

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 20th May, 2014, 10.00 am

Councillors: Manda Rigby (Chair), Patrick Anketell-Jones and Gerry Curran

Officers in attendance: Alan Bartlett (Principal Public Protection Officer), Terrill Wolyn (Senior Public Protection Officer) and Shaine Lewis (Principal Solicitor)

14 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

15 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

16 DECLARATIONS OF INTEREST

There were none.

17 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

18 MINUTES: 23 APRIL 2014

These were approved as a true record and signed by the Chair.

19 MINUTES: 29 APRIL 2014

The approval of the minutes for the meeting of 29th April at meeting was deferred to the next meeting.

20 REVIEW PROCEDURE

The Chair explained the procedure to be followed for the next two items of business.

21 APPLICATION FOR THE SUMMARY REVIEW OF PREMISES LICENCE FOR STONES CROSS HOTEL, 2 NORTH ROAD, MIDSOMER NORTON, BA3 2QD

Applicant for Review: The Chief Officer of Avon and Somerset Police, represented by Martin Purchase (Police Licensing Officer), Superintendent Richard Cadden, Inspector Shirley Eden, Constable Natalie George

Licence Holder Chings Company Limited, represented by Johnathon Hibbard, also known as Yotjai Potjakapong (the name given on premises licence and by which he appeared at the Interim Steps meeting on 23 April 2014) and Potjakapong Singthony (Director and Designated Premises Supervisor) and Matthew Graham (Partner, Mowbray City Advocates)

The Senior Public Protection Officer summarised the application and invited the Sub-Committee to determine it.

The case for the Applicant for Review was opened by Mr Purchase. He submitted that the report before the Sub-Committee demonstrated a horrifying catalogue of drug dealing and criminality, and that other premises in Midsomer Norton had been contaminated by the illegal activities taking place in the Stones Cross Hotel. The Police had conducted an undercover operation ('Operation Henotic') over a long period based on information provided by the local community. The premises had been well-known among local residents as a centre of drug dealing and use. Inspector Eden said that a particular concern had been the impact on young people, who were in the habit of migrating in the course of an evening from one licensed premises to another in an extended pub crawl, and were drawn to the town from far around by the skate park. The town had a history of alcohol- and drug-related crime and disorder. After the formation of the alcohol partnership October 2012 there had been a decline in violent crime, but there had still been a significant amount of drug-related crime, which had posed a risk for vulnerable members of the community. The information which had led to the police operation had come from members of the community; her team had taken a considerable number of witness statements. It was worth noting that all those who had given statements had wished to remain anonymous. Officers who had attended the premises on 14 November 2013 had been subjected to an unacceptable level of threatening behaviour. During the operation 42 supplies of drugs were witnessed on the premises. It was reasonable to assume that a similar level of supply had been taking place regularly. In response to questions from Members she stated:

- Operation Henotic was the biggest operation of its kind that had ever taken place in the area
- the Stones Cross Hotel was well-known as a centre of drugs supply among local residents, who wondered why nothing was done about it
- the Manager, Mr Ching, had been warned about suspected drug dealing on 11 December 2013

The Chair noted that the Police application was seeking the revocation of the premises licence, and asked Mr Purchase why this would be a proportionate response to the situation. He replied that there was a deep-rooted culture at the premises, which impacted severely on the community. Little had been done by the Designated Premises Supervisor (DPS) to remedy this situation. That is why the licence should be revoked. The general feeling of the public was that this should have happened a long time ago.

Mr Graham asked Mr Purchase whether he accepted that Mr Ching had been running the premises. Mr Purchase replied that he had been running it jointly with Mr Hibbard. The question needed to be asked: what is a DPS? The answer is that the DPS is the person who is in daily control of the premises. Mr Hibbard had in fact done little to exercise control. Mr Hibbard was also the joint licence holder. Mr Graham responded that Mr Hibbard had not been on the premises for a long time, as he was running a restaurant nearby. The Senior Public Protection Officer stated that

she had met Mr Hibbard in his capacity as DPS in April 2013. Mr Purchase added that seven Temporary Event Notice applications had been submitted by Mr Hibbard.

Mr Graham stated the case for the licence holder. He hoped Members had been able to read the paper containing a proposed operating schedule and conditions for the premises, which he had submitted on 16th May. He stated that the Stones Cross Hotel had been disastrously managed by Mr Ching and that Mr Hibbard had no objections to the action taken by the Police. In fact, he was grateful for what they had done. Mr Ching was now, quite rightly, in jail. The time had come to look forward, rather than back. The Sub-Committee had to perform a balancing act. Did Members really believe that nothing could be done except close the premises? Or was it better that it should be properly managed with a new operating schedule and conditions which would make the Stones Cross fundamentally different from what it had been? The exclusion of Mr Ching and of all of those identified in Operation Henotic was essential to achieving that, so a condition barring them from the premises for 10 years had been offered by the licence holder. Mr Graham submitted that this was a powerful step in turning the premises round. He invited Mr Hibbard to address the Sub-Committee.

Mr Hibbard said that as DPS he had excluded many people from the premises. He had had arguments with Mr Ching about the running of the premises. Mr Ching had assured Mr Hibbard that he would remove Mr Hibbard's name from the premises licence, but he had not done so. Now that Mr Ching had gone he could run the premises as he wished to do. He said that he had started tidying up the premises, removing many things that Mr Ching had accumulated.

In conclusion Mr Graham asked the Sub-Committee to consider whether they considered that the proposed new operating schedule and conditions were in any way inadequate, or whether they actually went directly to the issues outlined in the Police case.

A Member asked Mr Hibbard how the Sub-Committee could be assured that things would be different in the future, given that he had been DPS at a time when the premises had failed spectacularly to promote the licensing objectives. Mr Hibbard said that he needed time to prove himself. In response to further questions from Members he stated:

- he had not been Mr Ching's boss
- he had told Mr Ching several times that he did not wish to be DPS, but he had not been able to assert himself because Asian culture emphasises respect for older people
- he acknowledged that he had failed as DPS
- he had not known that he was owner and a director of the premises

In response to a question from the Chair, Mr Graham said it would be entirely possible to exclude Mr Ching from the premises during opening hours even though he retained a share of the ownership. He reiterated that Mr Ching had been running the premises, not Mr Hibbard. Mr Hibbard was a local businessman and resident,

who wanted the premises to be better run in the future. The Senior Public Protection Officer, however, said that when she had met Mr Ching, he had given her the impression that he was running the premises on Mr Hibbard's behalf. She pointed out that Mr Hibbard had been named as DPS on the premises licence since 2005 and that no application to change the DPS had ever been submitted. She suggested to Mr Graham that much of the proposed operating schedule had no relevance to the issues that had triggered the review. Mr Graham responded that an operating schedule had to cover all aspects of the business. Section A of the operating schedule specifically addressed crime and disorder and drugs. Conditions about CCTV and the keeping of a staff register also addressed the review issues. The CCTV conditions had been informed by discussions with the Police.

Mr Graham summed up. He felt that the meeting had provided an opportunity to say what had needed to be said. He reiterated that the Sub-Committee had to perform a balancing act. He asked Members to reflect carefully on what Mr Hibbard had said his role was. A new operating schedule was proposed. It could be enforced, which was a powerful control. He asked Members to accept that licensed premises could change their character.

In opening the summing up for the Police Mr Purchase said that the facts amply justified his opening words about a horrifying catalogue of criminality. He submitted that the deep-rooted culture of criminality at the premises could not be changed simply by the removal of certain individuals and by new conditions. He asked the Sub-Committee to revoke the premises licence. Superintendent Cadden said that this was one of the worst cases he had seen during his 29 years in the Police. The criminal activities at Stones Cross had impacted on confidence in the community, which was now beginning to recover. Mr Hibbard seemed to be ignorant about the responsibilities of his role as DPS. Operation Henotic had led to individuals being charged with over 100 different offences. He submitted that in view of the seriousness of criminal activities there should only be one outcome: the revocation of the premises licence.

Following an adjournment the Sub-Committee **RESOLVED** to revoke the premises licence.

Reasons

Members have determined an application by Avon and Somerset Constabulary for a review of a premises licence at The Stones Cross, 2 North Road, Midsomer Norton. In doing so they took account of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and that they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on information before them.

In reaching a decision Members took account of all relevant oral and written representations and balanced the competing interests of the applicant and premises licence holder.

The police applied for the review on the basis of serious criminal conduct associated with and being carried on at the premises namely dealing Class A, B and C drugs. Members heard that prior to an operation carried out by Police there was only a limited number of crimes reported in relation to these premises. However, as a result of an operation between November 2013 and March 2014 the police uncovered incidents of drug dealing in and around the premises all of which had been arranged from within the premises. For example, on 42 occasions drugs were purchased on the premises and on 11 occasions drugs purchased in its immediate vicinity by covert police officers. As a result 37 individuals had been arrested and a number remanded in custody. Members read in the papers that police officers witnessed the type of bags used to contain cocaine discarded throughout the premises and patrons also often had white powder residue around their nostrils. Police also witnessed cocaine being weighed in vehicles at the premises' car park and cannabis being smoked on the premises in joints and a 'bong.' Members heard that the type of drug predominantly dealt was cocaine a Class A drug, although MDMA, amphetamine, ketamine and cannabis were also being dealt from the premises.

With regard to the premises management the police raised concerns of possible drug dealing and drug use on the premises and also raised an incident where unacceptable levels of aggression was experienced by officers visiting the premises on 14 November 2013. These concerns were raised at meetings with the management on 1 July and 11 December 2013 where the management stated it would take steps to ensure such incidents would not recur. However, the police stated the undercover operation had disclosed an on-going gross failure to promote the licensing objectives and that the management, DPS and premises licence holder had allowed a culture of criminality and lawlessness to develop. It was also noted that the management failed to engage in any of the community initiatives so successful in reducing crime and anti-social behaviour in Midsomer Norton town centre.

On behalf of the premises licence holder and DPS it was said the offenders have been identified and will face lengthy custodial sentences. The essence of the submission was that the premises had been disastrously run by Mr Ching and the intervention by police was welcomed and supported by Mr Hibbard, who had no issue with what the police had done or why. It was said however, that pubs can change and can be operated differently. In this regard Mr Hibbard proposed a fresh start in the form of enforceable conditions contained in the operating schedule that would become part of the licence which, together with the exclusion of Mr Ching, would fundamentally reform the premises.

Members noted Mr Hibbard had been the DPS and Director of the company holding the premises licence since 2005 and Mr Hibbard accepted it was his name on the licence. Members further noted Mr Hibbard had made several applications for TENs over the years, was the applicant for a variation of the licence and was present in 2013 when concerns were raised during a licensing visit. Accordingly Members conclude that, whilst Mr Hibbard claimed to be unaware he was the DPS, he was in fact aware and indeed discharged some of his DPS duties.

Members reminded themselves of the statutory guidance which states a DPS is the person with day-to-day responsibility for premises. Members also reminded themselves of their statement of licensing policy which states the DPS will occupy a pivotal role in terms of management and supervision. It was clear, having listened to

the police and Mr Hibbard's representative that he had not taken his responsibility as DPS or premises licence holder seriously, which had resulted in the premises developing a culture of criminality and lawlessness. Accordingly, given this disastrous history as DPS, Members considered Mr Hibbard could not and does not represent a fresh start and are not convinced he could deliver his promises having failed in the past to heed police advice. Moreover, and as he stated, his time is taken up with his restaurant business, Members were sceptical that he could fulfil his role effectively as both DPS and Managing Director of the premises licence holding company.

Members found there had been extensive drug and criminal activity at the premises whilst Mr Hibbard was DPS. Further, he failed to address this, even though he had been given police advice. Members, therefore, have no confidence that Mr Hibbard can deliver the changes necessary and consider simply removing him as DPS would not address the issues, given he was the premises licence holder. Furthermore, Members do not consider any conditions would address the detrimental impact this premises was having on the licensing objectives. In all the circumstances, and having found a total disregard for the promotion of the licensing objectives, Members find it appropriate and proportionate to revoke the licence. Accordingly the interim steps taken cease to have effect and the licence is revoked.

22 APPLICATION FOR THE SUMMARY REVIEW OF PREMISES LICENCE FOR WUNDER BAR, BASEMENT, 2 HIGH STREET, MIDSOMER NORTON, BA3 2LE

Applicant for Review: the Chief Officer of Avon and Somerset Police, represented by Martin Purchase (Police Licensing Officer), Superintendent Richard Cadden, Inspector Shirley Eden, Constable Natalie George

Licence Holders: James Bull (Designated Premises Supervisor) and Lucy Milner

Other Persons: Sydney Bull and Daniel Flitcroft

The Senior Public Protection Officer summarised the application and invited the Sub-Committee to determine it.

Mr Purchase opened the case for the Police. He said that it was very disappointing that the sale and use of drugs had occurred at the premises. The management and staff had been very lax, and the management appeared on occasion to have turned a blind eye to what was going on. However, they had responded positively since the meeting on 23 April and had faithfully implemented the interim steps imposed. Inspector Eden said that the Police had noted the level of support for the premises in the community, but the considerable support from the community for the actions taken by the Police should also be noted. In response to questions from Members she stated:

- it had not been possible to identify any underage drinkers on the premises during visits following the two reports from Street Marshalls about the premises "overflowing with underage drinkers"
- she was satisfied that a continuance of the interim steps would be sufficient to promote the licensing objectives

- the premises might be “safe” as far as physical violence and other crime was concerned, but on occasion they had not been in relation to the threat of drugs; it might be that the drugs problem had migrated from the Stones Cross, but if so this had occurred because of the naivety of the management of the Wunder Bar
- the Police had been unaware of any problems with drugs at the premises until Operation Henotic
- the Police had not been called to the premises since the interim steps had been imposed

Mr Bull asked why it was necessary for the premises to employ two security staff every night. There were very few patrons on Thursday and Sunday evenings and these were all regulars from the locality. Mr Purchase replied that this was because a single security person would not be able to cope on their own, because of the need to check toilets etc. The condition about security staff was imposed specifically to address the issue of drugs.

Mr Sydney Bull made a statement on behalf of the premises. He said that he was the nephew of the DPS and a regular customer of the Wunder Bar. He said that the premises played a vital role in the cultural life of the community and that it would be tragic if it were closed, particularly at a time when so many other licensed premises were closing.

Mr Daniel Flitcroft made a statement on behalf of the premises. He said that he had first attended the premises 15 years ago. More than 100 musicians who had been clients of his music studio had come to him via the Wunder Bar. The premises are regarded as a centre of culture and creativity and has never been regarded as associated with crime or violence. He suggested that the condition about the employment of 2 door staff was “overkill”, and urged the Sub-Committee to show flexibility in relation to it.

Ms Milner said that the management of Wunder Bar could only deal with problems of which they were aware. The Police had never raised any concerns about Class A drugs at the premises, but only cannabis. Over 100 representations had been made in support of the premises, and she urged the Sub-Committee to have regard to these.

Mr Bull said that 6 CCTV cameras had been purchased, and that it was planned to raise this to 9. Further discussions would take place with the Police about their location, and he would ensure that every area of the premises was covered. Recording would commence one hour before the premises opened and cease one hour after they closed. He was also considering installing microphones to the external cameras. The requirement for 2 security staff every day at a total cost of £571+VAT was, he said, placing an undue financial burden on the business, and he urged the Sub-Committee to reduce this requirement, at least for Thursday and Sunday evenings, when the clientele mostly comprised regulars from the locality. There was no admission charge for any of the events held at the premises, and Ms Milner and he had made no money from the premises for years. In reply to questions from Members Mr Bull and Ms Milner stated:

- he was confident that there would be no problems if the requirement for security staff was reduced; Thursday and Sundays were always quiet, and in future the whole premises would be monitored by CCTV; the premises were small and could be thoroughly inspected in a relatively short time
- security cameras had been installed as the Police and requested and customers would in future be aware that they were being monitored; staff knew that the premises could close if there were any future issues with drugs and would be alert
- a new ethos of zero tolerance to drugs had been introduced at the premises

The parties were invited to sum up. Ms Milner said that she and Mr Bull did not make money out of the premises and the local community respected them for that. She had been amazed by the volume of support for the Wunder Bar. She urged the Sub-Committee not to close it.

Mr Purchase said that the management of Wunder Bar had fully embraced the interim steps that had been imposed. It was possible that the premises had been contaminated by activities which originated in the Stones Cross.

Following an adjournment it was **RESOLVED** to add conditions to the premises licence as detailed below.

Reasons

Members have today determined an application from the Avon and Somerset Constabulary to review a premises licence at Wunder Bar, Midsomer Norton. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Licensing Policy, and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and that they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on information before them.

In reaching a decision Members took account of all the relevant oral and written representations, and balanced the competing interests of the applicant and premises licence holder.

The application was made on the basis of concerns that serious crime was being carried on at the premises, namely drug use and dealing of class A, B and C drugs. Members heard that an operation carried out between October 2013 and April 2014 produced evidence of drugs being supplied to covert police officers on 9 occasions within the premises and 13 occasions in the immediate vicinity. The drugs supplied were cocaine, MDMA, MDMC and ketamine. The police further stated that on one occasion a patron was seen to snort white powder when a member of staff walked passed and on another a drug deal taking place in view of door staff. Further, on 17 January 2014, during a licensing visit, there was a strong smell of cannabis being smoked in the garden and following searches a young male was issued with a fixed

penalty notice for possession of cannabis. Members heard that Police officers spoke to Lucy Milner advising her to take better control of the premises and garden and during a follow-up visit no offences were seen being committed. As a result of the police operation Members heard 7 people had been arrested on suspicion of supplying drugs.

The premises management stated they were shocked by the allegations and felt revocation was not the answer. They also felt a suspension was not the answer, particularly as they are a small business looking to ensure this does not occur again and those involved have been arrested. The management also stated that most of the incidents related to a garden area, which was a blind spot and the incidents occurred unknown to them. It was suggested that suspension will lead to more problems elsewhere in the town but that if the premises remained open with conditions matters could be controlled and more closely monitored.

In reaching their decision Members noted the police suggested conditions, if it were considered inappropriate to revoke the licence. Members also noted the content and number of positive representations the premises had received. Having listened carefully to all the representations, and in all the circumstances, Members find it is not appropriate to revoke the licence but rather consider it appropriate to modify the conditions licence as follows:-

1. CCTV shall be installed to the satisfaction of the police and maintained in good working order. All cameras shall record continuously during trading hours and for one hour afterwards. The time and date shall be displayed on the recordings. Recordings shall be maintained for a period of 31 days and made available to the police or licensing authority for evidential purposes on request. If the CCTV equipment fails, the police and licensing authority must be informed as soon as possible and immediate steps shall be taken to effect a repair. A notice shall be displayed at the entrance to the premises advising that CCTV is in operation.
2. There shall be 2 SIA registered door supervisors on duty, from opening time until closing time, when the premises are open to the public and 2 other members of staff shall be on duty during these times 1 of whom shall be female.
3. Checks will be made of the male and female toilets on the premises every 15 minutes by door supervisors or other members of staff while the premises are open, a written record of such checks will be maintained at the premises and will contain the name of person carrying out such checks. This record will be available to the police and licensing authority on request.
4. A register will be kept on the premises showing the full name, full SIA badge number, time on duty and time off duty of each door supervisor. The register will be retained for 12 months and made immediately available for inspection to the police or licensing authority.
5. An incident book shall be maintained at the premises with all incidents of crime and disorder and any ejections by door supervisors shall be recorded. The incident book shall be completed on a daily basis regardless of whether

any incidents have taken place. The incident book shall be retained on completion for 12 months and shall be made available to the police and licensing authority.

6. A personal licence holder shall be on the premises during all opening hours.
7. All staff will be regularly trained in matters concerning illegal drug use and sale of alcohol and records kept of such training. The records will be made available to the police or licensing authority on request.
8. All persons entering the premises will be searched for drugs, weapons or other illegal items on entry or re-entry.

Delegated authority to modify and issue the licence

The meeting ended at 12.56 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services