

LICENSING SUB-COMMITTEE

Minutes of the proceedings at a virtual meeting of the Licensing Sub-Committee held on Monday, 1 February 2021, at 10.00 a.m.

Present

Councillors

Kevin Holmes

Helen Ladhams

David Webster

Apologies for absence were received from Councillors .

Officers

Courage	Legal, Governance and Democracy Specialist
Aiguobasinmwin	
Cat Brumwell	Case Management Officer
Patrick Cantley	Specialist, Licensing
Sean Hall	Principal Specialist (Health & Environment)
Simon McVey	Operational Lead Support Services
Adam Moffatt	Specialist - Legal, Governance and Democracy
Thomas Toumazou	Senior Specialist - Environmental Protection
Louisa Wania	Case Management Officer

LS/32 INTRODUCTION

Following confirmation that the live stream of the meeting had commenced, the Legal, Governance and Democracy Specialist welcomed everyone to the virtual meeting of South Lakeland District Council's Licensing Sub-Committee.

The Legal, Governance and Democracy Specialist then invited Members of the Committee to introduce themselves, to advise whether they were taking part by video and/or audio and to confirm that they were able to see (where practicable) and hear all Members participating in the meeting. All Members present, having indicated that this was the case, the Legal, Governance and Democracy Specialist then invited the public participants, who had been dialled into the meeting, to introduce themselves and confirm that they were able to hear the proceedings. He then referred to officers present at the meeting who would introduce themselves when asked to address the meeting.

LS/33 ELECTION OF CHAIRMAN

RESOLVED – That Councillor Helen Ladhams be elected Chairman for the meeting.

LS/34 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

RESOLVED – That it be noted that there were no apologies and no reconstitution of membership.

LS/35 DECLARATIONS OF INTEREST

RESOLVED – That it be noted that no declarations of interest were raised.

LS/36 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

RESOLVED – That it be noted that Part II of the Agenda be dealt with following the exclusion of press and public.

LS/37 PROCEDURE FOR MEETING

RESOLVED – The Chairman read out the procedure for the meeting.

LS/38 LICENSING ACT 2003 – REVIEW OF PREMISES LICENCE

The Sub-Committee informed all parties of the late representations that had been submitted since the adjourned meeting on 11 January 2021 which had been distributed before and at the hearing. All parties confirmed receipt and where given additional time to read the late representations. The Sub-Committee passed a resolution to adjourn the meeting for 10 minutes to consider the late representations submitted by Mr Nicholson.

The Licensing Sub-Committee reconvened at 10:27am. Mr Nicholson's Legal Representative requested additional time to advise their client. A further resolution was passed by the Sub-Committee to adjourn the meeting for additional 10 minutes and to consider the additional late representations received from Mr Nicholson Legal Representative during the meeting which included testimonials in support of the premises. This was agreed by all parties.

The Sub-Committee reconvened at 10:47. Confirmation were obtained by all parties to include the late representations received during the meeting from Mr Nicholson's Legal Representative in accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations. This was agreed to by all parties.

The Principal Specialist (Health and Environment) addressed the Licensing Sub-Committee and informed them that Cumbria Constabulary, as a Responsible Authority had applied to review the premises licence as it was believed that the licence holder, Mr Nicholson was not upholding the licensing objectives of '*prevention of criminal and disorder*' as well as '*public safety*'. The Principal Specialist informed the Licensing Sub-Committee that upon receipt of the application for review, all the relevant parties were served with copies and that the requirement to advertise the application was complied with. He informed Members that during the advertising period, the notice of the review were removed by unknown person(s) and replaced by the Licensing Authority on 9 occasions.

The Principal Specialist informed the Licensing Sub-Committee that representations were received from the Environmental Protection Team as a Responsible Authority at South Lakeland District Council which related to the licensing objective of '*public nuisance*'. Representations were also submitted by the Licensing Authority which related to the licensing objectives of '*prevention of public nuisance*', '*prevention of crime and disorder*' and '*public safety*'. The Principal Specialist referred the Licensing Sub-Committee to his report which detailed the activities authorised under the current premises licence. He also drew Members' attention to Subsection 11.17 of guidance issued under section 182 of the Licensing Act 2003, as well as paragraphs 11.18 and 11.20 of the same guidance.

The Principal Specialist informed the Licensing Sub-Committee that they were required to consider the review application submitted by Cumbria Constabulary on the 12th November 2020 as well as any relevant representations that were received during the statutory consultation period. The Principal Specialist outlined further requirements of the Licensing Act 2003 in particular, Section 52 (3) of the Licensing Act 2003 which required that the Licensing Authority take such steps it considered appropriate for the promotion of the licensing objectives which included, (a), to modify the conditions of the licence; (b) to exclude a licensable activity from the scope of the licence; (c) to remove the designated premises supervisor; (d) to suspend the licence for a period not exceeding three months; or to (e) to revoke the licence.

Note - *Following the report presented by the Principal Specialist, due to the nature of this hearing and before representations from all parties could be heard, the Sub-Committee passed a resolution to exclude the press and public from this hearing in accordance with Regulation 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005 as it was considered that the public interest in excluding the public from the hearing outweighs the public interest in the hearing taking place in public.*

Furthermore, in accordance with an exempt reasons under Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, specified by way of paragraph number:

- paragraph 3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)*
- paragraph 7- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.*

As a result, all relevant parties moved to a private Part II meeting in which all parties gave their representations.

Note - *Having heard all relevant representations, questions and closing statements, the Part II meeting was suspended and by a resolution passed by the Sub-Committee to adjourn the meeting to exclude the press and public in making its decision, pursuant to Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006 by virtue of the paragraph indicated:- Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*

The Chairman explained to all public participants that they would be disconnected from the virtual meeting in order for the Sub-Committee to reach their decision. Once the Sub-Committee had concluded their deliberations the public participants be reconnected and the meeting would be reconvened.

The Sub-Committee, supported by the Legal, Governance and Democracy Lead Specialist (Solicitor) then withdrew at 16.06 p.m. to consider the application.

The meeting reconvened at 16.56 p.m.

All parties were reconnected to the virtual meeting in order to hear the decision of the Sub-Committee. The Chairman asked the parties in turn if they were able to hear the proceedings.

The Legal, Governance and Democracy Specialist (Solicitor) communicated the Sub-Committee's decision.

RESOLVED – The Licensing Sub-Committee reached the decision to revoke the premises licence PL(A)0597.

Note – All present were notified that the detailed reasons for the decision would be communicated to the relevant parties in due course. Parties had a right to appeal against the decisions of the Sub-Committee and may do so by giving notice of appeal to the Magistrates Court for the area in which the premises concerned are situated within a period of 21 days beginning with the day on which they were notified of the decision by the licensing authority.

Minutes of the Part II proceedings are contained separately.

Note – The following reasons for decisions were communicated following the proceedings.

Reason for Decisions

In reaching this decision, the sub-committee was mindful of the need to ensure that any licensed premises operate in a way which promotes the four licensing objectives contained within the Licensing Act 2003, Revised Guidance issued under section 182 of the Licensing Act 2003 and SLDC's Statement of Licensing Policy, namely:

1. the prevention of crime and disorder;
2. public safety;
3. the prevention of public nuisance; and
4. protection of children from harm.

The sub-committee were grateful for the representations made by all parties and they found them helpful in reaching its decision. The sub-committee is mindful that all parties, including Mr Nicholson and his Legal Representative, were afforded a proper opportunity to address its Members, and respond to the representations made by all other parties. At the conclusion of the hearing, all parties confirmed that the hearing procedure had been fair and that it had allowed them opportunity to put their case to the sub-committee.

It was clear from the evidence that was presented to the sub-committee that there have been numerous efforts made by the Responsible Authorities to work with Mr Nicholson to secure the licensing objectives. The sub-committee gave full consideration to the Council's Statement of Licensing Policy, especially paragraphs 5.9 to 5.12. The sub-committee took particular account of paragraphs 5.10 and 5.11 which specified that the Designated Premises Supervisor should:

1. *5.10 - have sufficient experience and knowledge appropriate for the operation under their control. That a Designated Premises Supervisor should be able to control the activities on site and respond quickly and efficiently to problems;*
2. *5.11 – A Designated Premises Supervisor should be able to demonstrate that they:*
 - a. have sufficient knowledge and experience appropriate for the premises that they intend to control; and*
 - b. are able to respond to problems quickly and to meet with responsible authorities, local residents and ensure adequate direct management of individual premises in a timely manner.*

The sub-committee also had regard to paragraphs 8.19 to 8.31 which sets out the actions before a review is conducted and consideration of appropriate condition's (where applicable).

Additionally, the sub-committee carefully considered the revised guidance which has been issued under section 182 of the Licensing Act 2003.

The paragraphs referred to in the Officer's report included paragraphs 11.24 to 11.28 of the guidance. These paragraphs relate to the prevention of crime and disorder licensing objective. The subcommittee noted paragraphs 11.16 – 11.23 which set out the range of powers that are available to it. It was particularly mindful of paragraphs 11.21 and 11.22, which state:-

1. 11.21 *"... licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisors may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."*
2. 11.22 *"... it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented"*.

The sub-committee was satisfied that the problems arising from the premises were not merely the result of their poor management by Mr Nicholson; rather, that poor management was as a direct consequence of poor business practices. Therefore, the mere removal of Mr Nicholson as the Designated Premises Supervisor would not be an adequate or effective response to the problems that the sub-committee found had beset the premises. The sub-committee did not consider Mr Nicholson able to manage the overall operation of the premises in a way that will promote the licensing objectives.

No Further Action or Informal Warning:

Before reaching its decision, the sub-committee considered whether the option of doing nothing or offering Mr Nicholson an informal warning was appropriate. The sub-committee decided that this would not be an appropriate course of action because having heard the evidence it was satisfied Mr Nicholson had previously been warned on numerous occasions by the Responsible Authorities of the need to take steps to remedy the unsatisfactory management of the premises in accordance with the licence but had failed to do so.

To Modify the Conditions of the Premises Licence:

The sub-committee was not satisfied the conditions of the Premises Licence could be modified to better secure the Licensing objectives. The sub-committee decided this would not be an appropriate course of action because the existing premises licence conditions were not being complied with. Therefore, adding or modifying the conditions was unlikely to secure compliance and promote the licensing objectives. The current premises licence conditions were considered pivotal in promoting the licensing objectives. Modification or additional premises licence conditions would be too burdensome to and would likely make compliance more difficult for the premises licence holder and designated premises supervisor.

To Exclude a Licensable Activity from the Scope of the Premises Licence:

Before reaching its decision, the sub-committee considered whether compliance with the licensing objectives could be secured by excluding a licensable activity from the scope of the premises licence. It was not considered that compliance could be secured because this option allowed for Mr Nicholson's continued involvement in the establishment. The sub-committee noted the concerns expressed by the Environmental Protection Team in relation to statutory noise nuisance complaints received from neighbouring residents as a result of musical entertainment provided at the premises (indoors and outdoors) during deregulated hours. More particularly, noise nuisance caused by live or amplified music and singing in the beer garden of the premises necessitated the issue of a Noise Abatement Notice by the Environmental Protection Team to abate a statutory nuisance. Members also gave consideration to the representations made by the Licensing Authority as a Responsible Authority, and Cumbria Constabulary which highlighted the difficulties encountered with Mr Nicholson as the Premises Licence Holder and Designated Premises Supervisor. The sub-committee noted the representation from Mr Nicholson that he did what he could to address the noise nuisance complaint. However, the sub-committee was satisfied that the licensing objective '*The prevention of public nuisance*' had been undermined by Mr Nicholson's haphazard approach to resolving the problems at the premises and his reluctance to take and failure to act on advice from the Responsible Authorities. On this basis a removal of a licensable activity was judged likely to be ineffective as a means of promoting the Licensing Objectives.

To Remove the Designated Premises Supervisor:

The sub-committee considered whether the removal of Mr Nicholson as the Designated Premises Supervisor would ensure compliance with the Licensing Conditions and promote the licensing objectives. The sub-committee recognised that during the period of COVID-19 Mr Nicholson as the Designated Premises Supervisor failed to adhere to restrictions which closed public houses and prevented it from trading. This was supported by Cumbria Constabulary's evidence which included a witness statement from a former Designated Premises Supervisor at the Premises, employed by Mr Nicholson which confirmed that during these restrictions, on 21 March 2020, Mr Nicholson organised a private party at the premises. This account was not disputed by Mr Nicholson and his legal representative at the hearing. The evidence also showed Mr Nicholson failed to promote and enforce social distancing, display QR code despite being required to do so, or use face masks when operating and serving drinks beyond the legally permitted opening hour. When these breaches were highlighted to Mr Nicholson during the various visits by the Police to the premises, he was uncooperative, defensive, threatening and on numerous occasions, failed to comply with reasonable requests such as the provision of CCTV. At the hearing, Mr Nicholson and his Legal Representative conceded that the premises was not a Grass Root Music Venue. Whilst the sub-committee recognised that the public health emergency had had a significant financial impact on Mr Nicholson's business, it judged this did not excuse his flagrant disregard of legislation designed to prevent the transmission of COVID-19. The sub-committee also recognised that the impact of COVID-19 disruption was industry wide, so that there was no particular justification for Mr Nicholson's disregard of the rules in his business interests.

As the Premises Licence Holder, owner of the business and tenancy holder for the premises, the sub-committee was satisfied that Mr Nicholson would still have sufficient control over the premises even if removed as the Designated Premises Supervisor. Additionally, it was clear from the evidence presented that Mr Nicholson was not able to maintain good working relationships with the Responsible Authorities and that unreasonably high levels of resources had been spent trying to secure his compliance with emergency regulations as well as conditions attached to his premises licence. Thus,

in the opinion of the sub-committee, Mr Nicholson would continue to undermine the licensing objectives through his inadequate management of the premises, inadequate procedures and a general unwillingness to comply with emergency regulations or conditions of his licence. Most specifically, Mr Nicholson's clear inability to properly manage a licensed premises was a grave concern to the sub-committee, which noted in particular his continued lack of cooperation with the Responsible Authorities as well as breaches of licence conditions and emergency regulations.

Overall, having regard to the evidence it heard, the sub-committee are satisfied that Mr Nicholson's continued involvement at the premises would continue to undermine the licensing objectives regardless of who the Designated Premises Supervisor is. It was considered by the sub-committee that Mr Nicholson, as the Premises Licence Holder and the person with overall management responsibility for the direction of the premises, not only with respect to his poor management of the premises, but also the business policies, culture, structure and procedures are unlikely to change if Mr Nicholson is only removed as Designated Premises Supervisor.

To Suspend the Premises Licence for a Period not Exceeding Three Months:

Consideration was also given to suspension of the licence for a period not exceeding three months. On the evidence before it, the sub-committee were not satisfied that a time limited suspension of the Premises Licence would address adequately or at all and resolve the unsatisfactory management and operation of the premises evidenced at the hearing. Consequently, this measure would not be likely to secure compliance with the Licence Conditions and promotion of the licensing objectives.

To Revoke the Premises Licence.

In the circumstances, the sub-committee concluded the only viable, appropriate and proportionate option available to it was the revocation of the New Inn Premises Licence.

The decision to revoke the premises licence was considered by the sub-committee as a last resort and it was not taken lightly. Evidence from the Responsible Authorities, in particular, Cumbria Constabulary and the responses provided at the hearing which related to Mr Nicholson's behaviour with respect to the premises was considered by the sub-committee as an indication that Mr Nicholson is unsuitable to continue to be the Premises License Holder and Designated Premises Supervisor. Evidence given at the hearing confirmed to the sub-committee that it would be difficult for Mr Nicholson to work with the Responsible Authorities, local community and neighbours. Also, that Mr Nicholson was very reluctant to work and assist the police in their role as a Responsible Authority. Members were not convinced that this relationship would change in the near future. Thereby, undermining the licensing objectives. Mr Nicholson provided no adequate reassurances that he would address these concerns moving forward. The sub-committee did not have confidence that Mr Nicholson would be able to manage the premises whilst ensuring compliance with the licensing objectives. He was asked how he will work with the Responsible Authorities, what he would do differently and how he would ensure future compliance with the premises licence conditions and promote the licensing objectives. He did not provide a clear response to Members even after several prompts from his Legal Representative.

The sub-committee were of the opinion that were Mr Nicholson to be allowed to continue to be responsible for this premises he would require significant level of assistance from the Responsible Authorities. However, he has demonstrated that he is not capable of working with the Responsible Authorities to resolve problems affecting the management of

his premises promptly and constructively, which undermines rather than promotes the licensing objectives.

Members of the sub-committee appreciated the impacts of this decision on Mr Nicholson, his staff and the wider community. For the reasons that have been given, the decision of the sub-committee to revoke the licence was made as other measures were deemed insufficient. The promotion of the licensing objectives were considered paramount in this case.

NB: In accordance with section 181 and Schedule 5 of the Licensing Act 2003, the parties have a right of appeal against this decision to the Magistrate's Court within 21 days from receiving this written decision.

The meeting ended at 5.11 p.m.