

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD
THURSDAY 9th JULY 2009 AT 12:00 PM
ROOMS 1B & 1C, GATEWAY, KING STREET, MAIDSTONE**

AGENDA ITEM 1

Application for the expedited review of a Premises Licence under the Licensing Act 2003 for Source Café Bar, Rose Yard, Maidstone, Kent.

PRESENT:

Committee Members: Councillor FitzGerald (Chairman)
Councillor Mrs Hinder
Councillor Mrs Joy

Council Officers: Mike Hawkins – 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
Bill Head – Police Licensing Officer
Stephen Noble – MBC Licensing Enforcement Officer

Licence Holder: Mr Stephen Moore – represented by Mr Juan Lopez
and Mr Stephen Thomas (Solicitors)
Anna Shreeves – DPS
Mikel Vata - Manager

DISCLOSURES BY MEMBERS AND OFFICERS

There were none.

DISCLOSURES OF LOBBYING

There were none.

EXEMPT ITEMS

RESOLVED: That the items on the Agenda be taken in public as proposed.

Opening Remarks

The Chairman opened the meeting by asking all parties to introduce themselves. He then read out to all present the administrative matters as set out in the Licensing Act Sub Committee Hearing – Order of Proceedings document. All participants confirmed that they had copies of and understood the procedure. All Committee Members

confirmed that they had read the papers beforehand.

The legal advisor then outlined the application and representations regarding the application.

The Hearing

i. The Applicant for Review

P.C. Murray explained that the Source Bar was a Town Centre pub with a 24 hour licence, it was popular with the 18-25 age range and popular during the week. A crime analysis request showed high crime associated with the premises and intelligence showed a high drug use with the complicity of the owner. A warrant was executed on Tuesday 7 July 2009 under the Misuse of Drugs Act 1971, 50 officers were involved in the operation resulting in 3 arrests for the use of drugs and 2 arrests for dealing. A search of the premises found wraps that contained cocaine on the dance floor, 2 wraps were found on shelving at the end of the main bar, in the CCTV room and on a desk in the office, tests found that the substance contained in them was cocaine. ION swabs taken of various surface areas showed a high drugs reading for cocaine. A small bag found at the DJ desk also showed a high cocaine reading. The manager of the premises stated to Stephen Noble that he was aware of drugs in the premises and that Stephen Moore had instructed him to allow the dealers in there and that it was common knowledge that drugs use takes place in there. Chief Superintendent Hope had signed the application certificate because Serious Crime was going on at the premises and asks for a suspension of the licence. Conditions were originally considered but it was felt that they would not address the seriousness of the situation at the premises. The issues were with the Licence Holder, the DPS and the staff who the Police believe to be passively complicit with the use of drugs at the premises.

Mr Lopez pointed out that the severest interim measure of suspension would close the premises for 6 months and that effectively would lead to a permanent closure. He felt that the Sub-Committee had to be convinced by the applicant that the issue was Serious Crime and not Serious Disorder. Serious Crime was on the basis of drugs and all other matters were for the Review. He felt that Mr Moore had been characterised unfairly and that the previous good working relationship that had been established over the years with the Police and Licensing Authority had been undermined. The premises had been searched just the once and there had been no mention of the quantities found. There were drug problems in Maidstone at most venues and most premises suffered to some degree, premises toilets are renowned for being used for drug taking but not for supply. On issue of the warrant 40- 50 Police some with dogs searched the premises and took swabs throughout the premises, from the bars, the dance floor and all staff rooms and rooms on all floors.

The evidence found was quite modest given the capacity and popularity of the venue. There was an implication that the management were the suppliers but there was no evidence of supply. Quantities are normally the trigger that signifies supply, and there had been no quantities stated by the Police or any witness to the supplying of drugs. An individual had admitted to using cocaine for their private use on the premises but not supplying to anyone. The use of cocaine has been shown to have occurred in the toilets, CCTV is situated in the toilets but not in the cubicles. Cocaine use was difficult in the toilets as there are no ledges in them to aid use. People using drugs in the toilet cubicles was a difficult thing to monitor and the best method to catch anyone would be the use of Police dogs. The reasonable remit of the Premise Licence Holder is to

deter the use of drugs on their premises. The Police say that they found paper wraps and small zip bags outside the premises in the area where people smoke, the drugs that were smuggled in were dropped when the customers saw the Police and the floor inside the premises was not littered with wraps or bags there was only a modest number found inside which did not indicate a drug den. The findings of the Police although unattractive were modest and the level of quantities found has not been made clear by the Police. The suspension of the licence is a draconian request and would put the premises out of business and individuals out of work. Two previous ION swabs taken at the premises prior to the warrant being executed showed no trace of drugs in the men's toilets but there was evidence of drugs in the women's toilets, this did not signify when the drug use took place as traces of drugs can be found up to a year after use and if the toilets were not cleaned thoroughly then historical traces of drugs could be found.

Mikel and Anna although arrested were not charged and were bailed until September and neither of their houses had been searched to assess any evidential proof of drugs, it was telling that they were not charged, they are not suppliers or users.

There had been no correspondence between the Police and the Licence Holder about the management of the premises or on how to address the issues prior to the events leading to the raid. The Sub-Committee would have to be sure and certain that there was enough evidence to suspend the licence. There could be modifications to the conditions of the licence to insure that the use of drugs on the premises was stopped, some suggested conditions could be changing the DPS, routine patrols of the toilets, sporadic unannounced checks by SIA staff, customers submitting to searches of themselves and the cubicle on exit and if they refuse are asked to leave the premises, keeping incident logs, using a security firm recommended by the Police who undertake pat down searches and if customers do not submit themselves to the search they are refused entry, supplying an Amnesty box that Police could then empty and make safe. Strip searches cannot be undertaken but all other reasonable means can be taken. The suggestion by the Police that conditions won't work is nonsense they did not think about it, if everyone had put their heads together than a set of conditions could have been agreed that would eliminate the problems and work, if the licence is suspended then it is with no evidential basis. If any agreed set of conditions did not work then the Licence could be revoked at Review.

Mr Moore explained that he had been a licensee for 20 years and 13 year of those were in Maidstone, he has managed 4 different premises in the town in those 13 years and has always worked closely with the Police and had never had any problems before, he felt discussions could have been held to address the drug use problems. Anna and Mikel had been brought in to help with the issues at the premises. Suspension of the licence meant financial ruin for himself and affected 40 other staff at the premises, he explained that the business was not an easy one to be in for anyone in the industry in the current climate. He conceded that the premises had some problems that needed to be addressed and that they could be resolved with modified conditions, he felt a lot of what he had heard was rubbish and based on hearsay and that if conditions were attached to the licence then the days leading up until the Review would allow enough time to get things right.

Closing Speeches

Mr Lopez stated that revocation at the Review was the same as a suspension today as it would cause ruin, they could potentially agree to modify conditions and invite an undertaking to ensure that the premises remain closed until conditions had been agreed by all.

P.C. Murray explained that herself and Mr Noble had spent a significant amount of time speaking to Mr Moore about a lot of the issues at the premises on various occasions. According to Mr Moore the problem was one rogue promoter doing one line of cocaine, she disagreed with that statement and felt the problem was much more than that, drugs were found in private areas of the premises, one reading being 5.91 on the ION track showing it to be recent and large. A 1st floor office desk showed 3.45 again a recent and significant ION track reading. Readings showed extensive Coke use in the private areas of the premises.

Gary Brimson asked if a warrant was issued at Mr Moore's Shrewsbury premises.

Mr Moore answered yes there had been a warrant issued there.

Gary Brimson then asked how Mr Moore could make the statement that nothing like the raid at the Maidstone premises had ever happened to him before when a similar occurrence had happened before.

Mr Moore answered that he was predominantly based in Maidstone and that drug problems were a countrywide epidemic.

Mr Thomas explained that the Shrewsbury premises were managed by a business partner who was arrested and that after the events there Mr Moore with the agreement of the Police was the replacement DPS.

Gary Brimson explained that Chief Superintendent Hope was sure in his opinion that Serious Crime was taking place at the premises and it was this that triggered the expedited Review. That interim measures were needed to address the problems at the premises. The premises already had SIA staff and security cameras and those measures had not stopped drugs going into the premises. He pointed out that the one place that drug traces had not been found when the raid took place was in the toilets. Drug traces were predominantly found in private and staff areas which were not accessed by the general public. He also pointed out that people had not yet been charged with offences as it was an ongoing investigation and that they still had weeks of CCTV footage to watch and that Anna and Mikel were on bail. Warrant provided valid evidence found on the premises and intelligence gathered over a year has shown information received to be correct. Premises management cannot be trusted to comply with any condition that may be imposed. A suspension was necessary and it was temporary until the Review and was not the same as Revocation any decision could be appealed. Mr Lopez says there is no evidence it is there in bundles.

Mr Lopez stated that suspension is Revocation and that any appeal would take 6 months by which time the business would be gone, also the warrant was dated 29 June 2009 but undertaken on 7 July 2009 why was there a delay of 10 days if the matter were so urgent. Individuals had not been charged and CCTV had still not been checked how could they state that management were involved when all the facts about individuals had still not yet been checked and verified and how could they

justifiably request a suspension of the premise licence based on those facts.

End of Hearing

The Chairman brought the Hearing to a close and asked for Mike Hawkins and Lorraine Neale to 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 at Appendix A.



LICENSING AUTHORITY: MAIDSTONE BOROUGH COUNCIL

**LICENSING ACT 2003 (as amended by Violent Crime Reduction Act 2006)
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005
LICENSING ACT 2003 (SUMMARY REVIEW OF PREMISES LICENCES) REGULATIONS 2007**

NOTICE OF DETERMINATION OF EXPEDITED REVIEW HEARING

Application Ref No:

Applicant for Review: Chief Superintendent A. Hope – Kent Police

Regarding the premises or club: The Source Bar
Rose Yard
Maidstone
Kent

Licence Holder: Mr Stephen Moore

Date of hearing: 9th July 2009

Date of determination: 9th July 2009

Committee Members: [Chairman]: Councillor: Mike FitzGerald
Councillor: D Joy
Councillor: W. Hinder

Legal Advisor in attendance at hearing: M. R. Hawkins (Senior Solicitor, Swale BC)

Senior Licensing Officer in attendance at hearing: L. Neale

This is an application for Expedited review of premises licence under Section 53A Licensing Act 2003

A: Representations, evidence and submissions:

The Committee considered the representations, evidence and submissions of the following parties:

Applicant for Review:

- Name: Chief Superintendent of Police
- Witness (1): G. Brimson - Alcohol, Gambling and Licensing Sargeant
- Witness (2): S.Noble - MBC Licensing Enforcement Officer
- Legal or other representative: PC Barbara Murray

Licence Holder:

- Name: Stephen Moore
- Witness (1): M. Vata
- Witness (2): A. Shreeves
- Legal or other representative: Juan Lopez – Solicitor
- Stephen Moore - Solicitor

B: Consideration of the legislation etc.

The Committee has taken into account:-

- i) the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) especially Sections 51 – 53A inclusive which relate to the review and expedited review of a premises licence;
- ii) the provisions of the October 2007 Guidance as to Expedited Reviews;
- iii) the provisions of the Borough Council's Statement of Licensing Policy;

C. Determination and Reasons:

The Committee has had to consider whether interim measures are necessary. Committee have first considered the Guidance in detail. The Chief Superintendent has signed a certificate. Despite the Guidance the Committee also feel, on what they have heard and seen, that serious crime (although not in line with the definition in the Guidance) is occurring at the premises and that this is significantly greater than other venues in Maidstone. Committee have been advised in detail on the Guidance, but note that the Guidance is non-statutory and that the Guidance is guidance. Committee have considered it and decided that this is so serious that it is worthy of the summary procedure. The Source Bar has a 24 hour licence and is regularly open till 4 or 5am. Committee believe that there may be a large scale drug problem which may involve financial gain to a person or persons within the premises whether customer or staff. The Committee has heard that problems with the club have been ongoing for some time and are not convinced that the staff respond appropriately when the drug problem is evident. Committee therefore intend to impose an interim measure in order to promote the Prevention of Crime and Disorder objective. Committee have considered what is proportionate and appropriate, and believe that only suspension of the licence until the outcome of the Review proper will serve to prevent crime. The Police say that they do not believe any licence conditions will suffice and Committee accept that. The Licence will be suspended therefore until the outcome of the Review.

Reasons for determination:

Prevention of Crime and Disorder: The suspension of the licence until the outcome of the Review proper will prevent further crime

PRINT NAME (CHAIRMAN): Mike FitzGerald.....

Signed [Chairman]: A copy of the original document is held on file

Date: 9th July 2009.....