the Police had contacted the Designated Premises Supervisor the day previously expressing concerns in view of intelligence gathered. Mr Campbell acknowledged that it would be good practice for the use of clickers to be logged and that this condition could be added to the operating schedule. With regard to prior notification of this function, it was noted that there was disagreement between the Police and the premises as to whether or not this had taken place. Mr Downing withdrew at this point.

Mr Campbell continued his case for the premises at this point. On questioning, WPC Holt disputed that the premises had ever been pressurised into cancelling events because of the threat of closure by the Police. WPC Holt acknowledged that the Designated Premises Supervisor (DPS) had produced an alternative action plan and that this was a positive step and no more than she would expect from a DPS. Ms Culley advised that, although PC Morgan was not in attendance, WPC Holt had viewed the CCTV relating to the incident on 24 January 2013 and that she had the footage with her, although only CCTV of the bar area had been given to the Police and the function had taken place in the lounge area.

Responding to questions from Ms Culley, the Premises Licence Holder accepted that she was obliged to abide by the current conditions on the Premises Licence and accepted that it was the wish of the Police to receive twenty eight days notice in respect of all events. She advised that adherence to this had not always been possible due to work being carried out on the building, but she was happy to work towards compliance with the request. Mr Campbell advised that the premises would be happy to meet with the Police on a regular basis, but that it should not be the subject of a formal condition on the licence. With regard to the incident on 16 June, the Premises Licence Holder indicated that there had been no evidence to suggest that the situation would escalate. She added that she had initially experienced some embarrassment in having to ask for personal details of DJ's and promoters. She felt that the venue was being over-regulated and was being stopped from moving the business forward. She indicated that she understood, however, that the Police had to act on intelligence received. Ms Culley commented that the CCTV footage did not accord with the comments of the door supervisor. The Premises Licence Holder believed that she had done everything in her power to control and disperse people on the night in October when the Police attended.

Responding to a question from the Sub-Committee, WPC Holt advised that the conditions were no different than they would expect for other venue in the City, although changes were being made over

time to address the lack of conditions on licences which were granted when the 2005 Act was first implemented. She advised that a number of venues had a closing time of 0200 hours and submitted Temporary Event Notices for events going beyond that time. Responding to a further question, Mr Campbell advised that the Premises Licence Holder was happy to put in place measures to ensure that the premises would cause no noise nuisance to local residents, which would be part of the noise management plan requested by Environmental Health.

Responding to Ms Culley's questions, the Designated Premises Supervisor advised that problems could be experienced in providing twenty eight days notice in relation to about seven out of ten events, and that for business reasons she would not wish to turn down requests. She stated that the security firm had been changed since the alleged stabbing incident and she had provided the clearest CCTV information available at the time. She believed that the venue provided a service for people who worked until the early hours. Plastic glasses were used for hygiene purposes, but it would be preferable to decant straight from the glass bottle in respect of Champagne. Ms Haye referred to her extensive experience in the licensed trade and drew attention to the proposed noise management plan. She indicated that the premises would be prepared to consider a noise limiter, adding that some measures took time to implement.

At this juncture, the Responsible Authorities outlined their representations.

Mrs Freeman-Evans referred to evidence outlined by a local resident. She drew attention to representations made by Environmental Health (Commercial), which were detailed at Appendix 5 to the Licensing Officer's report. She commented on the difficulty of controlling volume and vibration in respect of heavy bass music and the problems occurring due to the late closing hour. She advised that the noise management plan should be established in consultation with Environmental Health and that the premises should be given a time period within which to comply with its implementation.

Mr Bradley drew attention to the representations of the West Midlands Fire Service, attached at Appendix 4 to the Licensing Officer's report. He reiterated the need for a fire risk assessment to be carried out and repair to emergency lighting.

Mrs Moreton, on behalf of the Licensing Authority, indicated that she had nothing to add to the representations outlined at Appendix 6 to the Licensing Officer's report.

In response to the representations, Ms Haye outlined the proposed noise management plan.

Responding to questions, the Fire Officer indicated that a capacity number could only be imposed when a fire risk assessment had been carried out.

At this juncture, all parties made closing statements. It was acknowledged that some of the concerns of the West Midlands Fire Service could be addressed by their own primary legislation, but that the Fire Officer felt obliged to make the Licensing Sub-Committee aware of the current safety issues in regard to the premises.

Exclusion of Press and Public

25. Resolved:-

That, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from consideration of the items of business in Part II of the Agenda, on the grounds that in view of the nature of the business to be transacted or the nature of the proceedings, exempt information falling within paragraph 3 of Schedule 12A to the Act (Information relating to the business affairs of particular persons) is likely to be disclosed.

All parties, with the exception of the City Council's Solicitor and the Democratic Support Officer, withdrew from the meeting at this point.

PART II - EXEMPT ITEMS

Deliberations and Decisions

26. The Sub-Committee discussed the issues which had been raised during consideration of the review of the Premises Licence.

The Solicitor advised them of the options open to them in determining the application.

Re-Admission of Press and Public

26. Resolved:-

That the press and public be readmitted to the meeting.

PART I - OPEN ITEMS

Announcement of Decision

27. All parties returned to the meeting room and the Solicitor outlined the decision of the Sub-Committee as follows:-

An application has been made by the West Midlands Police for a review of the Premises Licence in respect of the Empire Suite (Edda Lounge), Ward Street, Wolverhampton.

At this hearing to review the Premises Licence, the Sub-Committee have listened carefully to all representations made by the persons who have spoken at the hearing. We have heard from the West Midlands Police, the Premises Licence Holder, the Designated Premises Supervisor, Environmental Health (Commercial) and their

witnesses, the Licensing Authority and West Midlands Fire Service. We have also taken into account witness statements provided by the West Midlands Police and Premises Licence Holder.

The Licensing Authority, when determining an application for review, have the power to take the following steps:-

The Licensing Authority, when determining an application for review, have the power to take the following steps:-

- (a) Modify the conditions of the Licence (either permanently or for a period not exceeding three months)
- (b) Exclude a licensable activity from the scope of the Licence (either permanently or for a period not exceeding three months)
- (c) Remove the Designated Premises Supervisor
- (d) Suspend the Licence for a period not exceeding three months
- (e) Revoke the Licence

Any decision shall be in accordance with the four licensing objectives, which are:-

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance, and
- the protection of children from harm.

The Sub-Committee have considered the guidance, from October 2012, issued under Section 182 of the Licensing Act 2003, which does provide that any conditions to be attached to the Licence shall be appropriate, precise and unambiguous. We are satisfied that the civil standard of proof applies here and that hearsay can be considered. However, we have attached appropriate weight to this.

Based upon the above and having regard to the application and relevant representations made, the Sub-Committee have decided to modify the conditions of the Licence permanently.

It appears agreed between the parties that it is appropriate to modify the conditions. Conditions 1, 2, 3, 6, 10, 11, 12, 14, and 19 are agreed.

With regard to:-

condition 4 - the Premises Licence Holder would agree to no drinks after 2330 hours;

condition 5 - there appears little evidence that notice of events is required. However, there is evidence of management issues at the premises, highlighted by fire safety issues. However, the Sub-Committee do sympathise with the Premises Licence Holder with regard to the late booking of events and, therefore in the circumstances, believe that 21 days notice would be appropriate;

condition 7- based on evidence the last sentence should be removed;

condition 8 - the last part of the sentence is a little ambiguous;

condition 9 – it is noted that the Premises Licence Holder would agree to a last entry time of 0230 hours;

condition 12 – the Licensing Sub-Committee accept the argument presented by the Premises Licence Holder about Champagne;

condition 13 - last sentence not required;

condition 15 – should be deleted as there is no evidence to suggest those under the age of 25 are causing a particular problem at the premises, and

condition 17 – should be deleted as there is no evidence to suggest that person likely to attend an 18th birthday party are particularly problematic.

The conditions applied will read:-

- 1) A CCTV system shall be installed and maintained at the premises, which is to be of evidential quality and with sufficient cameras located at all entry and exit points, smoking shelter and areas where alcohol is sold, money is taken and public have access to. There must also be clear footage of all patrons entering and exiting the premises and the whole area directly outside the premises.
- 2) All CCTV footage must be kept for a minimum of 31 days, on a suitable format, and must be provided to a member of a Responsible Authority upon request without any undue delay.
- 3) Sufficient documented training to be provided to staff to operate the CCTV system and at least one member of staff who can operate the system must be available to ensure that, in the event of a request by a Responsible Authority, footage can be provided without any undue delay.
- 4) Sufficient lighting shall be provided in the smoking shelter and no drinks shall be permitted in this area past 2330 hours.
- 5) All event details must be provided to the Wolverhampton Police Licensing Department no less than 21 days prior to the event. This is to enable a suitable risk assessment and intelligence checks to be conducted. The only exception to this would be a funeral wake. The details that are required are:-
 - DJ's: DJ name, full real name, date of birth and home address;
 - promoters full name and contact details;
 - party/function organisers full name, date of birth, address and contact details, and
 - music genre of event.
- 6) Regular (weekly) contact shall be made with the Police Licensing Officer to ensure that any issues are identified early and dealt with sufficiently, including event details.
- 7) Sufficient SIA trained door staff, authorised for frontline duties, shall be deployed at the premises to a general ratio of 1:50 patrons.

- 8) Full search shall be made of all patrons upon entry and re-entry to the premises, to include body search and the use of hand-held security wands and 'knife-arch'.
- 9) Strict last entry time of 0200 hours Monday and Tuesday and 0230 hours Wednesday to Sunday shall be imposed.
- 10) Ejection policy to be agreed with door staff and maintained with all details appropriately documented and records to be made available for inspection to any Responsible Authority upon request.
- 11) An incident log book shall be kept at the premises with all incidents, regardless of whether emergency services are called, to be recorded with date, full details and action taken.
- 12) No glassware to be used by patrons under any circumstances. All drinks to be served in plastic cups and any beverage purchased in a glass bottle to be decanted into a plastic cup prior to serving, with the exception of recognised Champagne in a bottle.
- 13) No parking cones/notices etc. to be used to prevent vehicles parking up directly outside the venue.
- 14) Entry to be via glass doors to front, where strict searching will be conducted on all patrons. Non entry shall be permitted via the smoking shelter door, except in the case of an emergency.
- 15) *Condition deleted.*
- 16) 'Challenge 25' shall be enforced by all staff and appropriate training provided to all members of staff. This training must be documented. Signage re 'Challenge 25' shall be clearly displayed in all public areas.
- 17) *Condition deleted.*
- 18) Drug prevention measures, including posters and regular checks of the toilets and smoking shelter, shall be undertaken at the premises. A record must be kept of these checks and details shall be provided to a member of a Responsible Authority upon request.
- 19) There shall be external lighting and secure perimeter fencing. The site shall be fully alarmed. All bar serveries shall be protected by shutters.

In addition, conditions proposed by Environmental Health (Commercial) and the Licensing Authority (in conjunction with the West Midlands Fire Service) to be attached to the Premises Licence and to read as follows:-

- 20) A noise management plan for the premises shall be prepared, as requested by Environmental Health (Commercial), by the Premises Licence Holder and Designated Premises Supervisor, the content of which to be agreed with Environmental Health (Commercial) by 31 March 2013 and to be reviewed on a six monthly basis.
- 21) A suitable system of clickers to be used to control numbers for use on entry and exit of all patrons to the premises. Suitable records to be maintained, showing that the system is used at the premises and total numbers present on any occasion, and to be provided to a member of a Responsible Authority upon request.

The above actions are considered appropriate and proportionate for the promotion of the prevention of crime and disorder and prevention of public nuisance licensing objectives.

25 January 2013

An appeal against this decision may be made to the Magistrates' Court by the applicant, the holder of the Premises Licence, or any other person who made a relevant representation, within 21 days of receipt of written notice of this decision.