

Licensing Sub-Committee

7 November 2014 at 9.30 am

Present: Councillors Tyler, Clayden and Squires

1. Election of Chairman

Prior to commencement of the meeting it had been agreed that Councillor Tyler would chair the meeting.

2. Declarations of Interest

There were no Declarations of Interest made.

3. Application for a Review of a Premises Licence – Licensing Act 2003 Section 51 – The Old Barn, Felpham

Licensing Manager	Sarah Meeten
Applicant	Chief Inspector Taylor Peter Saville, Police Barrister Pauline Giddings, Licensing Officer PC Whitcombe PC Heaseman
Licensee	Peter Hall, Owner and Licensee Kevin Pain, Barrister
Interested Parties	Local Residents: Brian Holland Brian elderfield Richard Harper Barry Wood Rachel Searle Jennifer Howard, Employee & local resident
Legal Representative	Delwyn Jones, – Legal Advisor to the Council

The Chairman asked if there was any reason to enable the hearing to be dispensed with and was advised by the Licensing Manager that there was not.

Prior to commencement of consideration of this item, the Chairman requested those in attendance to introduce themselves and stated that there was a laid down procedure to be followed, a copy of which was circulated at

the meeting. He also stated that a verbatim note of the meeting would not be taken and should anyone wish anything particular to be noted they should indicate accordingly to enable this to be done.

The Chairman advised those present that additional documentation had been presented on behalf of the Licensee immediately prior to the meeting and he therefore called a short adjournment to enable Members to read the information that had come forward. He apologised for the inconvenience caused.

On the meeting being reconvened, the Licensing Manager presented the report and advised that the applicant, Sussex Police, was seeking a review of the premises licence for the Old Barn, Felpham, as it was contended that the licensing objectives of Prevention of Crime and Disorder, Prevention of Public Nuisance and Public Safety had been seriously undermined. The details of the case were set out in the papers previously circulated. For the benefit of the public present, the Licensing Manager read out an extract from the relevant legislation and guidance which Members would have to take account of when deliberating the matter.

The Barrister for the Police, Mr Saville, introduced his case by stating that, given the history of the premises, the Police would have expected management to ensure that there was absolute compliance with the conditions attached to the licence. However, visits to the premises had highlighted that there were multiple breaches around those conditions and these, together with the clear evidence that had been provided by the swab machine that drug use had been carried out at the public house, provided the core of the case for the review. The Police were requesting revocation of the licence.

In the course of questions around the drugs readings, the barrister for Mr Hall, Mr Pain, requested a short adjournment to the proceedings as he had not had sight of the evidence presented by the Police. The Chairman agreed to enable Mr Pain to consider the witness statements presented by the Police.

On the meeting being reconvened, Mr Pain asked a number of questions of the Police witnesses which centred around the results of the drug swabs and the advice given to licensees by the Police.

Mr Pain then presented his client's case. He queried the readings of the swabs taken at the premises as they were extremely high and, although there had been a previous history of drug taking, that was no longer the case as the clientele of the pub had changed dramatically since it had been reopened and Mr Hall had taken over the running of it. The breaches of a number of the conditions were addressed and both Mr Pain and Mr Hall put forward mitigation as to why they had occurred and the steps that had been taken to ensure such breaches would not reoccur. It was suggested by Mr Pain that, rather than revocation of the licence, a more appropriate course of action would be to attach additional conditions to promote the licensing objectives.

A number of local residents and a member of staff spoke in support of Mr Hall and were emphatically of the view that the pub was no longer a base for drug use or anti social behaviour. It was felt that there was now a community feel to the premises and the clientele who patronised The Old Barn felt genuine shock that the swab tests had indicated such a high level of drug presence.

All sides present were asked and were able to ask a number of detailed questions, which were responded to at the meeting. In line with the Council's procedure, further written representations had been received and these had been taken account of.

The Subcommittee, together with the Council's legal representative, then retired from the meeting to consider its decision. The Chairman had advised that, due to the complexity of the case, a decision might not be reached today and, following some deliberation, the Committee Manager advised all parties that the decision would be notified within 5 working days.

(The meeting concluded at 1.15 pm)

Signed Chairman

THE DECISION OF THE COMMITTEE, PUBLISHED ON 13 NOVEMBER 2014, IS SET OUT BELOW.

Decision

The Subcommittee, having taken account of all the written and verbal representations made by the applicant, the Licensee, responsible authorities and interested parties; all evidence judged on a balance of probability, the Council's own Licensing Policy; the Secretary of State's Guidance under Section 182 Licensing Act 2003; and the three licensing objectives pertaining to this review hearing, namely Prevention of Crime & Disorder, Public Safety and Prevention of Public Nuisance, **decided** :-

1. To remove the Designated Premises Supervisor
2. To suspend the Premises Licence for 14 days after publication of this Decision

Reasons

The Subcommittee took account of the following Licensing Objectives:-

Prevention of Crime and Disorder – the Police presented evidence of breaches of Premises Licence Conditions and the presence of drugs on the premises

Prevention of Public Nuisance in that the Police presented evidence of breaches of Premises Licence conditions and the presence of drugs on the premises.

Public Safety –the Police listed this as a relevant Licensing Objective but the hearing and the decision chiefly focussed on the two previous Objectives.

The Subcommittee considered the following policy and guidance :-

Arun District Council Licensing Policy Appendix 3
Guidance under S182 Licensing Act 2003 paras 11.18 – 11.23

All evidence was assessed on a balance of probability.

The Subcommittee deliberated the case at some length and accepted the Police evidence submitted in the form of written and verbal witness statements by PC Heaseman and PC Whitcombe that :-

- There had been a serious failures to cooperate with the Police, as evidenced by the Licensee's failure to provide records relating to CCTV and training and to be proactive with regard to Pub Watch and the issue of drugs on the premises
- Drugs had been found to be present at the premises
- There had been a lack of managerial ability to address and rectify defects
- There was a previous track record of poor performance
- There had been a failure to report incidents to the Police
- Covers had not been laid out on the tables, as required by condition
- The conditions attached to the licence had been seriously and consistently breached

On four occasions 24 August, 27 August, 6 October and 8 October 2014.

Police evidence was subject to cross examination by barrister Kevin Pain, representing Mr Hall. The two constables were not shaken in the certainty of their evidence.

Although Mr Hall disputed the swab readings by contending that they were unreliably high, particularly as they were higher than when The Old Barn had been closed down previously, he was not able to provide any evidence to disprove the readings, and contradict the police, whose evidence on this point was preferred. Mr Hall had taken his own readings through the use of a DIY

kit but the Subcommittee discounted that as it was not carried out professionally.

The Subcommittee accepted that The Old Barn had improved significantly and that the customer base had changed, as evidenced by the testimonials, both written and verbal, provided by existing customers. The customers present expressed their shock at the presence of drugs at the premises and some found it very hard to believe. The customers commended Mr Hall for turning the business around and for now providing a much needed community venue with good quality service, food and beer. However, whilst these customers focussed on the enhancement of the pub's management since 2012, they could not give precise evidence to contradict or deny the breaches of conditions, evidenced by the police.

The Subcommittee had regard to letters received from Bethan Lloyd, employee and personal licence holder, and Chris Zupnik, which admitted certain failures to observe licence conditions and which sought to explain and mitigate these failures.

The Subcommittee felt that Mr Hall had not put forward any good or sufficient mitigation to explain the breaches of conditions and had not contacted the police when he had been notified by a customer that someone suspected of using drugs was on the premises. Although he contended that he could not contact the police as it was only a suspicion, Members were of the view that, bearing in mind the history of the premises, Mr Hall should have been more proactive in dealing with the matter.

SUMMARY OF REASONS FOR THE DECISION

In conclusion, the Subcommittee believe that, based on the evidence, to take no action or to administer a warning was not a sufficient or proportionate response. Additional conditions had been suggested as an option by the Licensee but this was discounted because the existing conditions were not being adhered to and, indeed, no new conditions were offered by the Licensee when asked to elaborate on his suggestion that new conditions could be a solution.

The current DPS, Mr Peter Hall, was not believed, or shown on the evidence, to be a proactive manager. Under his management evidenced, admitted, undisputed and serious breaches of the Premises Licence conditions had occurred. Suspension of the Premises Licence is considered to be appropriate and proportionate for the promotion of the licensing objectives and would signal the seriousness of the situation. It would additionally enable a new and proactive DPS to be found and appointed and would signal the need for a more vigorous and proactive management of the premises, so as to avoid similar intervention of the kind that had resulted in the Review Application.

As there had been good progress and managerial improvements made since 2012, which was offset by the significant shortcomings evidenced at the hearing and the weakness of the DPS, it is concluded that the decision would

address this problem and give time to enable alternative arrangements to be made. Removing responsibility from Mr Hall will assist matters and ensure that the whole burden does not fall on him so that he can take a less prominent role in managing the business. This appeared a sufficient and proportionate step, short of the more drastic step of revocation, to address the problems evidenced by the Application,