

Licensing Sub Committee

Tuesday 24 April 2012 and Friday 27 April 2012

PRESENT:

Councillor Browne, in the Chair.
Councillor Mrs Nicholson, Vice Chair.
Councillors Rennie and Singh (Fourth member).

Also in attendance: Pete Clemens – Senior Licensing Officer, Sharon Day – Lawyer, Tim Howes – Monitoring Officer, Ross Johnston – Democratic Support Officer and Katey Johns – Democratic Support Officer.

The meeting started at 10.00am and finished at 6.25pm on 24 April 2012 and started at 1:00pm and finished 4:15pm on 27 April 2012.

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.

89. APPOINTMENT OF CHAIR AND VICE-CHAIR

Agreed that Councillor Browne is appointed as Chair and Councillor Mrs Nicholson is appointed as Vice Chair for this meeting.

90. DECLARATIONS OF INTEREST

The following declarations of interest were made by members in accordance with the Code of Conduct –

| Name | Subject | Reason | Interest |
|--------------------------|--|----------------------|-----------------|
| Councillor Browne | Review of Premises Licence – Clipper Inn, 65 Union Street, Plymouth (minute 92 refers) | Knows the respondent | Personal |
| Councillor Mrs Nicholson | Review of Premises Licence – Clipper Inn, 65 Union Street, Plymouth (minute 92 refers) | Knows the respondent | Personal |

91. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

92. **REVIEW OF PREMISES LICENCE - CLIPPER INN, 65 UNION STREET, PLYMOUTH**

The committee having –

- (a) received advice from the Monitoring Officer that whilst members needed to be aware of political sensitivities with regard to decision making as the Council was in its pre-election period, there were no public interest reasons for the review not to go ahead;
- (b) considered the report from the Director for Place;
- (c) heard Devon and Cornwall Police's representation:
 - (i) the following gave live evidence for the police: PC Austin, Sgt Loveridge, Mr McIndoe, PC Wilkins and Mr Prout. They gave details about the problems experienced with the premises in relation to drunkenness, disorder, violence and lack of cooperation from the premises licence holder (PLH) and designated premises supervisor (DPS) generally and in particular with regard to requests for CCTV;
 - (ii) the Police also read out witness statements from Officers who were not present before the committee which further detailed the problems the Police were experiencing with the premises;
 - (iii) the Police played 25 minutes worth of CCTV which detailed incidents which had occurred on the 8 December 2011, 1 January 2012, 9 January 2012, 3 February 2012, 4 February 2012, 9 February 2012, 23 February 2012, 25 February 2012, 26 March 2012 and 8 April 2012;
 - (iv) the CCTV showed incidents of violence, disorder and drunkenness. It also showed how the behaviour of the patrons of the Clipper impacted on the general public going about their normal business in the morning. In particular it showed patrons staggering in the road causing vehicles to swerve to avoid them and also groups of drunken people staggering towards the residential area of the Octagon;
 - (v) licensed premises report forms (L10's) which were licensed premises intelligence forms were produced by the Police as a record of the problems at the premises. These were referred to in the timeline of incidents at the premises referred to by the Police;

the police told the committee of the difficulties they had had in contacting the DPS on the numbers he had provided either by text, telephone or correspondence. The police had been contacting the DPS on the mobile phone number which had been provided but were still not getting any response or even acknowledgement from him;

- (vi) there had also not been any response from the PLH in response to correspondence sent to the registered address of the company. The police therefore considered that there was a lack of cooperation from the PLH and DPS which was hampering the promotion of the crime and disorder licensing objective;
- (vii) in relation to the contact problems these were outlined in the statement of Mr Fred Prout dated the 10 April 2012;
- (viii) the problems in contacting the DPS had meant that it had been extremely difficult in obtaining CCTV from the premises to assist in the investigation of crime and disorder and had on more than one occasion resulted in criminal investigations either being dropped or with the police not having all the evidence that would assist with their investigation;
- (ix) after delays, when the CCTV was eventually produced it did not always show the correct material. This was thought to be due to the fact that the time on the CCTV clock was wrong and thus resulting in incomplete footage being provided missing the crucial piece of the action required. When the later action was requested the police had been advised that the CCTV had then been overwritten;
- (x) there had been problems with violence and disorder at the premises. On occasions this had occurred at times when no door staff were working (in compliance with the licence conditions), also staff had taken no action to call the police at all or at an early enough stage or had not been cooperative when the police did attend;
- (xi) evidence was provided of door staff standing and watching disorder taking place three feet in front of them without intervening;
- (xii) evidence was also provided of door staff not being contactable on their club watch radio to be alerted to a threatened break out of disorder resulting in a need for the police to attend on an immediate call out having to use their blue lights and sirens. This placed the public in danger as well as diverting police resources which could have been used elsewhere had the radios been used correctly;
- (xiii) there was however also evidence provided that the door staff and staff had been cooperative and helpful;
- (xiv) evidence had been collected of the community concerns about the management of the Clipper. This was provided by email and through the statement of Mr McIndoe due to one of the people fearing repercussions. The concerns were that people using Union Street during the morning had to cross the road to avoid the users of the Clipper as they were intimidated by the people who were outside and who were drunk. Nearby businesses had changed their opening

hours to avoid having persons leaving the premises coming into their shop to purchase alcohol and then were faced with abuse and racial abuse from drunk people when they refused to sell the alcohol;

- (xv) the police told the committee that conditions on the licence were not being complied with as the CCTV was not being downloaded as required and that that particular condition as it stood was not enforceable (condition 4 imposed after the review hearing on the 20 April 2010);
 - (xvi) the management of the premises was not sufficient to prevent crime and disorder occurring;
 - (xvii) one door supervisor was not sufficient to control the problems that were occurring and generally where violence or disorder occurs then two door staff were needed to deal effectively with the situation. It was stated that the council's own licensing policy that for premises of up to 100 patrons, a minimum of 2 door supervisors was required;
 - (xviii) the police stated that the problems with the premises generally occurred between the hours of 3am and 8am or until close. This, they said, was demonstrated by the charts provided at pages 13 and 14 of their bundle;
 - (xix) the police were of the opinion that further conditions would not work as the PLH failed to comply with the existing one with regard to CCTV. They suggested that removal of the DPS in this case would not work as the DPS was also the sole director of the company who held the premises licence and therefore the removal of the DPS would have no effect. They therefore suggested that the licence should be revoked;
- (d) the Premises Licence Holder and his legal representative made the following representation –
- (i) Mr MacPherson is the PLH and DPS;
 - (ii) in relation to the Police concerns about the provision of CCTV it was stated that The Clipper had been instrumental in setting up the current arrangement in relation to the use of the CCTV request forms due to the lack of a formal way when they had been requested in the past;
 - (iii) the PLH stated that he had provided the CCTV as requested. In particular with reference to the CCTV request on the 14 November he told the committee that he had received a request from the investigating officer on the actual day or day after the incident and this had been provided. He had then received what he thought was a second request from the licensing section of the police for a

different time scale. He could not explain why he had provided the complete incorrect date on that occasion though. (The police stated that the police computer did not record that the footage had been received and that was why the request was made. They could not confirm what the PLH was saying in this regard as they had not had prior notice of it and so could not make the relevant enquiries);

- (iv) with respect to the CCTV being provided and not showing the correct time as requested, leading to the vital incidents being missed off it, the PLH said that as soon as he had been made aware the time on his CCTV clock was wrong he had immediately corrected it and he now regularly checked the time against the Sky News clock to ensure it did not happen again;
- (v) the PLH told the committee that he did not watch the clips as they recorded as he had been told by the Police that this could corrupt the footage and that it was best to just leave it to run. He also said that he had been told on a previous occasion to only provide the footage of the times requested by the police and therefore this is what he did;
- (vi) the PLH further stated that he had had problems in arranging collection of the CCTV footage;
- (vii) the PLH asked for the Police's permission to introduce documentary evidence to support this and other matters but the police refused to give consent to the information being introduced as it had not been served prior to the hearing. Therefore in accordance with regulation 18 of the Licensing Act 2003 (Hearing) Regulations 2005 the committee's discretion to consider this information was not invoked and the material was not put before the committee;
- (viii) in relation to the allegation of a lack of cooperation and response to correspondence, the PLH said that he had not had any problems with the MOD police, CID and the transport Police, but there did seem to be a problem between himself and the licensing section of the police;
- (ix) out of the four letters sent to him by the Police's licensing section he had only received two of them. He thought he had responded to the one dated the 5 December 2011 by way of a phone call and the letter dated the 22 December 2011 he thought was a duplicate of the original letter which he thought he had dealt with and so ignored it;
- (x) having had another CCTV request in the new year he sought legal advice and wrote to the police requesting a meeting to the Police licensing address in Launceston. This had not been received by the Police and so he again sent a reminder about the meeting when he responded to a request for CCTV evidence;

- (xi) the PLH said that he refuted any allegation that his premises sold to people who were already drunk; he supported this by saying that there was no record of anyone being arrested on the premises for being drunk and disorderly;
- (xii) the PLH blamed a lot of the problems on the fact that the majority of the people 'pre loaded' before they came out, making it difficult for licensed premises;
- (xiii) he said that the peak trading period for his premises was from 3.30am onwards and that this coincided with a change from proactive policing by the constabulary to a reactive one due to the fact that it was coming close to a shift changeover. He said that some of the problems were down to this;
- (xiv) in relation to the Police's point about the number of incidents over a five month period, he said that whilst 10 had been recorded this taken in context was not a large amount. He said that as he was open seven days a week 10 incidents could not be considered as being high. Further if the incidents were broken down in relation to the peak period the Police referred to six incidents between 5am and 6am. One of these had been a break in which wasn't something that was in the control of the PLH, one person had been ejected by the premises door supervisor, two incidents had been because of an incompetent member of the door staff team who no longer worked for the premises, one had been in relation to a stolen purse which had nothing to do with the premises and one there had been no trace of. This therefore undermined the police's case that the problems at the premises were down to lack of management at these times;
- (xv) the L10 licensing intelligence forms were not filled out fully and so they could not be relied upon as they contained no information on whether the problems were down to a lack of management at the premises;
- (xvi) in relation to the problems outlined by the Police which had been expressed by members of the public and local businesses the PLH stated that he had an open door policy and had been aware of the fact that the police had been canvassing locals to find out what problems they had been experiencing. He had not been made aware of any problems by residents. It was pointed out that there had been no representation from any other responsible authority or from residents of the area;
- (xvii) the PLH told the committee that he already had door supervisors staying on until close on peak days and when the PLH deemed it necessary taking into account the natural cycles of patrons. The PLH is also SIA approved so can go on the door if needed.

The committee took the above into account and considered all the documents provided by the police in response to the notice of hearing.

The committee disregarded any matter referred to in the time line provided by the Police which was not tied and linked to the premises.

The Committee took the evidence of the witnesses from the police and the evidence of the PLH and the witness statements provided by the Police into account in reaching its decision.

From the evidence, the committee identified a lack of communication between the Police licensing unit and the PLH/DPS which had led to problems obtaining CCTV which had had a knock on effect on some investigations. Committee found a complete breakdown of communication by mail, texting, telephone messages and notes through the premises door.

This breakdown of communication was, in the opinion of the committee, a factor which was undermining the crime prevention licensing objective. Therefore the following condition would be imposed on the licence:

- (I) The PLH is to provide the police with a current land line number and mobile phone number and in the event that this number changes the PLH is to advise the police licensing unit of the updated number within seven days of the change occurring.

The Committee took the LI0's (licensing intelligence reports) into account but noted the comments made by the PLH's legal representative that the forms had not been completed fully so there were very few which showed whether or not the DPS was on the premises at the time of the incidents and therefore their value was limited. The committee accepted that they were of limited value with respect to whether the DPS was present or not, however they did accept that these forms showed the sort of problems which were experienced at the premises and relied on them in reaching their decision in that regard.

The committee considered the charts presented by the police and took into account the PLH's comments about the six incidents between 5am and 6am being able to be narrowed down and not being of any significance. Having looked at the time line report the members noted that it was unclear as to whether the stolen purse incident had been included in the total number as they were able to find that six incidents of crime or disorder could be counted up in that time period without reference to the stolen purse incident as follows:

- (i) 14 November 2011 – ABH;
- (ii) 28 November 2011 Common assault, drunk and disorderly outside the premises;
- (iii) 9 January 2012 - Affray outside (it was noted that this occurred between 4.50am and 5am);
- (iv) 3 February 2012 - Disorder and drunkenness at the premises (It was noted that no crime reported however this incident did demonstrate disorder);

- (v) 9 February 2012 – Affray;
- (vi) 23 February 2012 - Evidence of drunkenness at the premises and males fighting outside.

Further with respect to the charts the committee accepted these and noted that they covered a five month period between November 2011 and April 2012, the number of incidents of crime and disorder occurring at the premises rose between the hours of 3am and 9am. The problems seemed to reach a peak between 5am and 6am with six incidents being linked to the premises in that time period with 10 incidences being recorded between the hours of 6am and 8am and then four incidences between 8am and 9am. This gives a total of 20 incidents between the hours of 3am and 9am. These occurred on all days of the week with the worst days appearing to be Thursday, Friday and Sunday (six, seven and five instances respectively).

The times of day that these problems were occurring meant that members of the public on their way to work in the morning had the potential to be caught up in these problems and this had been demonstrated on the CCTV. These problems did not seem to be able to be controlled at the premises at present and therefore committee considered that action was required to promote the crime and disorder licensing objective. They agreed that the following conditions would be attached to the licence:

- (2) An SIA door supervisor will be employed from 0200 hours through to the close of the premises Monday to Sunday and a second SIA door supervisor will be present on the premises from 0400 hours until the close of the premises and at such other times as the DPS feels will be appropriate for the safety and security of patrons;
- (3) Two SIA door supervisors will remain in a principal position near the external front entrance from 0400hours to the close of the premises seven days a week to marshal patrons using the front external smoking area.

As a result condition one and two which had been imposed on the 20 April 2010 would be removed from the licence.

The committee accepted the police evidence that there were problems in obtaining CCTV from the PLH but also took into consideration the explanation put forward by the PLH. It was clear to committee that the crime prevention objective was being undermined as a result of this problem. They further noted that the condition was not being complied with in that in the absence of the DPS it was a requirement of the premises licence that someone could download the CCTV either immediately or within a reasonable time and that this was put in place to ensure the promotion of the crime and disorder licensing objective. The time taken to download the CCTV could not be said to be reasonable and the staff on the premises did not know how to download it to assist the police.

The committee therefore agreed that the following condition should be imposed in order to promote the crime prevention licensing objective:

- (4) the DPS and in their absence other authorised staff shall download images following a written request of footage by any responsible authority and within seven days of that request being made the PLH or DPS will contact the responsible authority who requested the footage to tell them where the footage can be collected from. The footage from the incident/day in question must then be retained for a further period of 14 days to ensure that if any further information is required it can be provided within the same terms as the original request.

Members therefore agreed that the above mentioned conditions would be attached to the premises licence in order to promote the crime prevention licensing objective and those conditions were considered to proportionate, necessary and appropriate in all the circumstances of this matter. The committee had consideration to the statutory guidance and their own licensing policy in reaching their decision.

93. **EXEMPT BUSINESS**

There were no items of exempt business.