

Licensing Sub Committee

Tuesday 12 May 2020

PRESENT:

Councillor Rennie, in the Chair.

Councillor Parker-Delaz-Ajete, Vice Chair.

Councillors Jordan and Ms Watkin (fourth member – substitute for Councillor Rebecca Smith).

Apologies for absence: Councillor Rebecca Smith.

Also in attendance: Sharon Day (Lawyer), Fred Prout (Senior Licensing Officer) and Helen Rickman (Democratic Advisor).

The meeting started at 10.00 am and finished at 2.30 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.

55. **Appointment of Chair and Vice-Chair**

The Committee agreed that Councillor Rennie is appointed as the Chair and Councillor Parker-Delaz-Ajete is appointed as the Vice-Chair for this meeting.

56. **Declarations of Interest**

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

57. **Review of Premises Licence (under section 167 of the Licensing Act) - Bar 9 - First Floor, 32 Western Approach, Plymouth, PL1 1TQ**

The Committee:

1. considered the report from the Director for Public Health;
2. considered the closure order made by South and West Devon Magistrates Court on the 23 March 2020 on the grounds that the court were satisfied that a person had engaged with anti-social behaviour on the premises and that the use of the premises was associated with significant and persistent disorder or persistent serious nuisance to members of the public;
3. considered both the written and verbal representations from the police which were in summary as follows:
 - breach of licence conditions in particular with regards to the time that anyone under 16 had to be off the premises, the operation of CCTV, and

staff being fully trained to fulfil their role;

- failure of the Premises Licence Holder (PLH) and staff to engage with police;
- not reporting incidents to police (an example of this was an assault where a 16 year old girl had her jaw broken and this had been reported by ambulance control and not the PLH);
- failing to take any actions to remedy the conduct of youths on and in the immediate vicinity of the premises;
- Police likened the premises to a youth club with beer and such were the police concerns that it was recommended no single crew visits;
- staff had not been suitably trained and were unaware of the conditions of licence;
- there were occasions where large numbers of youths were present on the premises but there was only one member of staff working and so it was difficult to see how they could respond to any incidents that may occur or effectively monitor the use of the premises;
- a member of staff working had confirmed she had found alcohol concealed around the premises after closing;
- Police had smelt cannabis in the premises and on one occasion found a bag of the same on the table. On another occasion a 17 year old male who confirmed they had been on the premises was found with two bags of cannabis concealed within his sock;
- Police found intoxicated youths on and in the immediate vicinity of the premises;
- staff had not been cooperative with Police in the investigation of crimes and weren't able to provide CCTV when asked because only the owner could access the CCTV. Failure to provide the CCTV had hindered the investigation of crime;
- there was a lack of age verification procedures by staff of people using the premises;
- multiple reports of underage sales taking place – one mother reported her 15 year old daughter had attended the premises already intoxicated and had allegedly gained entry, been served alcohol and then had to have help to transport her daughter to hospital;
- PLH had left the premises open and completely unstaffed on one occasion – this was the first time the licensing officer had ever come across this happening;

- difficulty contacting the PLH;
 - large fights/disorder taking place at the premises culminating in a closure order being obtained on the 23 March 2020. One incident had involved a person with a machete – that person had been seen on CCTV leaving the premises and pulling a machete from his trousers;
 - during interview the PLH/DPS had freely admitted breaches of licence;
 - 5 crimes tied and linked to the premises; 4 of which involved violence;
 - 9 complaints from local residents/business owners and others about the premises – most complainants don't want to be named due to concerns about reprisals from the patrons of the premises;
 - 18 licensing reports from police officers attending the premises;
 - all of these issues have arisen in a short 2 month timescale. There is another premises nearby, there have been no complaints about that premises but a major increase in incidents around Bar 9;
 - the police did not believe that having doormen on the premises would prevent any incidents as the doormen would rely on Mr Wright for their instructions and with his lack of cooperation and knowledge of the licensing requirements he could not be relied upon to give the effective instructions;
 - Mr Wright became the Designated Premises Supervisor (DPS) in May 2019. The company Bar 9 Limited had taken over the premises licence in January 2019 and then in May one of the directors resigned and Mr Wright was left as the sole director and DPS;
 - there weren't two incidents on the 11.1.2020 and 12.1.2020 they were one in the same incident;
 - the three reports of underage drinking on and around the 1 and 2 February 2020 could all be the same incident reported in three different ways. It was not possible to be sure;
 - if the DPS or staff members had reported any incidents from the premises this would be listed on the information provided to committee;
 - due to the lack of engagement, inability to comply with conditions of licence, not working in partnership with the police, they asked the committee to revoke the licence. They felt that changing the DPS would not have any effect as Mr Wright would still be the PLH;
4. considered the verbal representations from Mr Wright (the DPS and PLH) as follows:

- Mr Wright read a statement from Victoria Stephenson as follows (summary):
 - she has worked for Bar 9 since the latter part of December 2019;
 - she received training on the implementation of the company's policy and code of conduct;
 - she was not permitted access to the CCTV and if anyone wanted to review it she would have to notify the DPS;
 - the premises operate a membership scheme and when it is applied for the person must show ID. Anyone who is not a member pays a fee of £2 and must sign in and provide ID. If they don't then this is documented;
 - until recently, there had never been any cause of concern or need for police presence or attendance. Customers both members and non-members respected the premises. However, there have been slight issues that have been managed according to Bar 9's policy and code of conduct. There were two occasions in the early part of January, where two female youths were found to have alcohol on their possession and were asked to leave the premises immediately. They have not been granted re-entry since;
 - in relation to an allegation made by a grandmother of underage sales this followed an incident where a girl was pushing a young man in the premises. The girl was being encouraged by her grandparents. Ms Stevenson intervened and explained that the behaviour was completely unacceptable and asked the family to leave the premises. She was then verbally abused by the grandmother who continued to explain that this young man had "done her granddaughter wrong". This was clearly a domestic issue, but she considered the conduct unacceptable and so asked them to leave and if they refused she would call the police. The verbal abuse from the grandmother continued, which was personal and threatened to have her sacked. The grandmother allegedly said, "I'll get you, I'm going to call the police and say you're serving underage". Within 5 minutes the police entered the premises and said there had been reports of underage drinking. The police looked around and did voice their concerns for several individuals' ages. She explained her understanding of the bars policy and licence and the police left with no issues – so she understood;
 - part of the club policy and code of conduct is to actively seek to refuse entry to anyone deemed to be intoxicated or those who could be underage and intoxicated. They cannot be held responsible of a person's conduct after being evicted from the business;
 - the bar has a policy of closing if there is a risk to anyone. Until the 11th

January this had never had to be implemented. On this day she shut down the bar and everyone was asked to leave. This proceeded to happen extremely smoothly. Nothing further was reported by the police;

- she confirmed there was an incident where a 16 year old female had attacked another girl on leaving the premises. She closed early and escorted everyone out. The fight had taken place and she had called the police, given them a statement and contact details. She informed them only Mr Wright could access the CCTV and was out of the country. She did not refuse to give a statement to the police, she never gave a statement due to family commitments and working. She attended the police station however there was confusion over the agreed time and she was never contacted to make a statement again;
- she completely rejects any accusations of any 'lack of engagement' of staff from her or anyone else employed at Bar 9. She says staff have worked effortlessly with any requests from police and PCSO's;
- she voiced concerns over the conduct of the police on visiting the premises where they challenged customers over their presence alleging grooming and paedophilia. The customers were offended and mortified and have not returned. This affected business;
- 24th January, there was a pool match, and no non- members were granted entry. There were only over 18's permitted;
- whilst all concerns have always been taken seriously, on each visit or attendance by the police, there has not been a single occasion where anyone has been served underage;
- 24th January, the 16 year old youth referred to entered the premises whilst the police were there and they dealt with the situation;
- she made attempts to speak with neighbouring businesses about their customers smoking what smelt like cannabis by the doorway. She did not have a welcome interaction with them so made no further communications;
- she acted in accordance with the wishes of a distressed mother whose daughter had gone missing and contacted her when she tried to gain entry to the bar;
- any customers asked by officers to confirm their age have been able to comply and prove their age. She has found that the police have quite subjective assumptions and have been very wrong about people's ages. One police officer argued that a customer was "clearly underage!" yet the 'young lad' was able to provide ID detailing his age of 19 years;
- she accepted she was wrong about the time 15 year olds had to leave

the premises. She said the police were also mistaken but once they had checked the licence she reported back to all staff and they have actively enforced it since;

Mr Wright told the committee:

- reiterated the procedure for membership stating that anyone under 16 gets one colour card and over 18's get another. Anyone not able to produce ID gets treated as being under 16 and so has to leave the premises at the stated time;
- he went on holiday in January for his health. There had been no problems with the premises up until that point;
- Mr Wright admitted that he did not realise that he, as DPS, had to be on the premises at all times. The first he realised this was at his meeting with Mr Seymour on 24 February 2020. He pointed out that other DPS do not need to be on the premises all the time. Whilst he was away on holiday he had friends who were licensees who could have been there if needed. He stated that Victoria Stevenson and a lady called Harriet were left to manage the premises in his absence. He confirmed that neither held a personal licence as is required by the licence;
- whilst he had been on holiday he had reduced the opening times of the bar;
- he hadn't been able to attend the Closure Order hearing at the Magistrates Court as he was isolating due to having Covid 19 symptoms. He had attended the police station but they wouldn't let him in because he had symptoms. He had spoken to his solicitor who had told him, and written to confirm, that there was no point in paying to have representation as the Magistrates 99% of the time grant a 3 month closure order. He had tried to call the Magistrates Court on the 23 March but had been unable to get through. He thought the hearing would be adjourned because he knew of other people whose hearings were adjourned. The notification about the closure order was sent to Bar 9 which because of the order he is unable to access. He stated that it is well known that he lives at the Mount Pleasant;
- the CCTV problems arose because his new high tech CCTV had been seized as part of a criminal investigation and so he had had to install another system which only worked on his phone. This is why the staff could not access it. He got the other CCTV back at the end of March and ensured that everyone could access it;
- he wasn't on the premises when a lot of the incidents happened and they didn't happen when other staff were working there;
- when asked if he was able to back up the claims of the grandmother being abusive leading to her making allegations of underage sales – Mr Wright said that the CCTV was only kept for 14 days;
- the premises constantly have over 18 nights;

- he would be happy not to have under 18s on the premises as this would address the concerns. He said he could not implement this himself as they have all bought 12 month membership;
- never known an incident like the machete one before – he has worked in the pub trade or been around it since a child and has never seen anything like it before - he didn't understand where all the violence was coming from;
- with regards to training the staff had been trained in company policy and procedures;
- with regards to underage sales he said that was as simple as 'don't sell to under 18s – what more can you say about it'. He wanted to book all staff onto personal licence courses. He hadn't been able to do that before as staff had other commitments and couldn't make the dates or places. There were places in March but then all of this happened. He said that Victoria Stevenson had downloaded and read through the personal licence holder booklet;
- he denied that anyone would be smoking cannabis on this premises as they are not allowed to smoke. He said that there was a hashish place next door which created all sorts of smells;
- they have a written drugs policy mainly about what to do with cleaning. They have a drugs safe on premises. They often find empty bags in the doorway but that can be from anyone there because of the area they are in. There is a lot of drug use around there;
- he has a refusals log and denied that they were just written on a piece of paper;
- if a person brings their own alcohol onto the premises it is confiscated and they are asked to leave and not allowed back in;
- they had moved the furniture around the alcove to prevent anyone hiding alcohol;
- he felt the problems could be alleviated by having all staff trained, 2 staff on at all times and on a Friday and Saturday night having doormen;
- he had not failed to cooperate with the Police. When he had phoned about the CCTV and other things they could have requested and set up a meeting with him then;
- he had been provided with a copy of the premises licence when he took over as DPS and had read the licence conditions and put it up in the premises. He said he thought the conditions had been changed but it was confirmed by the Licensing Officer that whilst there had been a minor

variation to remove doorman and another minor condition, nothing had changed with regards to the CCTV, staff training and times and conditions for under 16s to be on the premises;

- in relation to dispersal of customers and crowds outside, he said that he tries to disperse them but that no incidents happened before he went away. He escorts customers off the premises, they then go and get their buses or go and wait around the corner like they have always done;
- they didn't have any busy nights before he went away so there was no need for more than one person to be working;
- he said he had put restrictions in place once he returned;
- when U.16s have to leave the premises they go around and ask them to leave. The age verification procedure after that is the same, they have to show their membership card. You can see everyone coming in from the bar;
- with regards to the allegation of the girl with fake ID, she had lost her ID and was actually over 18 but because she had lost her ID she used a fake one instead. After the incident Victoria Stevenson had looked through their records and checked and confirmed her age;
- on the 19 February when he left the premises it was not unattended. He had left a friend who is a doorman in the premises to keep an eye on things. He was not serving. Mr Wright confirmed he thought this was acceptable;
- he has a written record of staff training. It is signed by staff doing training;
- whilst he has been a personal licence holder for 7 years and considered he was an experienced publican, he stated that he could probably do with a refresher on the licensing laws;
- Mr Wright stated that he wanted to keep his licence but that his intention was to sell the lease as he does not want to be in the pub trade any longer and so if the licence remains he will not have anything to do with the premises. He did make the point though that to his knowledge no one had been prosecuted for any of the incidents and therefore if they weren't bad enough to prosecute why should he and the bar be prosecuted. All the incidents happened whilst he was away on a holiday that he very much needed and he has worked with the police on his return;

The committee took into account everything mentioned by the Police and the Mr Wright in reaching their decision.

Licence Conditions:

They were satisfied that licence conditions had been breached as was admitted by

Mr Wright. They noted that Mr Wright had said that he had read the licence conditions when he became the DPS, however it was difficult to accept this as he had admitted that the first he knew about the requirement to leave a person with a personal licence in charge of alcohol sales when he was not present, was when he met with police in February;

The licence clearly requires there to be a person on the premises when it is open capable of operating and downloading the CCTV footage. This condition has not been complied with on numerous occasions. This is a condition that supports the crime prevention licensing objective;

Where the DPS is not on the premises the person managing the sale of alcohol in the absence of the DPS must hold a personal licence. This licence condition has been breached on numerous occasions. This condition supports all of the licensing objectives;

The evidence presented by the police clearly shows massive confusion over the licence condition with the requirement in respect of anyone under 16 being on the premises. This condition is there to ensure the protection of children from harm and all staff should have been aware of the licence requirements. It was the PLH duty to ensure they were appropriately trained but he was apparently unaware of the condition himself. There has been no direct evidence that anyone under 16 was on the premises after the stated time although there were reports of a group of drunk 15 year olds going to the premises after a party although there was no evidence of what time this was and also reports of youths aged between 14 – 18 years leaving the premises at around 2230 hours. Whilst there may not be direct evidence of this condition being breached it is reasonable to assume it has been based on the lack of knowledge of the condition by Mr Wright and his staff;

Also his staff had clearly not received sufficient training in the licence conditions as is required by the licence. Mr Wright could not have trained his staff in these licence conditions as he was unaware of them himself. All of the above undermines the crime prevention and protection of children from harm licensing objectives. The committee felt that Mr Wright demonstrated a very lackadaisical approach to his licence and he didn't appear to understand or have regard to the licensing laws and conditions of licence;

Alcohol sales:

There were several reports from unnamed people reporting underage drinking and also several reports in the police logs showing that when they had visited the premises whilst youths had not necessarily been caught buying alcohol on the premises there were reports of them being clearly under the influence. There was one incident of a 16 year old girl having possession of a bottle of Sol on the premises and using Fake ID (the committee did not accept the PLH's explanation of this incident), another of a 16 year old male being heavily intoxicated so that he could barely speak or stand and the officer taking a pint of Fosters off him in the car park outside the premises, and reports of youths hiding alcohol when they see the Police arrive. All of these matters were taken into account in reaching the decision as, taken together, they build a picture of alcohol being available to those

under 18 whether by direct sales, proxy sales or alcohol being brought onto the premises. This is despite the reports in some of the police evidence that on some visits there was no evidence of youths drinking and records being kept of ID checks however these measures would seem to have been ineffective in protecting children from the harm of alcohol;

Poor management of the premises:

There were a number of reports of youths being drunk on the premises and in the immediate vicinity of the same. As stated above, alcohol would appear to be being consumed on the premises by those under 18. Whilst this could be because of actual underage sales or proxy sales there is also the possibility, as put forward by one member of staff, that youths are bringing in the alcohol themselves as she has found empty alcohol bottles around the premises at closing. The police reports show that youths have been able to use the 'dark area' of the premises and other areas out of sight of the bar. Staffing levels are very low (often being just one person) and it is difficult to see how during busy periods one member of staff can both serve and monitor and check on the activities of patrons whilst on the premises to prevent things like the secret drinking of alcohol, proxy sales or use of drugs like cannabis, as was mentioned in at least two police reports;

In addition to the above there was also a report that Mr Wright had left the bar completely unattended on the 19 February 2020. Despite Mr Wright considering that this is acceptable, the committee do not agree with him. There should have been someone in control of the premises at all times especially in light of the fact that young people frequent the premises;

Fights have often occurred when the DPS or staff have ejected people from the premises – one such fight and subsequent assault happened involving two 16 year old girls, one of which had been ejected from the premises. Fights have also occurred and then those involved been allowed back in to the premises only for further disorder to occur again later in the evening. Mr Wright did not give any information to the committee to satisfy them that he had taken any steps to ensure that incidents of violence and disorder did not occur. The PLH/DPS had failed to report any incidents to the police and had no effective dispersal policy to prevent these problems from occurring. Whilst it is acknowledged that the PLH/DPS cannot be responsible for conduct of patrons away from his premises, all these incidents occurred in the immediate vicinity of his premises. This is within his control and calls to the police and working with the police may have resolved the issues. The committee were satisfied that the conduct from and in the immediate vicinity of the premises was having a detrimental effect of the crime prevention licencing objective and, due to the age of the customers of the bar, the protection of children from harm and that this was all down to poor management of the premises;

Taking the above into account the committee were satisfied that action was needed to ensure the promotion of the four licencing objectives. It considered whether it was appropriate to add conditions to the licence however, in light of the fact that Mr Wright was unaware of and had failed to comply with his existing conditions of licence, they had no confidence that he would comply with any new

conditions that were added. They considered whether the issues could be addressed by removing any licensable activity. The only applicable licensable activity is the sale of alcohol but a majority of the issues affecting the premises are due to poor management and removal of a licensable activity would not address this;

The committee agreed that the removal of the DPS would be ineffective as the DPS is also in effect the PLH. Therefore the poor management issues would be likely to continue;

The committee decided that suspending the licence for 3 months would be ineffective as the issues would be likely to return once the premises opened given the recent history;

Therefore the committee were satisfied that the only appropriate action was to revoke the licence to ensure the promotion of the licensing objectives of prevention of public nuisance, prevention of crime and disorder and protection of children from harm.

58. **Review of Premises Licence (under section 51 of the Licensing Act) - Bar 9 - First Floor, 32 Western Approach, Plymouth, PL1 1TQ**

The Committee having considered the report from the Director for Public Health, heard from the Police and Mr Wright, agreed that as all the matters raised in the Section 51 review had all been dealt with by the decision made under the S.167 review, no further action was required.

59. **Exempt Business**

There were no items of exempt business.