

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB-COMMITTEE

MINUTES OF THE MEETING HELD
WEDNESDAY 29 JULY 2009 AT 2:00 PM
MAIDSTONE HOUSE, KING STREET, MAIDSTONE

**Review hearing for the Premises Licence under the Licencing Act 2003
for Source Café Bar, Rose Yard, High Street, Maidstone, Kent, ME14 1HN**

PRESENT:

Committee Members: Councillors Fitzgerald (Chairman)
Councillor Mrs Joy
Councillor Mrs Gibson

Council Officers: Samantha Clarke – Legal Advisor
Lorraine Neale – Senior Licensing Officer

Applicant: Chief Superintendent A Hope on behalf of the
Chief Officer of Police – represented by P.C.
Barbara Murray
Garry Brimson – Sargeant
Ian Jones – Sargeant
Jacky Bradley – Sargeant
Stephanie Wilson – P.C.
Adrian Parsons – P.C.
Bill Head – Police Licensing Officer
Stephen Noble – MBC Licensing Enforcement
Officer
Helen Barton - Witness

Licence Holder: Mr Stephen Moore – represented by Mr Juan
Lopez and Mr Stephen Thomas (Solicitors)
Anna Shreeves – DPS
Angela Darling – Potential Owner & DPS

Opening Remarks

The Chairman opened the meeting by asking all parties to introduce themselves. All participants confirmed that they had copies of and understood the procedure.

The Hearing

i. The Applicant

J Lopes indicated that he was submitting a statement from Stephen Moore and in his view it could be taken as read which would save time in the hearing. He also wished to confirm that the Members had received the papers he had submitted earlier in the day and for which he apologised for their late arrival.

It was agreed that the Members had been able to receive the papers but not all had been able to read it in detail. The Police would give a copy of the statement from Stephen Moore and the following discussion with the legal advisor it was agreed that this document could be taken as submitted. At this stage there was an adjournment which allowed Members to update themselves on the papers and following the adjournment the meeting then resumed and the hearing commenced. J Lopes stated that the reason they called for this further expedited hearing was because the previous sub-committee meeting had called for the most draconian step of suspension rather than conditions or removal of the Designated Premises Supervisor (DPS).

J Lopes then handed out the statement and then submitted copies of the expedited procedure and local policies before the Sub-Committee.

J Lopes Stated that any interim steps instigated by a expeditors hearing is in ?? until the main review had been held. Guidance indicates that serious crime is defined as the crime which would be subject to a 3 years first conviction in statute. Within the determination of the previous sub-committee they indicated that serious crime had not been found and that departed from national guidance and local guidance and his view was that rear guidance needed to be followed. In his view serious crime had not been demonstrated and therefore in this instance suspension up until a full review was not the appropriate measure and could be in existence for six months which could mean the end of this business and the forty jobs dependent on it. In his view this was a summary procedure which only should have been implemented for serious crime which had been indicated in the determination that it was not.

J Lopes Indicated that he had asked for certain information from the Police regarding this case and in particular the information they were using in respect of the review hearing. As yet he had not received these papers though the police had confirmed they did not intend to rely on these documents as part of their evidence for this meeting. He then referred to page 76 of Appendix F to the papers for the Monday meeting relating to human rights that would need to be taken account in this particular case. He drew attention to Article 1 and the First Protocol Article 6 which refers to a fair and public hearing but it was not fair as he had not had the opportunity to look at the documents held by the Police as nothing was given to him in response to the correspondence to them by Stephen Thomas, solicitors. He then referred to the Council's own policies, paragraph 17, where the local authorities role was to ensure that the

hearing was heard in full and in paragraph 19 where that the level playing field in terms of Article 1 was also applied. Fairness means that the evidence needs to be in front of both themselves and the sub-committee. He stated that the policy all indicated the need for him to receive the information and the evidence that the Police had but which they were not submitting as evidence to the Committee.

He then referred again to the expedited hearing guidance and in particular to paragraph 2.3 and the definition of serious crime and in his view he did not think it was necessary to depart from this guidance in particular relating to the three year definition.

He then detailed the track record of the licensed premises. Management changes had occurred with Luke Bendell being removed at the end of the year with Anna Shreeves coming in the New Year. Since this change occurred he had not received any indication that the Police were not happy with the way the premises was run and it was not right to look back at the record of Mr Bendell as he was no longer at the licensed premises. He then looked at the nature of the crime and disorder and maybe there was a drug problem but he then referred to where was the evidence to support this being presented to the Committee.

He then indicated it was though the Police had powers which if enacted and for them to be able to close the premises. However the Police had chosen to use the powers within the Licensing Act to seek this draconian measure. In his view the matter could be resolved by robust conditions being applied to the licence and on this occasion they were suggesting a number of conditions which they felt could work in achieving this. In addition to the conditions there was a further measure that could be taken which was by the removal of the current Designated Premises Supervisor. Though this measure might be inappropriate as the transition for Luke Bendell to Anna Shreeves had seemed to work. He was not suggesting that no action should be taken but that there were conditions that should be applied which he felt dealt with all the allegations being submitted. He indicated that there had been drugs found at the premises but there was no specific definition as to the amounts and less about what high levels meant. He was also willing to accept that there were drugs found at the premises and that they were not just in the public part of the premises. He then indicated that there was an individual involved within the premises who could access the private area and who had admitted that he had had cocaine at the premises. He was John Pugh though he had no action taken against him as far as he was aware. He indicated that Mr Varta and Ms Shreeves had been arrested but no charges had been brought against them at this stage and it was only an allegation of drug use. He indicated that there had been direct liaison with the Police in the period leading up to the raid and no mention had been made of the drug problem and there had been no need to impose any interim measures.

He then indicated that they had suggested 21 conditions that could be imposed to licence as set out in a letter from Stephen Thomas the solicitor on behalf of the licence holder.

Condition 1 – Club Scan ID which would be introduced at the premises. He said that Mr Moore didn't need to do this but was willing to do so and willing to accept the financial costs of such an introduction.

Condition 2 – Photo ID could pass on to scanner and date checked

Condition 3 no under 18's

Condition 4 full pat searches

Condition 5 drug dog teams could be used on the premises

Condition 6 as set out in the letter

Condition 7 (v) information sharing exercise on all premises which will link back to Condition 1 (x) drugs will be logged and confiscated and ask the Police to take these away

Condition 8 digital TV the Police could be asked to tell the licence holder where it should be placed

Condition 9, 10 and 11 as set out in the papers

Condition 12 set times for checking of toilets sporadic surprise ??

Condition 13 outside area could be covered

Conditions 14, 15 and 16 SIA trained staff could be used throughout the establishment including the outside areas.

Condition 17 adequate numbers and happy to work with the Police on the numbers required including the provision of the stewards outside the premises

Condition 18 Policy queuing to access the premises would be introduced

Conditions 19, 20 and 21 as set out in papers

He felt that the conditions could work and allow the premises to open in a controlled environment.

He then clarified the position with regard to the existing licence and how these new conditions would be more specific and more reliable than those which are currently in place. Within the existing licence there is no specification on the CCTV required or on the number of door supervisors. There was also the

provision for a drugs policy this had not been produced for the licence but he would be happy to submit a drugs policy with the help of the Police. Condition 22 saw the introduction of the challenge 21 policy which was enforced but the club scanning scheme suggests within the conditions would allow a far greater control over the age of people seeking to enter as the cards within the scheme were susceptible to forgery while he felt that it was better to rely on driving licences and passports.

Mr Lopes then went on to consider the certificate from the police made under section 53A (1)(b) of the Licensing Act 2003 and in particular the statement "the circumstances were such that it appears supply and use of drugs takes place on the premises". And in his view "it appears" is not good enough. On this basis Chief Superintendent Hope had signed it but he could not have seen the evidence to support it and he noted that in the papers produced for the meeting on Monday there were a number of reports provided but there was no evidence of Iontrack readings. These readings could in fact detect cocaine on bank notes which had already passed through the system on a number of occasions since they were actually used. So the readings were not clear in comparison to other similar properties and was not relevant as the other properties were larger premises than the Source Bar and therefore would not a fair and direct comparison. Then to take in account within the report submitted to the meeting the intelligence reports which were at Appendix A for a period of 1 January 2008 to 31 December 2008 was not right as this was in the period when Luke Bendell was ??? and not the current management and therefore the comparison to the other night clubs was again not a fair comparison. Since then that particular DPS had been removed and was no longer at the property. Also during that period Liquid and Envy were closed for refurbishment for three months and was that actually taken into account in the figures. The key element to be taken into account is not the capacity but the actual people who attended and ??? 160,000 attendances were at the Source Bar and during the whole of that period there were only three incidents out of 160,000 attendances and twenty two instances of violence against a person. And in the second period there were twenty nine incidents at the Source Bar compared to ninety at the Lockmeadow clubs. In his view it should not be about arrests but about convictions. He went on to state that in the period of 1st January 2009 to 30th April 2009 there were no arrests made.

Mr Elson was then submitted as a Witness in support of the case the application. He indicated that he was a member of the SIA team and that he was in fact the supervisor for the team. He had been an SIA steward at the premises for ten years and he had not been aware of any complaints or crime and disorder during that period. He felt he had worked very well with the Police and the management in that period. He indicated that CCTV footage had been provided to Police straight away when requested and there were no blind spots within the premises. He had not received any requests for updating the CCTV but in the early part of 2007 there had been a difficulty with regard to the CCTV which meant that they had to change that current system to a new system and moved ?????? to a digital system. At this point Mr Moore indicated that the old system

had been woefully inadequate and he had upgraded in 2007 in discussion with the Police, P C Barbara Murray and Stephen Noble of the Licencing Enforcement section and it had been set up in accordance with their instructions. Mr Elson then responded in relation to each of these Witness Statements and in respect of the incident report in the statement of Daniel Barker indicated that he had refused access to a person to the premises and then had received verbal abuse from the customer and a result had called the Police on the night net and the Police turned up and a person was arrested. In connection with an incident in the statement of Lee Berridge, Mr Lopes indicated that it was about someone having a drink at a bar and you cannot close a bar down for that and someone as a result of that drink being drunk in roucos.

In connection with the incident relating to Helen Barton Mr Elson indicated that no mocking had been made of the lady in this connection but she had been asked if she was alright but she had been rude and offensive to him and then she sat down near to the entrance of the Bar. He asked one of his SIA stewards Mark Hatcher to keep an eye on her but two gentlemen came along and collected her and she was driven away. He then indicated that her drink had not been spiked as indicated in the statement.

Mr Elson concluded his evidence. Mr Lopes then called Mr Moore as a witness. Mr Moore indicated that he had not been at the premises much during the past six months as he had need to be away for a number of personal issues. During that period he had only attended ten times. This is one of the reasons why he brought Anna and Mike into run the business in his absence.

Mr Lopes then called Anna Shreeves as a witness who in response to his questions indicated that there had only been two formal meetings with the Police since she had taken over although there had been other informal meetings particularly at night when there had been a number of visits from the Police. She then indicated that you couldn't compare the number of incidents in 2008 and 2009 there were very few incidents in 2008 compared to 2009 and there had been no major problems during that period. She also indicated that they had made changes to security and had adopted extra security upon the request of the Police. She also indicated that she felt that the meetings indicated that they were making progress as a result of the measures that they were introducing. Mr Lopes indicated that in that emails they talked about Iontrack readings taken at the premises. He also indicated in the witness statement from Stephen Noble about a further number of meetings had taken place but no talk had been made of shutting down the premises or about the drug problem if any existed at the premises.

Mr Lopes indicated again that the position in 2008 had been worse than in 2009 and that was one of the reasons why Luke Bendell had been removed from the property and new management brought in. However he indicated that no discussions with the management about the drug use and in no instances had they indicated that there was a drug problem at their premises and if they wished action to be taken they could have raised these issues with the

management of the premises. Mr Lopes indicated that he had taken them through all the documents submitted to the Committee and in his view it was important that the Committee did not depart from the policy which was in fact not the statutory national guidance but their own Council policy. He indicated Mr Moore had been away from the premises for the majority of the six months and had only visited on a number of occasions. He also indicated that he had submitted a number of conditions by which the property could operate if the licence was reinstated and not only were those conditions offered but if they felt that this was not sufficient the Council could seek to remove the designated premises supervisor. He also indicated that some of these conditions require ????? the Police and they would not seek to introduce them until that agreement had been sought.

ii. The Police

Gary Brimson indicated that under Section 53A(4) the Certificate should be submitted under the signature of a Senior Officer which had been done. He also indicated it was the opinion of the Senior Officer of Police that there was a serious crime and disorder issue at this particular premises. In this case he was not saying that there was serious disorder but there had been serious crime. In this instance it is a serious crime as under the definition of three years as the supply and use of Class A drugs in fact would give fourteen years sentence and therefore the issue being dealt with in this particular case was a serious crime under the definition within the national guidance. As indicated the Police were of the view that in this instance the licensing conditions being proposed would not be sufficient and that the suspension of the licence was the appropriate action.

PC Murray then indicated the actions taken by the Police as set out in the certificate submitted by the Chief Superintendent of Police going through instances that had actually occurred in relation to the action taken on the Tuesday 7th July with a warrant issued under the Misuse Of Drugs Act 1971. She also at that stage indicated as set out in the certificate the searches had found a number of instances of white substances within the premises and that as a result three persons were arrested on suspicion of intent to supply drugs and two persons ?? the premises Supervisor Anna Shreeves and her partner Michel Varta were allowing the premises to be used for the supply of drugs. She then also submitted the Iontrack readings to the Committee for the substances found at the Source Bar on the 24th March 2009 and in particular on 7th July 2009 when the arrests were undertaken.

PC Murray then called Mr Noble the Licensing Enforcement Officer as a witness. Mr Noble confirmed his witness statement submitted in the papers and he confirmed the statements made by Michel Varta to him outside the premises when the raid was taking place, namely that this was bound to happen as he'd been instructed to let people in by Steve. However PC Murray then stated that they had not been able to discuss the matter of the incidents occurring at the Source Bar with the management because they

believed the management were complicit in the actual activities and therefore to discuss it with them would have notified them of any potential action. She also indicated that the Magistrates had agreed to issue this warrant and that these actions had not been taken lightly and would not be agreed lightly by the Magistrates. She also believed that the licence could operate with the conditions because with the existing management it was quite likely that the same issues would occur again and the Management could not be trusted to deliver their conditions as submitted by the licence holder. At this point in time they did not believe it was appropriate to add conditions and that it was not appropriate to lift the suspension of the property.

Closing speeches

i. The Police

Gary Brimson indicated that the police were in a difficult position with the premises and that they could not take the matter any further with the Management and therefore had taken the view that they must take action in regard to this particular premise. At this point they obviously did not continue with any negotiations with the licence holder and decided that action needed to be taken regarding the criminal activities on the premises. He indicated it was now down to the Sub-Committee to determine whether there was sufficient information available and particularly he drew onto the statement of their own Licensing Officer and that of PC Murray about what was being undertaken at this particular premises. In his view the management including Stephen Moore and Anna Shreeves were in collusion with the activities at the premises and therefore the Police had only one action to take as criminal activity was taking place at the premises and in his view any continuation in the licence would only lead to a continuation of the criminal activity at the premises.

ii The Licence Holder

Mr Lopes indicated that if the suspension continued it would go on throughout the process that would mean the end of this particular business and forty jobs arising out of this business.

He indicated that Stephen Moore had not even been interviewed as part of a criminal investigation. The Chief Superintendent has issued a statement which indicated that it appeared that there were drugs at the premises.

However he was happy that if all the conditions being suggested were in force and with the Police working together with the Licence holder those conditions would work and this premises could continue as a business.

End of Hearing

The Chairman brought the Hearing to a close and asked that Samantha Clarke and Neil Harris remain with the Sub-Committee Members during their deliberations.

The Decision

The Sub-Committee came to the decision as shown in the Notice of Determination.