

Licensing Sub Committee (Miscellaneous)

Tuesday 20 September 2011

PRESENT:

Councillor Browne, in the Chair.
Councillor John Smith, Vice Chair.
Councillors McDonald and Mrs Nicholson (fourth member).

Apologies: Councillor Wright

Also in attendance: Sharon Day – Lawyer, Marie Price – Licensing Officer,

The meeting started at 10.00 am and finished at 5.15 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

37. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Browne is appointed as Chair and Councillor John Smith appointed as Vice Chair for this meeting.

38. DECLARATIONS OF INTEREST

There were no declarations of interest made by Councillors in accordance with the code of conduct.

39. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

40. REVIEW OF PREMISES LICENCE - WILD COYOTE CAFE/BAR, 180 EXETER STREET, PLYMOUTH

The Committee having –

- (a) considered the report from the Director for Community Services;
- (b) heard from a representative of Devon & Cornwall Police that the four licensing objectives were not being upheld as detailed below–
 - the premise had on two occasions failed to comply with the premises licence in respect of providing CCTV. Both CCTV drives were eventually seized for examination. The CCTV system did not comply with the licence conditions as it did not have facial recognition;

- the CCTV images on the 23 July 2011 were removed from the hard drive by persons unknown and could not be retrieved. The images appeared to have been wiped when the Police returned the next day. There was evidence that someone had been in the room since they had left it the previous day. Again there were problems with CCTV on the 31 July the hard drive was taken from the premises as images could not be found. They were later retrieved by the Police High Tec crime unit. This CCTV footage was viewed by the committee. The public were excluded from the meeting at this point as it was considered to be in the public interest to do so due to ongoing court proceedings. This is in accordance with regulation 14(2) of the Licensing Act 2003 (Hearing Regulations) 2005. Evidence of these events was detailed in the statements of PC Matt Mann dated 3 August 2011 and PC Ann McClean dated 11 August 2011;
- there was evidence of consistent lack of control of the premises. On the 23 July 2011 this resulted in smoking in the bar, customers in the bar reported to be shown on the CCTV to be helping themselves to alcohol while the premise licence holder was present and also drinking within the bar. Later that day the person who presented himself as in charge appeared to be intoxicated and customers were heavily intoxicated. The Designated Premises Supervisor (DPS) (who is also the premises licence holder (PLH)) was also said to be drunk when he returned to the premises later that evening. There was an alleged assault on a woman so drunk she could not speak and urinated in the rear of a police vehicle. Evidence of this was detailed in the statements referred to above;
- on the 31 July 2011 there was an incident of racially aggravated disorder in the vicinity of the premises at a local takeaway. There were also children at risk during this incident. The offenders all belonged to a group which were holding a meeting at the Wild Coyote. All four offenders were arrested after the police were deployed but they had to use Pava Spray to control the situation. All four are at present on bail to court;
- the committee were shown CCTV footage of the actions of the PLH from inside the premises whilst the incident was ongoing. (The public were excluded from the meeting at this point as it was considered to be in the public interest to do so due to ongoing court proceedings. This is in accordance with regulation 14(2) of the Licensing Act 2003 (Hearing Regulations) 2005.) The police also commented that the PLH did not call the police when the incident started and did not become involved until it was his own premises that were under threat. This was demonstrated on the CCTV. Licence conditions were also being breached on this day as drinks were clearly being taken outside when this is prohibited by condition C1 in relation to public safety on the premises licence;

- evidence of the above was contained in the written statements of PC Matt Mann dated 9 August 2011 and an anonymous witness statement dated 31 July 2011 detailing the lead up to the disorder. The public were excluded from the meeting when the anonymous statement was read out as it was considered to be in the public interest to do so due to ongoing court proceedings. This is in accordance with regulation 14(2) of the Licensing Act 2003 (Hearing Regulations) 2005;
- on the 3 September there was a breach of licence condition C.6 which requires that door supervisors are to be employed on any day of the week that the premises remain open after 11.30pm until close. The details of this incident were that PC McClean and Sgt Worthington visited the premises on that date at 10.30pm and discussed with the PLH the requirement to have door supervisors on duty if he remained open after 11.30pm. At 11.45pm the officers returned to the premises and observed that there were customers drinking but no door supervisors present. There were also breaches of other licence conditions in relation to signs not being displayed on that date. Evidence of the above was contained in the written statements of Sgt Martin Worthington dated 4 September 2011 and PC Ann McClean dated 4 September 2011. It was noted that there was a typing error with her statement saying Saturday 4 September rather than Saturday 3 September;
- since the incident on the 31 July the premises has been classified as a Category A premises;

(c) heard from the premises licence holder –

- the PLH produced a number of letters from people who used his premises. Some of these were a reproduction of representations made by interested parties in support of the premise licence holder. The remaining letters were from people who were not interested parties but who did use the premises. In summary these letters stated that there had been previous problems with the premises but that under the current PLH, they are well run and there is a zero tolerance to drugs. Many consider the premises to be a safe and friendly environment where they visit with their friends and family. One person stated that they had been present on the premises when the trouble started on the 31 July and that it had started outside the premises. The PLH had gone out to collect all the glassware and had then tried to stop the violence. Some letters confirmed that the premise licence holder had made a mistake in allowing the English Defence League (EDL) to use the premise;

- that he hadn't been present on the premises when the lady had been pushed/pulled off the bar stool on the 23 July. He said that his wife had been present and that the lady had fallen off the stool and that this had also happened on a previous occasion. An ambulance had been called and the lady had been checked over but was deemed to be ok to go home. He said that she may have urinated in the police car due to being concussed rather than being drunk. He did say the lady had not been drinking heavily in his premises but that he had then refused to serve her more alcohol. He had tried to make arrangements for her to get home prior to her falling off the stool;
- on the 23 July the people using the pub were there as friends and as a thank you for the help that they had given him when he was doing the pub up. This is why they could be seen helping themselves to drinks behind the bar. One customer had come in and had been served. This was because he was extremely ill and the PLH did not want to turn him away;
- in relation to the disappearance of the CCTV footage he said he did not know how the footage had been wiped but all he could say was that the police were the last people to use that room. He denied that anyone else had been up to the room after the police had left;
- he denied that either himself or the person left in charge of the premises on the 23 July had been drunk;
- he said that he had agreed to the EDL having their meetings at his premises. This was an economic decision and had no relevance to their politics. They had met previously and there had been no problem and therefore he had not expected any problems on the 31 July. He had taken steps to prevent people leaving his premises to take part in the disorder and had also helped apprehend one offender. He felt that he could not have controlled what was happening outside his premise as he could not be in two places at once. He accepted that the EDL had been drinking in his premises but also said that they had been getting drinks from the off licence nearby and consuming the alcohol on his outside tables. He had taken no action to stop them. He had suffered a cracked rib as a result of his intervention;
- the PLH disputed that he had breached any of his licence conditions on the 3 September. He claimed to have had all the signage in the correct place and wondered how much signage he was supposed to have. He stated that the premises had not been open to the public at 11.45pm on this date. The door to the premises was open as the cleaner was coming and going and the only people present were himself, his wife and some friends. The cleaner was there and working as it was not unusual for the cleaner to start working straight away after the bar closed if she was unable get to the premises the following morning;
- he stated that he thought he only had to have door supervisors on duty if he had music playing;

- the premise licence holder disputed all of the police evidence;
- (d) heard from an interested party present and considered written representations in support of the premises under the crime prevention objective that –
- the premises have been well run by the current premise licence holder and his wife;
 - the premise is a decent bar with decent people; the PLH has a zero tolerance to drugs and violence and is an asset to the community;
 - a few local residents said that they had never been affected by anything happening at the premises;
 - the PLH is described as being warm and friendly, who treats all his customers' in a fair manner and on the odd occasion if there is a problem he has dealt with it swiftly and even handily;

Members considered all representations made however they were of the opinion that the PLH was inconsistent in the representations he made to the committee and in his answers to questions. He had not demonstrated to them that he had control of the premises and based on the evidence presented by the police, all of the licensing objectives had been breached between the 23 July 2011 and the 3 September 2011. Of particular concern was the racially aggravated incident which had occurred on the 31 July and which the PLH had taken no action to control and had not even called the police.

The PLH had implied that a private party was being held on the 23 July and 3 September however he had presented a confusing picture of events in relation to this and the committee found it difficult to accept this version of events. Therefore they were satisfied on the police evidence that he had no control over the premises and was not complying with his licence conditions demonstrated by the fact that he did not have door supervisors in place when required and had not left the premises in the control of a responsible person when he was not present.

Members considered what action needed to be taken to promote the licensing objectives.

They looked at whether conditions could be attached to the licence in order to promote the licensing objectives. Their opinion was that conditions would not be effective in this case. The reason for this decision is that the PLH has demonstrated that he is unaware of his licence conditions despite the police being proactive in bringing them to his attention on numerous occasions. For example on the 3 September he had been reminded of licence conditions at 10.30pm only to breach them an hour later. The committee was therefore not confident that the PLH would abide by additional conditions.

The removal of the DPS would not address the problems that have been experienced as the DPS is also the PLH.

The committee did not consider that the removal of licensable activities or reduction in hours would have any effect as the problems experienced were down to poor management.

Therefore the committee considered that the only option available in order to promote the licensing objectives was to revoke the premises licence.

It was therefore agreed that the premises licence would be revoked.

41. **EXEMPT BUSINESS**

There were no items of exempt business.