

LICENSING SUB-COMMITTEE 1

TUESDAY 13 MARCH 2012 AT 2.30PM

PRESENT: Councillors Bell, Layden and Morton.

ALSO PRESENT: Councillor Cape was present at the meeting as the substitute Member.

LSC1.01/12 APPOINTMENT OF CHAIRMAN FOR THE MEETING

RESOLVED – That Councillor Morton be appointed as Chairman of Licensing Sub-Committee 1 for this meeting. Councillor Morton thereupon took the Chair.

LSC1.02/12 APPLICATION TO REVIEW A PREMISES LICENCE BY CUMBRIA CONSTABULARY – THE CLUB, 18 VICTORIA PLACE, CARLISLE

The Licensing Officer submitted report GD.14/12 regarding an application for a review of a premises licence in accordance with Section 51 of the Licensing Act 2003 in respect of premises known as The Club, 18 Victoria Place, Carlisle.

In addition to the Council's Licensing Officers, Assistant Solicitor and Lead Committee Clerk, the following people attended the meeting to take part in proceedings:

Premises Licence Holder/Designated Premises Supervisor:

Mr Martin Peter Bell

Mr James Johnston, Burnetts Solicitors representing Mr Bell

Applicant:

Sergeant Higgin, Cumbria Constabulary

PC Dixon, Cumbria Constabulary

The Assistant Solicitor outlined the procedure for the meeting.

The Licensing Officer reported that an application had been received from Cumbria Constabulary under Section 51 of the Licensing Act 2003, for a review of the premises licence relating to The Club, 18 Victoria Place, Carlisle.

The review application related to evidence of increased crime and disorder, the prevention of public nuisance as well as concerns for the welfare of young children.

The application and further additional details which supported the application had been copied and forwarded to the Premises Licence Holder and all Responsible Authorities. The application had been advertised on the premises, at the Council offices and on the Council website for a 28 day period and no further representations had been received from other responsible authorities.

The Licensing Officer outlined the premises licence history which included a number of warning letters from the Licensing Office to the Premises Licence Holder with regard to the running of the premises. The history also included the permitted hours of sale by retail of alcohol on and off the premises, non standard timings, regulated entertainment hours and late night refreshment. He stated that the Designated Premises Supervisor was Mr Martin Bell and listed the premises licence conditions attached to The Club.

The Licensing Officer reported the relevant sections of the Council's Licensing Policy Framework which had a bearing on the application and should be taken into consideration when making a decision. He also outlined the relevant National Guidance and reminded Members that the application must be considered, with regard given to the representations made and the evidence given before them.

Sergeant Higgin, on behalf of the applicant, then addressed the Sub-Committee. Sergeant Higgin highlighted the main points of the application as follows:

- Cumbria Constabulary felt Mr Bell was unfit to remain as the Designated Premises Supervisor at The Club as they felt his continued control of the premises undermined the crime and disorder objective
- Over the last 15 months the Police had been called to a number of incidents and on each occasion Mr Bell had been found to be under the influence of alcohol or, in the opinion of one officer, other substances. On each occasion Mr Bell's behaviour toward the Police and other persons was obstructive and aggressive.
- He outlined a number of specific incidents:
 - December 2010 – the Police made a routine licensing visit to the premises as part of a drug scanning operation. The premises were found to be full of young people, one under the age of 16, most were intoxicated and became aggressive towards the Police Officers. Mr Bell was found to be extremely drunk and aggressive towards officers and the premises had to be emptied. Mr Bell attended a meeting with the Licensing Manager and Sergeant Higgin and was warned his behaviour was unacceptable and he accepted this.
 - 2 December 2011 – the Police were called to a disturbance at the premises where there were reports of Mr Bell using threatening behaviour which had spilled out onto the street. It was noted that Mr Bell was extremely intoxicated under the influence of drink or drugs and was uncooperative and aggressive towards officers. Mr Bell was summoned to a meeting with the Licensing Officer and Sergeant Higgin and was again warned about that his behaviour was unacceptable.

–24 December 2011 – the Police were called to a large disturbance at the premises where bottles were being thrown onto the street. On arrival Mr Bell attempted to close the door to prevent officers gaining access. Mr Bell was found to be drunk and covered in blood which was not his own. Mr Bell had to be forcibly ejected due to his demeanour and the premises asked to voluntarily close.

–10 February 2012 – a number of youths, 3 of which were known to be under 18 years old, were observed in the premises consuming alcoholic drinks. A 16 year old was arrested for being drunk and disorderly. Mr Bell was in charge and appeared sober. The youths had been served by a 17 year old male working behind the bar and Mr Bell claimed he had been upstairs in the premises when the youths entered. The remaining youths were asked to leave but then went onto commit burglary and assault. A request had been made to Mr Bell to provide CCTV of the youths and to date the CCTV footage had not arrived.

- In his opinion The Club would have been subject to a review sooner if the premises were in a more central City Centre location due to Mr Bell's lack of control and attitude towards enforcement and the law.
- Mr Bell had been given a number of warnings but chose to ignore them.
- PC Dixon had been at the premises during the incident in early December 2011 and was available to answer any questions.

In response to questions Sergeant Higgin stated:

– He had not been at the premises during all of the incidents and a decision had been taken not to arrest Mr Bell. In his opinion Mr Bell should have been arrested at that time.

– On two of the occasions when Mr Bell had been considered in an unfit condition to continue to run the premises the premises had been closed.

– Mr Bell had not been breathalysed on any occasion as it was not procedure for the Police to breathalyse people unless there had been a road traffic accident.

– He had attended the premises on 24 December 2011 and he could conclusively state that Mr Bell was intoxicated and that he met all of the threshold tests that proved he was drunk.

Mr Johnston, representing Mr Bell, asked why the Police had not objected to the change in Designated Premises Supervisor (DPS) in June 2011 when Mr Bell applied to become the DPS.

The Licensing Officer clarified that it was the responsibility of the applicant to inform the responsible authorities, include the Police, of any variations to their licence, this would include a change to the DPS.

Sergeant Higgin could not recall if the variation had been received by the Police but confirmed that if it had been received he would not have raised any objections because there had only been one incident prior to the change in DPS in June 2011 and it would not warrant an objection.

At the request of Mr Johnston, PC Dixon addressed the Sub Committee and outlined the events of 2 December 2011.

She reported that:

- On arrival at the premises a number of people had been outside of the premises
- There had been an altercation with the band regarding a set of keys
- A member of the band informed her that he had given the keys to the bar man
- Mr Bell was not outside the premises but had remained inside behind the bar serving
- She had to wait for Mr Bell to come to her to answer questions
- Mr Bell made no effort to discuss the matter with the Police
- The matter was left to Mr Bell to deal with and the Police did not deal with it as a crime
- She could not smell alcohol on Mr Bell's breath but he was under the influence
- Police were at the premises for approximately 15 minutes
- In her opinion the matter was serious and was not 'run of the mill' for a licensed premises

Mr Johnston, Burnetts Solicitors, then addressed the Sub-Committee on behalf of Mr Bell, the Personal Licence Holder and Designated Premises Supervisor, highlighting the following:

- Mr Bell had owned the premises for eight years
- Mr Bell had invested a significant amount of time and money into the restoration of the premises to build into a music venue and pizza shop
- The premises had been Mr Bell's full time occupation for eight years
- Mr Bell had spent all of his adult working life working in bars and as a DJ
- The Club began trading in 2007 and employed two part time members of staff
- The current staff had been employed by Mr Bell for four weeks
- The ultimate goal for the Club was to make it a members only club
- The Club had been open over two years before Mr Bell had any interaction with Sergeant Higgin
- Mr Bell's version of events differ from the Police reports:
 - December 2010
 - Mr Bell was not breathalysed
 - There had been no drugs found on the premises
 - 2 December 2011 - The incident was outside of the premises when the Police arrived
 - Members of a rival club had been asked to leave by Mr Bell and the Police called them back to the premises
 - Mr Bell had been 'pumped up' on adrenaline after the incident and did not take drugs
 - 24 December 2011 – A man punched the bar man and other people intervened to stop the bar man retaliating
 - Mr Bell removed the bar man from the premises and was outside when the Police arrived
 - Mr Bell had blood on him from the bar man who he had restrained

- Drinks had been spilled on Mr Bell so he smelled of alcohol
- The Club did not have a pool table so the pool balls must have been brought in by the customer who initiated the fight
- Mr Bell was handcuffed and placed in a police van
- Mr Bell's understanding of the situation was that he was to be breathalysed but it had not been carried out and the handcuffs had been removed

In response to questions Mr Johnston stated:

- Mr Bell had been protecting his premises and had naturally produced adrenaline during the incident
- It was clear from the minimal time the Police were engaged at the premises that Mr Bell had dealt with the incidents quickly and safely
- There had been three incidents at the Club in five years
- Mr Bell returned as the DPS because he missed being involved
- No DPS could prevent incidents happening on their premises they could only deal with them quickly, responsibly and safely
- Mr Bell recognised that conditions may need to be attached to his licence and he was willing to work with Licensing Officers
- Removal of Mr Bell as DPS would result in loss of work for him and his two employees

Mr Bell then clarified the following points:

- Bar staff were only used on Friday and Saturdays, Mr Bell worked behind the bar on all other nights
- The Club had a downstairs area that was hired out but did not serve alcohol
- People under age were allowed in the downstairs area but not into the main bar
- Mr Bell asked that parents were with people under age
- He felt that progress had been made with regard to the prevention of under age drinking since 2010
- The bar man was 18 years old not 17 years old and had worked at the Club for eight weeks
- He had not refused Police entry to the premises on 24 December 2011, the door was glass and the Police could see that Mr Bell was ejecting someone from the Club when they arrived and so could not move out of the doorway
- He understood there was issues with alcohol and it was difficult saying no to customers who wanted to buy him a drink and converse with him especially if they had already been drinking
- He had stopped all intake of alcohol

2 December 2012:

- The incident with rival club occurred because the band playing at the Club usually played in the rival club but the Club was a smaller and therefore more suitable venue
- The keys belonged to a storage cupboard on the premises that bands used to store equipment

- The keys had been given to a member of the band and when Mr Bell asked for them back the band member became verbally abusive
- Most of the incident had been resolved before the Police arrived

In response to a question the Licensing Officer clarified that the Licensing Act allowed for people under the age of 18 to serve alcohol but each sale had to be authorised by the DPS. He added that it was illegal to purchase alcohol for anyone who was drunk and it was illegal for anyone who was drunk to purchase alcohol for anyone else.

Sergeant Higgin informed the Sub Committee that he had been at the premises on 10 February 2012 and had interviewed the bar man who gave his date of birth as being 17 years old.

Mr Johnston read out a letter of support for Mr Bell and the Club from Mrs Nicholls. The letter stated that Mrs Nicholls had used the premises on a number of occasions for family events and music evenings and found Mr Bell to be very helpful and polite.

At 3.30pm, all parties, with the exception of the Sub-Committee Members, the Assistant Solicitor and the Lead Committee Clerk withdrew from the meeting whilst the Sub-Committee gave detailed consideration to the matter.

The parties returned at 4.05pm to hear the Sub-Committee's decision.

The Sub-Committee's decision was:

This matter concerned an application by Cumbria Constabulary to review the Premises Licence at Club Victoria, 18 Victoria Place, Carlisle.

The Sub-Committee has considered the application and has taken into account the evidence before it. In particular, it has listened to the submissions made by:

1. Sgt Higgin and PC Dixon on behalf of Cumbria Constabulary
2. James Johnston, solicitor from Burnetts on behalf of Mr Martin Bell the Premises Licence Holder and the Designated Premises Supervisor for Club Victoria

The Sub-Committee has also considered written evidence in the form of letters from the Council's Licensing Section to Mr Bell, including three warning letters regarding the incidents that took place at Club Victoria and a letter from Cumbria Constabulary to The Council's Licensing Section as well as witness statements and incident reports provided by Cumbria Constabulary which included evidence from a member of staff from Club Victoria which stated that Mr Bell had a problem with alcohol and is often drunk when acting as DPS.

It also considered that Cumbria Constabulary have made sufficient effort to liaise with the Premises Licence Holder once the problems at the Premises

became apparent. It is of the view that the Police took steps to hold a meeting Mr Bell and a Licensing Officer from the Council on 10th December 2010 which was followed by a warning letter from the Council's Licensing Section. The Police then held a further meeting with Mr Bell and a Licensing Officer from the Council on 8th December 2011 which was again followed up by a warning letter from the Council's Licensing Section which made it clear that if any similar incidents occurred the Police would call a review of the Premises Licence.

After careful consideration, the Sub-Committee has unanimously decided to remove Mr Bell as Designated Premises Supervisor of Club Victoria:

The Sub-Committee gives the following reasons for this decision:

1. The application was determined in accordance with Section 52 of the Licensing Act 2003, the statement of licensing policy and paragraph 11.18 of the section 182 guidance issued by the Secretary of State. In reaching its decision the Sub-Committee has had regard to the Licensing Policy, in particular paragraphs 5.2.1 and 5.2.2, as well as the s182 Guidance and has considered the options available namely:
 - a. the modify the conditions of the licence;
 - b. to exclude a licensable activity from the scope of the licence;
 - c. to remove the designated premised supervisor;
 - d. to suspend the licence for a period not exceeding 3 months;
 - e. to revoke the licence.
2. The Sub-Committee takes very seriously any actions or omissions by the Licensee or its staff which undermine the licensing objectives. It further views seriously any application for review where the police have been called to attend to incidents of disorder and the presence of children under the age of 18 years at the Premises.
3. It is satisfied that there has been a clear connection between the Premises and incidents of crime and disorder. It is also satisfied that the Premises pose a risk to public safety and to children, not least because of one of the incidents spilling out into the street and a further incident resulting in glasses being thrown and the Police being refused access to the Premises by Mr Bell.
4. The Sub-Committee is therefore of the opinion that three of the licensing objectives are not being met.
5. The Sub-Committee is of the opinion that the causes of the problems have been the lack of control of the DPS, youths as young as 14 years being allowed on the Premises, Police being called to incidents of disorder and violence, the DPS threatening members of the public, the DPS being uncooperative and hostile to the Police and on one occasion refusing the Police access to the Premises, the Police being

called to the Premises after reports of disorder and finding the DPS under the influence of what they believed to be alcohol and/or drugs.

This decision will be confirmed in writing and will include details of your right of appeal.

(The meeting ended at 4.10pm)