

Licensing Sub Committee

19 July 2016

Not for publication under Regulation 14(2) of the Licensing Act 2003 (Hearing) Regulations 2005.

The committee agreed to hear the representations in relation to both reviews (a) Section 51 lodged on 1 June 2016 and 9b) Section 53a lodged on 22 June 2016 together.

I. The committee –

(a) considered -

- the report from the Director of Public Health;
- heard representations from the Devon and Cornwall Police that -
 - ▶ on 1 June 2016 they had lodged an application under Section 51 of the Licensing Act 2003 for a review of the premises licence in relation to the Beresford Arms and on 22 June 2016 an application for an expedited review of the premises licence at 9 Cumberland Street, Devonport known as the Beresford Arms under Section 53a of the Licensing Act 2003;
 - ▶ these premises were authorised for retail sale of alcohol between the hours of 10:00-01:00 Sunday to Wednesday and 10:00 to 02:00 Thursday to Saturday;
 - ▶ the police licensing department had received an application on 9 October 2015 to transfer the licence of the premises to the current licence holder and at the same time she made an application to become the Designated Premises Supervisor (DPS) of the premises; both these applications were granted on 20 October 2015;
 - ▶ these were premises that under management of previous licence holders had been the subject of earlier reviews and amendments of conditions due to concerns as to noise and public order issues;
 - ▶ from the point that Ms Burrell was granted the premises licence and became the DPS on 20 October 2015, the incidents of anti-social behaviour, drunkenness and violent crime had increased;

- ▶ on 21 November 2015 at 01:00 an assault took place on the premises, the offender was an employee of the premises; the DPS was not present at the end of the night and did not see the incident;
- ▶ on 18 December 2015 a drunk male exited the premises and caused damage to a parked vehicle; investigations by the police licensing team established that it was common practice for people to stand outside the premises drinking and smoking; there were concerns as to the customers' activities and noise they were generating;
- ▶ on 24 April 2016 a fight occurred as patrons left the premises which lasted for approximately 10 minutes and involved shouting, swearing, fighting and smashed bottles; part of this incident was recorded by an environmental health officer on this mobile phone and produced to the police. The decision was taken not to produce them to this meeting for fear the complainant could be identified from the angle of the recording;
- ▶ on 19 June 2016 two serious assaults took place in a road adjacent to the premises; two men were assaulted and suffered grievous bodily harm at the hands of a group of customers using the premises immediately before and after the assaults; a male was seen to enter the Beresford Arms at 01:10hrs and a few seconds later six males ran out of the premises into Chapel Street, where the assault took place, followed a few minutes later by another three males; several of these males then returned to the premises at 01:17 hours in separate groups; there were members of the group that fitted the descriptions given by the witnesses;
- ▶ the CCTV images from four of the eight cameras in the premises were shown at the hearing; they showed a man pulling up outside in a car, getting out and entering the pub; images from three cameras inside the premises showed this man speaking with some patrons, some of whom rushed out of the premises immediately, with others following them out one at a time; the initial six exited the CCTV shot at the bottom right where the police explained there was a mini roundabout and the way to Chapel Street; the CCTV images showed the PLH/DPS behind the bar and looked up noting their departure; three minutes later two men that were playing pool with a third watching them were approached by a fourth man who spoke with them and they were all seen exiting the premises; the PLH/DPS

was seen closing the front door and turning off a gambling machine; these men exited the camera shot top right where, the police explained was a service lane which led to Chapel Street;

- ▶ the CCTV images showed approximately six minutes later the men returning in two groups; the men from the second group began to do 'low fives' with each other and pat each other on the shoulder; they returned to the bar, their drinks and the pool table; the PHL/DPS was again behind the bar and noticed their return; the outside camera recorded the two groups coming back from two different directions both of which lead to Chapel Street;
 - ▶ the police accepted that only images from four out of the eight cameras were shown at today's hearing but they were satisfied that all relevant information was produced; they agreed that the shots shown revealed the DPS moving to the front door and closed it after the men had left;
- (b) these incidents were considered relevant under the licensing objectives of prevention of crime and disorder, public safety and public nuisance -
- the police had repeatedly experienced difficulty in retrieving the CCTV footage on the premises thus hindering their investigations into crimes and on one occasion the images had been deleted; the most frequent excuse made was that nobody knew how to operate the system; this was a breach of a condition attached to the licence;
- (c) this was considered to be relevant under the licensing objectives of prevention of crime and disorder and public safety -
- the premises were poorly managed and the PHL/DPS had failed to engage positively with the police licensing department on numerous occasions to discuss concerns and issues arising out of particular incidents; attempts to make contact had been made by personal visits, telephone messages and emails at various times of the day with messages being left with staff by both licensing officers and uniformed officer;
 - the PLH/DPS did respond to a letter from the police licensing team dated 11 January 2016 and attended a meeting on 28 January 2016 at which the concerns regarding the operation of the premises were made clear to her and she was asked to provide an action plan within 28 days (25 February); no action plan had ever been received;

(d) this was considered to be relevant under all of the licensing objectives -

- the police had received information regarding underage drinking;

(e) this was considered to be relevant under the licensing objectives of protection of children from harm and prevention of crime and disorder; however, no direct evidence was supplied in relation to this -

- on 4 May the Police Neighbourhood Beat Team conducted an operation in Cumberland Street and received complaints from its residents in relation to these premises. On 22 June 2016 statements were obtained from two local residents which had been submitted as part of the police representations; all complaints report that the following occurred on a regular basis -

- ▶ after hours drinking 'lock-ins';
- ▶ loud music and shouting from within the premises going on until 2am or 3am in the morning which was disturbing residents' sleep and that of their children;
- ▶ the volume of the music vibrates in residents' homes;
- ▶ loud shouting and swearing from patrons standing and drinking outside of the premises and presenting in an intimidating manner to residents wishing to pass;
- ▶ patrons exiting the premises urinating in the street, against buildings;
- ▶ throwing bins over, throwing and smashing glasses and bottles on the pavement and road, none of which was cleared up by those working at the premises;
- ▶ that the broken glass was a danger to residents and their vehicles and that the behaviours of the groups outside the premises was intimidating to their children;

- in addition to witness statements from the complainants a statement dated 24 April 2016 from an Environmental Health Officer confirmed that he had witnessed a crowd of men outside the premises shouting and swearing and being intimidating, a man urinating in the street, a fight, unacceptable noise emanating from inside the premises and a man in the vicinity of the premises holding a glass with a drink in it;

(f) these incidents were considered to be relevant under all four licensing objectives -

- in oral submissions the police indicated that as the incidents

were coming on a regular basis but at a variety of times and days they did not feel that there were any modifications to the conditions, such as door staff, that would resolve the causes of the problem;

- these premises were difficult and would take a very experienced DPS to resolve them;
- it is their view that the root cause of the issues stemmed from the PLH/DPS's lack of strong management and merely changing the DPS would not resolve the problem; her lack of engagement and breach of licensing conditions had prevented addressing the problems in another way; her influence over the premises would continue with any option other than revocation;

(g) heard representations from Environmental Health that -

- they had received the following complaints -
 - ▶ 23 March 2016 of unacceptable noise emanating from the premises and that trading was taking place beyond licensed hours until 3am;
 - ▶ 18 April 2016 of unacceptable noise and broken glass in street smashed by customers;
 - ▶ 24 April 2016 of unacceptable noise;
- the PHL/DPS had failed to respond to Environmental Health letters sent on 31 March 2016 addressed to the PLH/DPS with copies being sent to both the premises and her home address; the letter requested that she make contact to discuss the complaints; she also failed to respond to three voicemail messages which were also left on the number listed on the premises licence; she had however left a voicemail message on the Environmental Health Officer's telephone on 14 July 2016 which was passed onto the Licensing Officer;

(h) these representations were considered relevant under the licensing objectives of public nuisance, public safety and protection of children from harm-

- received written representations from other interested parties namely -
 - ▶ a local resident who had called out the Environmental Health Officer on the night of 24 April 2016 due to the volume of noise stated that when the premises licence was transferred the last time after being closed, the original licensee remained working there which meant the same group of problem customers

- continued to drink there;
- ▶ he reported ongoing problems such as glasses and bottles being smashed by the customers and that no one from the premises ever cleared it up; that on one occasion the tenants of the bedsits above the premises threw something out of the window narrowly missing a customer which led to a shouting match; the licensee did come out but only to support her tenants;
 - ▶ vehicles were getting damaged from the customers' behaviour and the broken glass; on one occasion a car drove over a bottle and a piece shot out from under the car and nearly hit a pedestrian;
 - ▶ there were a lot of children in the street that witnessed the language, shouting, swearing and fighting by drunk people;
- (i) this was considered relevant under all four licensing objectives, however the complainant was not able to attend and the committee did not have the opportunity to raise questions; the committee noted that the complaints mirrored those presented by the Police and Environmental Health;
- (j) heard from the PLH/DPS
- the PLH/DPS accepted that she had not responded to phone calls and messages and accepted responsibility; as at the interim hearing, she accounted for this stating a former member of staff had been breaking in and had stolen two phones from her;
 - she commented on the CCTV evidence stating that she was confused that images were only shown from four out of the eight cameras; she stated that she had footage which showed that when the groups of men returned to the premises the front door was closed and she had opened it; she had only let them back in as one said he had lost his keys; it showed them going to the bottom of the pub, that she did not carry on serving and they were gone in two to three minutes;
 - she explained that the man who pulled up outside the premises, parked and then entered was a friend of hers; she alleged that she had called him to say that there was a group of young lads in the premises that she did not know and she wondered what they wanted and if he knew them;
 - under questioning by members, she explained further that it was unusual for strangers to come to the pub; she was not worried by the men, they were behaving; her friend came in and spoke to them and then they left; she stressed they were not regulars and she had not seen them before;

- Members pressed her on the reasons for the telephone conversation she said she had made to the man arriving in the car, which caused doubt in their minds as to her explanation of the telephone call; CCTV evidence suggested a lack of engagement between the friend and PLH/DPS when he entered the premises; he was seen talking to individual patrons, then leaving the premises with some of these patrons but did not return to the premises with the groups seen returning from the direction of Chapel Street;
- she stated that she had called a number of customers on occasions if she had needed them;
- on this occasion she said, she had stated she would be closing shortly which was why they left and when they did she shut the gaming machine down and closed the front door; she accepted this was some 45 minutes before closing time of 2am but she was not busy and had let the other member of staff go approximately an hour and a half earlier; after the group of men left she began clearing the drinks;
- when asked if she remembered getting the letter from Environmental Health, copies which were sent to both the premises and her home address, she said she could not recall and at the time it was sent, she was living partly over the premises and partly at the home address;
- she had not produced the action plan required by the Police Licensing Team following her meeting with them in January 2016, as she had thought that the Police Licensing Team would contact her to arrange another meeting which she would take it to; they did not contact her with another meeting time;
- she was asked if she had any proposals to alleviate concerns to offer the committee as to a way forward; she proposed that she removed herself as DPS and someone called Sean who was moving upstairs above the pub and was taking a licensing course would take over; she would take care of the food as regulars of all ages were asking her to do food;
- she stated she had not received any complaints from locals about noise and she often asked at the shop etc; she and her staff did pick up any smashed glass, although accepted that on one occasion Environmental Health had arranged for it to be cleaned up;
- she explained her different accounts of what happened on the night of 19 June, provided to the interim hearing and

today's hearing by stating she had got the wrong night at the hearing on 24 June 2016; she had thought it was the Friday night that was being discussed;

- she stated that the Beresford Arms was known as a 'trouble' pub which attracted young males and it could get loud; she was trying to address this with quiz and karaoke nights; she asked for volunteers for a pool team and she had enough takers for two teams; she had only been the DPS for six months and it took time to turn a premises around, changes were beginning to be seen;
- (k) when reaching its decision the committee took into account the representations received, the summary of evidence and witness statements from the Police, Environmental Health and local residents and the responses given at the hearing from the PLH/DPS;
- (l) the committee -
- considered that the representations received from the Police, the residents and Environmental Health were relevant under all of the four licensing objectives;
 - has had regard to the Home Office Guidance for summary reviews and had considered the information provided with a view to determining whether the problems associated with the alleged crimes were taking place on the premises or in connection with the premises and affecting the promotion of the licensing objectives;
 - also had regard to both the statutory guidance and its own policy in relation to both reviews pursuant to Section 51 of the Licensing Act 2003 and summary reviews pursuant to Section 53a of the Licensing Act 2003;
 - agreed that based on what it had heard that the causes of all identified problems stemmed from the poor management of the PLH/DPS; issues had increased since she took over as PLH/DPS; it had also found her representations between the two hearings and within this hearing to be contradictory; she had demonstrated a lack of proper engagement and when she had engaged she failed to follow through with any action; it considered that she did not have the ability to control her patrons or staff; all these factors rendered her incapable of managing the premises to a required standard;
 - in relation to both reviews had considered the lesser options, namely -

- ▶ there should be a modification of the conditions of the premises licence;
 - ▶ whether there should be an exclusion of the sale of alcohol from the scope of the licence;
 - ▶ whether the DPS should be removed from the licence;
 - ▶ the suspension of the licence for a period not exceeding three months;
 - ▶ the revocation of the licence;
- (j) however for the reasons above the committee could take no assurance that any of the lesser options would be sufficient or appropriate to resolve the problems at issue; the problems stemmed from the PLH/DPS's personal management;

2. The committee agreed that -

- (a) in relation to the review brought under Section 53a of the Licensing Act 2003 that the premises licence should be revoked and further determined that the interim step of suspending the licence taken at the expedited review on 24 June 2016 should remain in effect until the time for appealing the review has expired and any appeal has been determined;
- (b) in relation to the review brought under Section 51 of the Licensing Act 2003 that the premises licence should be revoked.

The committee considered these decisions to be appropriate and proportionate action in the response to the issues heard at today's hearing.