

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Monday, 29th July, 2013, 2.00 pm

Councillors: Manda Rigby (Chair), Anthony Clarke (In place of Gabriel Batt) and Andrew Furse (In place of Roger Symonds)

Officers in attendance: Francesca Smith (Senior Legal Adviser), Terrill Wolyn (Senior Licensing Officer) and Kirsty Morgan (Licensing Officer)

9 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

10 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillor Gabriel Batt, for whom Councillor Anthony Clare substituted, and from Councillor Roger Symonds, for whom Councillor Andrew Furse substituted.

11 DECLARATIONS OF INTEREST

There were none.

12 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

13 MINUTES: 4 JUNE 2013

Approval of these Minutes was deferred, because Councillor Rigby had been the only member present at the meeting of June 2013.

14 REVIEW PROCEDURE

The Chair drew attention to the review procedure, copies of which had been made available to those attending the meeting.

15 APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR THE GREYHOUND HOTEL, 1 HIGH STREET, MIDSOMER NORTON BA3 2LE

Applicant for Review: Bath and North East Somerset Council, represented by Terrill Wolyn (Senior Licensing Officer)

Responsible Authorities:

Avon and Somerset Police, represented by Martin Purchase (Licensing Officer) and PC Philip Millen

Environmental Protection, represented by Nigel Shire (Environmental Health Officer)

Licence Holder: Punch Taverns plc, represented by Matthew Phipps (TLT Solicitors), Jennifer Trethewey (Designated Premises Supervisor) and Kevin Day-McDonnell (Punch Taverns Partnership Development Manager).

Witness for the Licence Holder: Mr Frank Reynolds

Other Persons:

Sue Dicks (B&NES Community Safety Manager)

Cllr Jane Lewis (Midsomer Norton Town Council)

Cllr Michael Evans (B&NES Council and Midsomer Norton Town Council)

Cllr Linda Dunford (Midsomer Norton Town Council)

Terry Andrews (local resident)

Annette Andrews (local resident)

The parties confirmed that they had received and understood the review procedure.

The Licensing Officer summarised the application. She explained that the review had been brought by the Licensing Authority because of persistent breaches of licence conditions, which were undermining the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm, and because of the attitude of the former Designated Premises Supervisor during inspection visits. The application was seeking a reduction in the terminal hour for all licensable activities to 23:30 with the premises closing to the public at midnight. Additional information had been circulated since the publication of the agenda, including proposals from the licence holder to modify the licence as follows:

- a reduction in the terminal hour for licensable activities on Friday and Saturday from 02:00 to 00:30, thus bringing the terminal hour on these days in line with those for Thursday and Sunday
- a closing hour of 01:00 the following morning
- subject to the terminal hour for licensable activities being no later than 00:30, the removal of the last entry/no re-entry condition
- the condition on off-sales to be amended from “no open containers of alcohol to leave the premises” to “all alcohol sold for consumption off the premises shall be in its original, sealed container”

The Senior Licensing Officer stated that case for the applicant for review. She submitted that the facts spoke for themselves. The Licensing Authority prided itself on the relationships it had with communities, responsible authorities and the licensed trade and did not initiate enforcement action lightly. In December 2011, following a variation application, the premises had been granted an additional hour for licensable activities on Fridays and Saturdays. Since then licence conditions had been repeatedly breached. The licence holder had admitted there had been breaches. There had been dialogue over the last 18 months with all 3 Designated Premises Supervisors (DPS), letters and visits to the premises, but nothing had worked to prevent the breaches occurring. Breaches had continued even after multi-agency visits to the premises, whereby the DPS had appeared entirely disinterested in the impact the breaches were having on local residents. The application for the

review had not been made to punish, but to restore the balance between the interests of the Greyhound and those of local residents. It would be good for the community if the Greyhound were a viable and successful business, but not to the detriment of local residents. Since the publication of the agenda, there had been on-going dialogue with the licence holder's legal representative. The licence holder had now offered a reduction in the terminal hour on Fridays and Saturdays from 02:00 to 00:30. They had also proposed that the condition prohibiting new admission or readmission after 00:00 should be removed from the licence. This was because turning people away at 00:00 when the terminal hour was 00:30 might cause more trouble than simply admitting them for half an hour. They had proposed that there should be a condition that off-sales should be sealed and in the original containers. The previous DPS, who had received a Police caution after admitting breaches of the licence, had been replaced by his mother, Mrs Trethewey, and there had been improvements since she had taken over, although the applicant stated that this was to be expected at this stage of the process. Signage had been erected and a barrier had been erected to prevent access and egress through the main courtyard, as licence conditions required. The premises were now fully self-contained and the applicant would like the plan of the premises to be amended to indicate this. She said that the licence holder's proposals appeared reasonable to her, but the other parties might have a different view.

She responded to questions from Members as follows:

- the Police had agreed that the condition banning entry and re-entry after 00:00 could be removed, if the new terminal hour was 00:30; if the Sub-Committee was minded to grant non-standard timings, it might think it reasonable to retain that condition
- the CCTV footage circulated to Members provided evidence that people were admitted to the premises after the terminal hour, The evidence included CCTV footage of people who had been turned away in front of officers on 27 April 2013, after the terminal hour, and who had returned and gained admission later

Martin Purchase stated the case for the Police. He introduced PC Philip Millen. Mr Purchase said that breaches of licence conditions had been investigated by PC Millen, who had interviewed Mr Marcus Trethewey, the previous DPS, and had issued him with a caution. The clientele of the Greyhound was mostly in the age range 18-30. The premises formed part of a "circuit" of drinking establishments. Drinkers started at the top of the town and worked their way down to the Greyhound. The operation of the Greyhound had had adverse impacts on residents. The current DPS was the mother of the previous DPS. He wondered whether her position was sustainable in the long term, as she did not live at the premises and was present there only at weekends. He acknowledged, however, that there had been a marked improvement since she had taken over as DPS. The Police were content with the reduction in hours proposed by the licence holder and would accept the removal of the late entry condition. He had discussed this with the Midsomer Norton sergeant, who was of the view that it was better to get people inside premises, where they could be controlled, rather than have them wandering about the town. PC Millen said that the community needed the Greyhound as a well-run business.

In reply to a question from a Member Mr Purchase stated that there had been an improvement in the operation of the Greyhound since Mrs Trethewey had become DPS on 14th June.

In reply to questions from Members PC Millen stated that there were not enough customers in the town on Fridays and Saturdays to make more than one pub with late hours viable. He referred to the Crossways Public House in Midsomer Norton which he stated was full until midnight, and when it closed, groups of customers would walk 200 metres down the road to the Greyhound. He stated that, on Bank Holiday weekends, the busiest night was Sunday and that, if in future the Greyhound closed at 00:30, the customers who had previously gone there would probably go to a nightclub or go home.

Nigel Shire, Environmental Health Officer, stated his case. He said that complaints about noise had been received from the area. He had participated in the multi-agency visit on Friday 26 April 2013. His concern was the potential for nuisance, if noise at the premises was not properly controlled. He stated that a reduction in the hours for licensable activities and the time that customers would be outside smoking and drinking would reduce the potential for nuisance.

Sue Dicks, Community Safety Manager, stated her case. She referred to the first page of her witness statement, which explained her role and gave a history of action to tackle alcohol-related problems in Midsomer Norton. She stated that there had been Street Marshalls in the town since November 2012, who provide her with weekly reports. She had taken part in a night audit in August 2012 and had witnessed people drinking outside the Greyhound after the terminal hour. She had taken part in a further night audit in May 2013. On this occasion the Avon and Somerset Police and Crime Commissioner had accompanied them. Again people had been seen drinking outside the premises after the terminal hour and loud music had been emanating from the premises. She had seen for herself how nuisance and anti-social behaviour related to the premises had impacted on the local community. She stated that she had seen people under the influence of alcohol helpless in the streets; residents wanted a long-term solution to these problems. She confirmed that the use of the smoking area late at night caused disturbance to residents and that in her view 23:30 would be a reasonable terminal hour for licensable activities at the premises.

Councillor Jane Lewis stated her case. She said that she felt that the balance between the interests of residents and those of the licence holder needed to be restored; residents were not looking for draconian measures against the licence holder. She believed that there was plentiful evidence of a lack of co-operation by the management of the Greyhound and that there had been a great improvement in the town since the establishment of the local alcohol partnership.

Councillor Michael Evans stated his case. He said that he first become involved with issues relating to the Greyhound when the variation application had been made in 2011, because a large number of residents had been extremely concerned by it. He stated that the balance of interests should be considered very carefully, citing that residents needed sleep, and he suggested that a terminal hour of 23:30 with closing at 00:00 would be right. He expressed concern that residents had not been involved in the recent discussions that had taken place between the Licensing Authority, the Police and the licence holder which had resulted in the licence holder's proposals to

modify the licence. He was not happy with the proposed condition on off-sales as sealed containers, such as cans, could be opened very easily. He said that in his view the proposed new conditions would not give residents the reassurance they were seeking. He felt that the review process was rather legalistic and weighted against ordinary residents.

Councillor Linda Dunford stated her case. She said that the Greyhound had not complied with the conditions that had been attached to the licence when the variation was granted eighteen months ago. Residents, many of whom were elderly, or were parents with young children, had suffered a great deal of disturbance. She believed that Punch Taverns had failed residents and had failed to provide adequate support to the DPS. She stated that over the past eighteen months signs and barriers had been put up in the premises to comply with licence conditions, but this had never lasted for long. She urged the Sub-Committee not to remove any conditions from the licence and that the condition on late entry would protect residents, if extended hours were applied for in the future. She urged that the terminal hour should be 23:30 and suggested that recent improvements, under the new DPS, should be compared with the previous long period of non-compliance. She was concerned that day to running of the premises might again end up in the hands of the previous DPS, who was, after all, the son of the new DPS.

Mr Terry Andrews stated his case. He said that he was also speaking on behalf of his wife, Mrs Annette Andrews, who was present, but preferred not to make a statement. He said that he was not seeking to have the premises closed, but just wanted to have a night's sleep. He said that last week he had been awakened at 23:45 by a fight taking place outside the premises and that if there were rules, people should be punished for breaking them. He stated that Crossways was a very successful pub and it closed at 00:00 and he thought the Greyhound should do the same. In reply to a question from a Member, he said that the greatest disturbance occurred on Friday and Saturday nights. He was concerned about nuisance from music and did not think it was acceptable for music to be played at 00:30 in the morning.

Mr Phipps stated the case for the licence holder. He introduced the new DPS, Jennifer Trethewey, and Kevin Day-McDonnell, Partnership Development Manager for Punch Taverns. He said that on receipt of the application for review he had written to the licensing authority requesting a meeting. They had met at the premises and had had a robust discussion and this had been followed by an exchange of correspondence, which had resulted in the proposal for new conditions. He asked Members to note that the Licensing Authority considered that these conditions were satisfactory, though of course it was for them to decide. He confirmed that there was no question of a deal being "cooked up" between the licence holder and the Licensing Authority and that it was perfectly proper for discussions to take place between them, and had there been more time before the hearing, local residents would certainly have been contacted about the proposals. He said that Punch Taverns was sorry and embarrassed to be at today's hearing and that there had been unarguable and repeated breaches of licence conditions at the Greyhound. The previous DPS had accepted a Police caution, which could be considered the equivalent of a criminal conviction. He explained that Punch Taverns owns premises and lets them to tenants or "partners" and supplies them with beer to sell. He said that Punch Taverns had premises in the area of every licensing authority in the

country. He acknowledged that there had been a breakdown in communications with the officers of B&NES. On one occasion, Mr Day-McDonnell had had to return to Ireland following a bereavement, and had missed some correspondence from B&NES and had not replied to it. He said that one obvious step that the Sub-Committee might have taken was the removal of the DPS; this had already been done by Punch Taverns, who had understood that they were in a difficult situation and had taken effective action. He acknowledged that the parties who had spoken had justly pointed out that improvements in the operation of the Greyhound had only been very recent and that the licence holder had proposed changes to the hours on Fridays and Saturdays only; this was not to say that no incidents had happened on any other night, but clearly the review had been called because of issues relating to late opening on Fridays and Saturdays. He said that the licence holder was proposing a terminal hour of 00:30, whereas the residents were asking for 23.30 and that it was for the Sub-Committee to weigh the significance of one hour. He said that everyone recognised that there had been improvements under the new DPS, one of which had been the erecting of barriers to ensure that the premises were self-contained. He suggested that the plan of the premises be amended to reflect this, in view of the lack of confidence in the permanence of this expressed by parties. He submitted that it would be safe to leave the non-standard timings as they were, because the number of late evenings would still be reduced from 100 to only 10 a year. He submitted that the Sub-Committee should not be influenced by the fact that Crossways closed at 00:00 and that Members had heard from the Police about the "circuit" in the town and the fact that there were not enough customers to sustain two late-night pubs. The Greyhound, which was quiet during the early part of the evening, gained trade after the closure of Crossways. He submitted that would better promote the licensing objectives for the two pubs to have different closing times than for them to be discharging customers onto the street at the same time. He referred to the evidence of the EHO, who had said that there was "potential" for noise to become a problem; he had not said that it was a problem now. In conclusion, he said that his case depended on confidence that there was a manager in place who could run the premises in compliance with the licence conditions. He said he would attempt to demonstrate this by evidence from Mr Day-McDonnell and Mrs Trethewey. Mr Day-McDonnell said that Mrs Trethewey would only retain her position as "partner" and DPS if she ran the business in compliance with the licence. Mrs Trethewey said that she was at the premises every weekend, and from the following week would be at the premises more often during the week. She believed that it was possible to operate the premises with a terminal hour of 00:30 on Fridays and Saturdays in a way that was consistent with the licensing objectives.

A Member asked how the Sub-Committee could be confident that the premises would be run properly in future in view of the record of the past eighteen months. Mr Phipps replied that Punch Taverns ran hundreds of premises without problems, though he acknowledged that there had been a failure in respect of the Greyhound. He said that the management of the Greyhound were well aware that they would be in an extremely difficult position if there was a second review of the premises licence, when there might be a real possibility of revocation or suspension of the licence.

In response to questions from Members Mrs Trethewey stated:

- she was concurrently a DPS at other premises, a position she had held for about 5 years

- on Fridays and Saturdays she arrived at the premises between 18:00 and 21:00 and remained until closing
- her son was employed to serve at the bar

Mr Reynolds was invited to give a statement as a witness for the licence holder. He said that he was the chairman of a village hall at which Mrs Trethewey was treasurer and bar manager. He described how she had once dealt effectively with a threatening and abusive person who was attempting to bring his own drink onto the premises. He believed that Mrs Trethewey had a strong regard for the law. She had managed over thirty events at the hall, there had never been any trouble and the events had always finished on time.

The parties were invited to sum up.

Mr Phipps said that the management of the Greyhound realised that they were now in a very precarious position and that they would have a very difficult time if they were summoned to another review. He said that a terminal hour of 00:30 on Fridays and Saturdays would reduce the hours to below what they were before the variation. Members had heard that there was simply not the volume of customers to support more than one pub at a time; the business would not be viable with a terminal hour of 23:30. He submitted that the conditions proposed would promote the licensing objectives, as had been accepted by the Police and the Licensing Authority.

Councillor Michael Evans submitted that the Sub-Committee should not have regard to economic factors. He suggested that if the Greyhound wanted more customers it should improve its offer.

Councillor Dunford submitted that a terminal hour of 23:30 was late enough. She noted that staff who had been at the premises for the past eighteen months would remain in post and that during that time there had been repeated breaches of licence conditions. She urged the Sub-Committee to be mindful of the disturbance that residents had endured.

In response to a question from a Member, the Police representatives confirmed that it was a proportion of customers leaving Crossways who resorted to the Greyhound. It was stated that other patrons went to the Mallard, or went home and that if the Greyhound and Crossways had the same terminal hour, it would not mean huge numbers of customers coming onto the street at the same time.

The Senior Licensing Officer summed up for the Applicant for Review. In relation to Cllr Dunford's earlier submission, she reminded the Sub-Committee that the premises licence conditions only transferred to Temporary Event Notices if the notice was objected to by the Police or Environmental Health, and subsequently imposed following a hearing. She submitted that the evidence did not really support a terminal hour of 23:30, as all the incidents detailed in the submissions related to the operation on a Friday and Saturday and there was no evidence that the premises caused a problem on the days it traded to 00:30.

Following an adjournment, the Sub-Committee **RESOLVED** to modify the licence as follows:

The following provisions have effect for three months only;

1. The terminal hour for the sale and supply of alcohol shall be 00.30 on Fridays and Saturdays.
2. The terminal hour for Regulated Entertainment shall be 00.00 on Fridays and Saturdays.
3. The premises shall close at 01.00 on Fridays and Saturdays.

The following provisions have permanent effect;

4. The condition that “No open containers of alcohol to leave the premises” is deleted and replaced by “All alcohol sold for consumption off the premises shall be in its original, sealed container.”
5. The condition related to no entry or re-entry after 00:00 is deleted from the premises licence.

REASONS

Members have today determined an application for the review of a premises licence for The Greyhound Hotel, 1 High Street, Midsomer Norton. In doing so they have reminded themselves of the provisions of the Licensing Act 2003, Human Rights Act 1998, case law, Statutory Guidance and the Council's Statement of Licensing Policy.

Members noted that the proper approach under the Licensing Act is to determine an application on its own merits, and to be reluctant to regulate, unless there is evidence that premises may have a negative impact on the licensing objectives.

The application was made by the Licensing Authority for the Council and related to three of the four licensing objectives, contained in the Act, of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm. The grounds of the application were based on the fact that the multiple breaches of the conditions attached to the premises licence had taken place on numerous occasions in the 18 months preceding the application. A number of Multi-Agency visits to the premises had been carried out when these breaches had been witnessed, as well as evidence provided by the other parties to the hearing.

The conditions had not been complied with to the extent that the licensing objectives had been seriously undermined. The problems caused were anti-social behaviour, including noise nuisance caused by patrons which disturbed residents, open containers of alcohol taken away from the premises, the use of the outside area after 11.00 pm, the use of the side door, two incidents of under-age sales of alcohol, that a smoking screen was not used, drunk persons being allowed to enter the premises and failure to comply with the last entry time. The evidence referred to problems on Fridays and Saturdays and predominantly after 01.00 am.

The Licensing Authority and the Police had made a number of efforts to engage with the previous business Partner, DPS, Development Manager for Punch Taverns and risk assessment officer but there had been a blatant disregard for the advice given and no improvement had been made to the operation of the premises.

Members noted the oral and written evidence presented by the applicant and all of those who had made relevant representations which showed a consistent pattern of non-compliance and no positive action on the advice provided. They disregarded those representations which fell outside of the Licensing Act.

The Members attached much weight to the evidence of problems post 01.00 and to the professional opinion of the Police, Environmental Health Officer and the applicant for the review. They attached considerable weight to the residents' concerns and records of submitted by the Police and Street Marshalls.

The solicitor for Punch Taverns had proposed a number of modifications to the Premises Licence, to which the applicant had agreed. Members considered that these measures, further modified, would address the serious concerns that had been raised in the application and supporting evidence and were pleased that the company was willing to admit to the issues that had been raised and to introduce the proposed modifications. However, Members were concerned by the representations made by the residents regarding noise nuisance and decided to amend the proposed modifications further as they acknowledge the residents' distress.

They acknowledged that the Designated Premises Supervisor had now been removed and replaced and that new control measures had been put in place such as clear signage regarding restrictions on the use of the outside area and clear signage advising that patrons were to be quiet on leaving the premises.

Members considered that further action was appropriate in light of all of the evidence put before them and decided that the right measures to take with regard to their duty to promote the licensing objectives was to modify the proposal by Punch Taverns and agreed to by the applicant for a period of three months as they considered that these would address the causes of concern and show a consistent pattern of compliance by the end of that period. They considered that these measures would ensure that the premises would be operated in such a way to reduce considerably the negative impact which led to the application for the review.

Members noted the improvement in the operation of the premises had only started recently and considered that the new Designated Premises Supervisor had gone some way to demonstrate that she could operate the premises in a responsible manner. Members therefore did only what was appropriate and proportionate to promote the licensing objectives in light of the representations made to them today.

The meeting ended at 5.55 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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