

LICENSING SUB-COMMITTEE

Minutes of the proceedings at a meeting of the Licensing Sub-Committee held in the District Council Chamber - South Lakeland House, on Monday, 17 September 2018, at 1.30 p.m.

Present**Councillors**

Alvin Finch

Helen Ladhams

David Webster

Officers

Una Bell	Assistant Committee Services Officer
Patrick Cantley	Licensing Officer
Julia Krier	Solicitor (Property and Contracts)
Anthea Lowe	Solicitor to the Council
Hardeep Burnley	Principal Food, Licensing and Safety Officer
Sean Hall	Principal Environmental Protection Officer
Hilary Fawcett	Environmental Health Officer
Peter Adams	Environmental Health Officer

Also in attendance at the meeting were representatives of the Responsible Authorities, Inspector Paul Latham and PC Rebecca Hunter from Cumbria Constabulary.

Ms Alison Hibbitt and Mr Roy Savigar were also in attendance as interested parties.

LS/14 ELECTION OF CHAIRMAN

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

LS/15 APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

There were no apologies and there were no changes in the membership of the Sub-Committee and, therefore, no reconstitution was necessary.

LS/16 DECLARATIONS OF INTEREST

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

LS/17 LOCAL GOVERNMENT ACT 1972 - EXCLUDED ITEMS

RESOLVED – That the items in Part II of the Agenda be dealt with following the exclusion of the press and public.

LS/18 INTRODUCTIONS

The Chairman made introductions and read out the procedure for the meeting.

LS/19

LICENSING ACT 2003 - REVIEW OF PREMISES LICENCE, PL(A)0446, CHURCHILLS WINE BAR, ROBINSON PLACE, BOWNESS ON WINDERMERE

The Solicitor to the Council informed the Sub-Committee Members that the applicant, Mr Anthony Knowles, had submitted a request for the postponement of the Sub-Committee meeting. The Solicitor to the Council asked the responsible authorities present if they wished to make a representation regarding the request for the postponement.

Representations were made by Police Inspector Paul Latham, Cumbria Constabulary; Patrick Cantley, Licensing Officer; Hardeep Burnley, Principal Food, Licensing and Safety Officer and Alison Hibbitt, a colleague and friend of the applicant. Alison Hibbitt informed the Sub-Committee that the applicant had given her a letter which Members may wish to take into consideration at this point in the proceedings.

Note – Further information relating to the review of the premises licence and, in particular, the request to postpone the hearing, was detailed in a letter provided by Alison Hibbitt and the documents circulated at the meeting. part of which were in Part II and were excluded from inspection by members of the public in accordance with Section 100 (B) of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, and, in all the circumstances of the case, it was considered that the public interest in maintaining the exemption outweighed the public interest in disclosing it. Copies of the document were excluded, as it contained information as described in Schedule 12A of the Act as follows:-

- Information relating to any individual. (Paragraph 1)

Note – The Sub-Committee passed a resolution 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:-

- Information relating to any individual. (Paragraph 1)

The Sub-Committee, supported by the Solicitor to the Council, then withdrew to consider the request from the applicant for the postponement of the Sub-Committee meeting and subsequently reconvened to deliver the decision.

The meeting was reconvened at 1.50 p.m. and the Chair of the Sub-Committee asked the Solicitor to the Council to summarise the considerations of the Panel. The Solicitor to the Council explained that the Sub-Committee had considered the request to adjourn matters. It had also considered the representations made by the Responsible Authorities. The Sub-Committee took account of the fact that Mr Knowles had been aware that a review was due to take place from early August. Additionally, although Members had some sympathy with the personal circumstances of Mr Knowles, it was noted that there was no evidence that he had an appointment elsewhere which would have prevented his attendance. Furthermore, having heard the representations from the Responsible Authorities and read the papers circulated in advance of the meeting, the Sub-Committee took the view that serious concerns had been raised which required consideration. On balance, Members felt that the need to consider whether or not the overriding objectives were being upheld outweighed the reasons for the request for an adjournment.

RESOLVED – That the review of Premises Licence, PL(A)0446, Churchill's Wine Bar, Bowness on Windermere should proceed.

The Principal Food, Licensing and Safety Officer presented a report which requested consideration of a review of the premises licence of Churchill's Wine Bar submitted by South Lakeland District Council, the Licensing Authority.

The Licensing Officer addressed the Members and informed them that South Lakeland District Council, the Licensing Authority, as a Responsible Authority had applied to review the premises licence as it was believed that the licence holder Mr Anthony Knowles was not upholding the licensing objectives. He emphasised that the Licensing Authority, together with the Police, had visited the premises to meet with the licence holder on several occasions and listed the dates upon which this had taken place.

He informed Members that, in his view, the licensing objectives were not being upheld. He also made reference to a statement from an Environmental Protection Officer who had visited the locality of the premises on 6 May and had witnessed the premises operating outside the conditions of its licence.

The Police Inspector then made representations on behalf of Cumbria Constabulary in its capacity as a Responsible Authority. He referred to the written submissions made on behalf of the Police. He explained that, had the Licensing Authority not made the decision to apply to review the Licence, the Police would have done so. He also explained that the Police had had a high level of interaction with the premises licence holder in order to assist him in meeting the licensing objectives. He said that the amount of time spent by the Police liaising with the premises licence holder was in excess of the amount of time that the Police have spent liaising with all other licensed premises within the District. He reinforced the fact that, wherever possible, the Police endeavour to work in partnership with premises and licence holders to seek compliance with the licensing objectives but that this case had gone beyond that stage. He also made reference to a time when premises staff had reported an incident and, when Police had investigated, the premises licence holder denied that anything had occurred and refused to hand CCTV footage to the Police to assist in the investigation. It was only handed over after several requests had been made. He also made reference to an under-age test purchase that had been carried out in July 2018 in which two girls aged 15 and 16 had attempted to buy alcohol. The staff member asked to see proof of age and then, when none was forthcoming, stated that he was only prepared to serve the older of the two as she looked 18. He expressed a view to Members that this was worse than failing to seek proof of age at all as it showed that the staff had the appropriate knowledge but chose to disregard it.

The Principal Environmental Protection Officer addressed the Committee referring to the written submissions made by the Council's Environmental Protection team and summarised the actions taken by the team in relation to the premises. He informed Members that the Council had served a number of statutory notices on the premises and that most of these were still in place. He also made reference to the fact that the conditions attached to the premises licence had recently been modified in order to assist Mr Knowles in upholding the licensing objectives. He felt that adding more conditions, or making them more complex, would not help in this regard.

One of the Environmental Health Officers present at the meeting then addressed the Committee. She made reference to the involvement she had had with the premises and the premises licence holder and, in particular, to some health and safety concerns regarding the premises. She made reference to issues regarding people having access to the flat roof outside the premises and also to the fact that the disabled toilets were in a very poor state with black mould and water running down the walls. As a result of the toilet problems, a Prohibition Notice was served on the premises in 2009. This remained in place and no action had been taken to remedy the issues identified in that notice.

Ms Hibbitt, an Interested Person then informed the Committee that the disabled toilets were locked and not accessible to the public as there was no legal requirement to provide disabled toilets. The toilet was used as store cupboard.

The other Environmental Health Officer addressed the Committee referring to the written representations submitted on behalf of the Environmental Protection team. He made reference to the fact that the electric and fittings were in a very poor state and, at the time of his visit on 17 March 2017, there were electric wires hanging loose from the ceiling. He served an Improvement Notice at that time as he had serious concerns about the condition of the premises.

Ms Hibbitt then addressed the Committee. She explained that, due to his personal circumstances, Mr Knowles was not able to attend and that he would be disappointed to know that the hearing had proceeded in his absence. The Solicitor to the Council drew the parties' attention to correspondence received from Mr Knowles which stated that neither of the Interested Persons were attending to represent him.

Ms Hibbitt informed Members that she was employed on a part-time basis to deal with room bookings at the premises and that, in the last three weeks, Mr Knowles had asked her to deal with the incident log and staff training. She felt that the fact that the most recent underage test purchase had been refused by staff showed that her work was having an effect. In response to a question from Members, she informed Members that she did not know what her job title was; all she knew was that she was asked to deal with the incident log and staff training and that was the extent of her remit. The Principal Food, Licensing and Safety Officer asked Ms Hibbitt how long her working arrangement with Mr Knowles was for and she responded that she did not know; she certainly didn't intend to be there on a long-term basis. The Solicitor to the Council asked Ms Hibbitt if she had anything to say to explain why she felt the premises licence holder was able to uphold the licensing objectives. She repeated the fact that the test purchase undertaken most recently had had a satisfactory outcome.

Mr Savigar addressed the Committee and explained that he assisted the premises licence holder in operating his business. He stated that had known Mr Knowles for a number of years. He assisted Mr Knowles on a Saturday evening by dealing with staff, paying the band and similar tasks. He stated that the premises did make sure that the doors and windows were closed in the evening although, sometimes they forgot. He made reference to an evening when he witnessed the glass collector find a handbag and hand it to Mr Savigar to be checked. He stated that this demonstrated that staff took their responsibilities seriously. He concluded by saying that there was never any trouble at the premises.

In response to a question from the Licensing Officer, Mr Savigar confirmed that he had previously told the Licensing Officer that he had refused to become involved in the operation of the premises due to Mr Knowles' persistent failure to follow his advice.

The Police Inspector asked Mr Savigar why he felt there was not trouble at the premises when the Police had recorded several, Mr Savigar responded that he had not witnessed any trouble.

Note – The Sub-Committee passed a resolution 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 Sub-Committee, supported by the Solicitor to the Council, then withdrew to consider the circumstances put forward and subsequently reconvened to deliver the decision.

The meeting was reconvened at 4.37 p.m. The Chair of the Sub-Committee asked the Solicitor to the Council to communicate the Sub-Committee's decision.

The Solicitor to the Council then stated that the Sub-Committee had considered all of the evidence provided to it both orally and in writing. This included the representations made by all parties at the hearing. The Members were disappointed that Mr Knowles did not attend to give his account of the events that had led to the hearing and, whilst his personal circumstances were noted, the Panel felt that this indicated that he had not treated the issues with any degree of seriousness.

The Sub-Committee was mindful of the need to ensure that any licensed premises was operating in a way which upholds the four licensing objectives contained within the Licensing Act 2003 and the statutory guidance, namely, the prevention of crime and disorder, the protection of children from harm, the prevention of public nuisance and public safety.

The representations made in the case had been very helpful in assisting members of the Sub-Committee to reach a decision.

It was clear, from the evidence before the Sub-Committee that there had been numerous efforts to work with the licensed premises to ensure that the licensing objectives could be properly met. There had been a number of interventions involving both the Council and the Police. The Panel noted that the earliest intervention from the Council dated back to 2005. The evidence from both the Licensing Officer and Police Inspector clearly set out the efforts made by both authorities to assist Mr Knowles in complying with his statutory duties and the licence conditions.

The Sub-Committee had had regard to the Council's Statement of Licensing Policy and, in particular, the following paragraphs:-

Para 5.9 which states that the DPS is normally expected to have a day to day role in the operation of the licensed premises and, when not present, should leave instructions in relation to the sale and supply of alcohol.

Para 5.10 which states that the DPS should be able to control the activities on site and respond quickly and efficiently to problems.

Para 8.19 which states that the Authority will, where possible, give early warning to licence holders of any concerns and the need for improvement.

The Sub-Committee considered that the Responsible Authorities had clearly satisfied this requirement.

Paras 8.24 – 8.31 regarding conditions and when it would be appropriate to impose conditions in a review circumstance.

The Members of the Sub-Committee had also had regard to the statutory guidance, especially to those paragraphs referred to in the officer's report. Notably, in relation to the objective of prevention of crime and disorder, the Panel had regard to the statutory guidance which states that the Police will normally be the primary advisor in relation to such matters.

The representations from the Police clearly outlined concerns that the premises was not taking steps to prevent crime and disorder, despite ongoing efforts to seek compliance.

Having taken all of the information into account and having referred to the relevant guidance and policies, the decision of the Sub-Committee was that the premises licence should be revoked.

The Sub-Committee had reached this decision for the reasons set out below.

There had been several incidents/complaints regarding the premises. The Sub-Committee considered that the majority of these incidents were of a serious nature. There were real concerns that there was a lack of regard for prevention of crime and disorder at the premises as demonstrated by the contents of the police representations. For example, there was failure to ensure that the CCTV was operational for a significant period of time. This was against the backdrop of the failure of the CCTV on a previous occasion which was also only identified when the Police requested copies. This was particularly the case given that it was a condition of the licence that CCTV is operational at all times.

Furthermore, the Police had made it clear that, in their opinion, there was a reluctance to assist the Police in investigations by providing CCTV in relation to any reported incidents. There were also incidents that the Police had logged, and had been reported by staff, which were not recorded by the premises and which were subsequently denied when investigations took place.

The Licensing Officer set out a number of times when he had had cause to engage with Mr Knowles to address problems at the premises. In addition, he raised concerns for Mr Knowles' ability to ensure the safety of his customers and the public given that there had been instances when the only visible fire extinguisher had been blocked from access and emergency lighting had not been operable.

Whilst the sub-committee considered that there can be times when persons under the age of 18 may attempt to buy alcohol, the failure to have appropriate checks and measures in place was not acceptable. In addition, it was a condition of the licence that there should be no unaccompanied children in the premises and the Panel heard from the Police that this had been frequently ignored although the Panel noted that the most recent test purchase was satisfactory.

Moving on to the nuisance aspect, the Sub-Committee members considered all of the representations in relation to the noise generated from the premises and the circumstances of the evening of 6 May 2018 when officers attended the premises and observed that the premises were operating outwith the licensing conditions in that doors and windows were not kept closed after 2300 hours. The Panel also considered Mr Savigar's representations that, whilst stating that staff ensured doors and windows were closed, this was sometimes forgotten.

The evidence of neighbouring residents and the Environmental Protection officers indicated that there had been an ongoing issue with noise being emitted from the premises. Officers had liaised over the last year and a half with the premises licence holder in relation to this but the issue did not appear to have been resolved.

The Panel noted that the premises licence holder had taken steps, in the last few weeks to address some of the issues identified. However, Members were not satisfied that these arrangements were adequate. For instance, Ms Hibbett herself was not clear as to the status of her arrangement with the premises licence holder and, indeed, was only tasked with addressing two issues when there were many more. Ms Hibbett did not make reference to how or why she was qualified to ensure that the licensing objectives would be met.

The Sub-Committee found that Mr Savigar himself had made reference to the fact that he assisted on one night of the week only. This did not give Members any comfort that the licensing objectives would be upheld on the other 6 days of the week. In addition, given that Mr Savigar had previously disengaged from assisting Mr Knowles due to his persistent disregard for the licensing objectives, the Panel could not be satisfied that Mr Savigar's efforts to assist would be accepted.

The Panel considered that there was clear evidence that the premises licence holder had failed to comply with the conditions imposed upon the premises licence and had failed to take steps to address those failings over a significant period of time despite intervention from the Council and other agencies.

Members had given consideration to the imposition of additional conditions or the modification of existing conditions but, given that the current conditions were relaxed in order to assist Mr Knowles in compliance, and there had still been a failure to satisfy those conditions, Members felt that this would not be an appropriate step to take.

The Sub-Committee reached the conclusion that there was a fundamental failure in management at the premises and was not satisfied that the licensing objectives would be upheld in those circumstances. Consideration had been given to the removal of Mr Knowles as DPS but the Sub-Committee considered that this would not address the concerns raised by the Responsible Authorities due to the fact that he would remain the owner and, therefore, in overall control of the premises.

In addition, Members heard that Mr Knowles had failed to follow advice given to him by Mr Savigar previously and saw no reason why a similar situation would not occur with an alternative DPS. The Members of Sub-Committee also considered whether suspension of the licence would be appropriate but, given the systemic and prolonged failings in management, and the fact that remedial action at the premises was only taken when statutory notices were served, believed that this would not be effective in meeting the licensing objectives.

The Sub-Committee believed that the licensing objectives would be undermined should the premises licence remain in place.

The Parties were informed of their right to appeal to the Magistrates' Court within 21 days of notification of the decision and it was

RESOLVED - That the premises licence be revoked.

The meeting ended at 4.44 p.m.