

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD
FRIDAY 13TH NOVEMBER 2009 AT 10:00 AM
TOWN HALL, HIGH STREET, MAIDSTONE**

AGENDA ITEM 1

Application for the expedited review of a Premises Licence under the Licensing Act 2003 for The Victory, Farleigh Lane, Farleigh Bridge, Barming, Maidstone, ME16 9NB.

PRESENT:

Committee Members: Councillor Sellar (Chairman)
Councillor 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 Bill Head

Licence Holder: Mr. Lee Gaul

NOTIFICATION OF MEMBERS

Hinder for Yates

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 Senior Licensing Officer then outlined the application and representations regarding the application.

The Hearing

i. The Applicant for Review

Bill Head explained that the Review came about from the incident that occurred from the incident that occurred on the 26th August 2009, he explained that the Premise Licence Holder and the Police had agreed on conditions 1 – 6 and 9 – 13 and the condition that was the sticking point was number 7, he felt that the Police had to insist on it because they believed that the extra training was appropriate to stop similar incidents happening again, condition 14 was in the hands of the Sub-Committee and condition 8 had been withdrawn as it was no longer relevant as that particular DPS was no longer at the premises.

Councillor Sellar asked if condition 14 was still being requested.

Bill Head answered that it was dependant on the outcome of condition 7.

Councillor Sellar asked about the DPS Sally Hillier and asked if the problems went with her.

Bill Head explained that she had received an £80 fixed penalty notice and would have had to have the declared the offence at court.

ii. The License Holder

Mr Gaul explained that her personal licence had been taken away and she had to take the course again to enable her to reapply for her personal licence. He explained that he owned and ran numerous outlets at the moment he had 8 but had, had 14 at one point. They included 2 strip clubs and some carvery's he was not in the trade for a quick wins. He had managed the Victory for 3 years and had been in a terrible state when he took it on. He explained there were not many houses in the area and his main trade came from the nearby caravan park which was a fairly elderly clientele. The pub had never had any trouble until it started jam nights which encouraged groups of kids to come in.

He explained if condition 7 was added to the licence it would cause him problems as he had an elderly lady who worked for him and she would be reluctant to have the training, as exams of any kind made her nervous. That lady had 25 years experience in the trade and he felt training was unnecessary in her case. He

further explained that currently his Mum, Dad and one other lady had undertaken the course to become personal licence holders.

Natasha Swainsbury had been the DPS at the Heart in East Peckham and had no problems there, she was not the current DPS at the Victory and would manage the premises better, the incident that occurred in August was a one off incident and the introduction of condition 7 would put immense pressure on the premises. He explained his parents had pubs in London 15 years previously and were now down in Kent and would take on the Victory. He further explained that every person who worked behind the bar had to have training, but to insist on them to be Personal Licence holders was harsh. He also pointed out that Sally Hillier had undertaken the training and still failed. He pointed out that he had 5 personal licence holders already installed at these premises he had already gone further than necessary to please the police and that condition 7 was unreasonable.

Bill Head asked if the 3 people had been issued their personal licences yet.

Mr Gaul answered not as yet there had been problems with disclosures and that his mother had only passed that Wednesday so her police check had just gone. Issue of the licences was imminent. He explained that initially that Natasha Swainsbury was not acceptable as the DPS at the Victory as the police had objected as she was DPS at the Heart in East Peckham at the time, he had arranged for himself to become DPS at the Heart in East Peckham so that his partner Natasha Swainsbury, could be DPS at the Victory and that his mother and father once they received their personal licences one of them would then become DPS at the Victory hopefully fairly soon.

Bill Head asked if they were prepared to compromise and agree to a personal licence holder being present during trading hours.

Mr Gaul answered no. He did not want to commit to that as he could not guarantee it and, it would be easier to undertake in house training. He felt that a pub in the middle of nowhere where a one off incident occurred would be severely affected by the addition of condition 7.

Bill Head answered he could see that and explained that Sally Hillier had said to him that those lads had been visiting for some time.

Mr Gaul explained that she had wanted to buy the premises and he would have sold it to her if the monies had been presented but then his Mum and Dad stepped in and some conflict started once she was given her 6 week's notice. She had been the one that had allowed it to happen and she worked week days and his parents weekends.

Bill Head agreed that he had no proof only what she had said to him, but still believed a personal licence holder on the premises whilst trading was not an imposition or at least present on Thursdays, Fridays and Saturdays and the Police still insisted on a qualified person present there.

Mr Gaul explained that Saturday was not the busiest night and it was not the type of venue that attracted trouble as their regular trade is an older clientele. It was not a youngsters pub and had no other trouble in 3 years, and it was a one off incident.

Councillor Mrs Joy asked if he was still involved in 8 establishments.

Mr Gaul answered that he was in day to day contact with them, that he distributed beer and collected monies from them.

Councillor Mrs Joy asked if any of those people involved in those establishments held personal licences or were they trained in house.

Mr Gaul explained all the other establishments had 1 personal licence holder and they would be the DPS. The DPS then undertook all other training of other staff.

Councillor Mrs Joy commented on his statement of it being a one off incident and asked if the music in the premises had been the cause and would his parents once they took over the establishment carry on those events.

Mr Gaul answered no it did not really work for the pub it had been purely about music and not a money spinner. They had been designed to draw in a particular group to give a free venue but encouraged to buy drinks, it had not been a success.

Councillor Mrs Joy referred to the elderly member of staff and asked if she worked alone at any time.

Mr Gaul answered yes she was 55 years of age. She had 25 years experience and worked Fridays.

Councillor Hinder asked what the problem was with the lady undertaking the training.

Mr Gaul explained that responsible alcohol training was a recognised course but not run regularly. Stephen Thomas a local solicitor did run the course but only when there was enough numbers to make it practicable. He also explained that if every member of staff had to undertake this course they would not be able to work for at least a month and that was not reasonable when the possibility was that a member of staff would do the odd shift now and again or as required.

Councillor Sellar asked if any staff had undertaken the BII course in responsible alcohol training.

Mr Gaul explained that they had all passed the personal licence course which was a higher qualification which covered the responsible alcohol training also. He had personally paid for 3 people to attain that extra level. He still believed that condition 7 would be restrictive for example if he went on holiday with both his parents and partner that would leave one personal licence holder on the premises. She would be under immense pressure as she would have to be present 24/7.

Bill Head explained the Police were not in the business of disrupting personal life, and were not insisting the staff be qualified straight away as long as they were booked on a course or training was imminent it would be fine. He further explained the basic training being requested by the Police was not intensive and was a 1 day course.

Councillor Sellar asked if there was an examination at the end of the day.

Mr Head answered yes there was.

Mr Gaul explained that it cost £110.00 for the basic course and it was actually cheaper to undertake the Personal Licence course.

Mr Head pointed out that the basic training was aimed at casual staff not personal licence holders or DPS.

Councillor Sellar asked if this training was regular practice for other premises.

Mr Head answered that some of them do for example Wetherspools.

Councillor Sellar asked why didn't we insist on this training for all premises.

Mr Head answered it was a good question but it was being requested at these premises because of the incident of the 26th August.

Closing Speeches

i. The Applicant for Review

Bill Head had nothing further to add.

ii. The License Holder

Mr Gaul re-iterated that the premises was a back street pub that the incident was a one off and they had had no previous trouble, and, that condition 7 was too harsh. He pointed out that he managed 2 strip clubs that attracted a far different clientele and nothing like this condition was insisted on at either of those two premises. So he could not understand why it was being insisted on at the Victory, that all training at the other premises was in house and given by himself and his partner.

End of Hearing

The Chairman brought the Hearing to a close and asked for Samantha Clarke 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
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

NOTICE OF DETERMINATION OF REVIEW HEARING

Application Ref No:

Applicant for Review: Chief Inspector David Pascoe on behalf of the Chief
Officer of Police

Regarding the premises: The Victory
Farleigh Lane
Farleigh Bridge
Barming
Maidstone
ME16 9NB

Licence Holder: Mr Lee Gaul

Date of hearing: 13/11/2009

Date of determination: 13/11/2009

Committee Members: [Chairman]: Councillor: Sellar
Councillor: Mrs Joy
Councillor: Hinder

Legal Advisor in attendance at hearing: Mike Hawkins

Senior Licensing Officer in attendance at hearing(s): Mrs L. Neale

This is an application for:

Review

of a:

Premises Licence

A: Representations, evidence and submissions:

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

Applicant for Review:

- Name: Chief Officer of Police
- Witness (1):
- Witness (2):
- Legal or other representative: Bill Head

Responsible Authorities:

N/A

Licence Holder:

- Name: Mr Lee Gaul
- Witness (1):
- Witness (2):
- Legal or other representative:

Representations considered in the absence of a party to the hearing:

...N/A.....

B: Consideration of the Licensing Act 2003, the Guidance under s. 182 of the Act and the Statement of Licensing Policy of Maidstone Borough Council

The Committee has taken into account the following provisions of the Licensing Act 2003 and the Regulations thereto:

Sections 51 – 53 inclusive which relate to the review of a premises licence;

The Committee has taken into account the following provisions of the Guidance under section 182 of the Act:

- Chapter 10 which relates to conditions attached to licences;
- Chapter 11 Reviews
- Annexes that relate to potential conditions: D part 1 (crime and disorder); part 5 (protection of children from harm).

The Committee has taken into account the following provisions of its Statement of Licensing Policy:

- Chapter 19 which relates to the 4 licensing objectives;
- Chapter 20 which relates to the prevention of crime and disorder;
- Chapter 23 which relates to the protection of children from harm;

The Committee has decided to depart from the guidance under section 182 of the Act and/or the statement of licensing policy for the following reasons:

Paragraphs and reasons (state in full):

N/A.....
.....
.....

C. Determination:

The Committee has decided, having regard to the application and the relevant representations, taken the following step(s) members consider necessary for the promotion of the licensing objectives:

- take no action in respect of the premises licence/club premises certificate;
- issue a warning to the premises or club in the following words:

N/A.....

Take one or more of the following steps under s. 52 (4) (premises) or 88(4) (clubs) of the Act:

To modify the conditions of the licence. (Note: conditions may be modified for a set period of time up to 3 months if considered appropriate). If so, state the modified conditions and if it is time limited:

In order to promote the licensing objectives of the prevention of Crime and Disorder and the protection of children from harm the sub-committee decided to amend the premises license to add the following conditions:

1. CCTV to be fitted to a standard agreed to by the police that complies with 'The CCTV Code of Practice (2008 edition)' produced by the Information Commissioners Office, with all public areas (including all access and egress points) covered.
2. The CCTV system will be maintained and serviced on a regular basis and records kept to that effect.
3. CCTV shall be operational at all time that members of the public and/or staff are on the premises.
4. Images will be retained for a period of at least one calendar month by whatever means the licence holder deems appropriate.
5. The Police, Local Authority or Trading Standards will have access to these immediately on request.
6. The Police, Local Authority or Trading Standards will be allowed to take a recording by way of tape, CD Rom or any other means of the image within 24 hours of the initial request being made by either the Police or Local authority.
7. All serving staff will be trained in- house by the Licence Holder who will within a month provide a copy of his syllabus to the Council's Licensing Officer, for the approval of the Sub-Committee.

The syllabus will be equivalent to the BII responsible alcohol retailing course.

The Licence Holder will keep a register of all staff training.
8. All staff at the premises will be trained in Challenge 25.
9. Challenge 25 posters will be prominently displayed in all areas of the premises including at the point of entry and at all till points.
10. Any person who appears to be under 25 years will be required to produce identity proving their age if purchasing alcohol.

11. The only ID acceptable will be a passport, photographic driving licence, or a pass marked accredited identification such as citizen card.
12. All staff training will be auditable or be available to any police officer, local authority licensing officer or trading standards officer at any reasonable time.

To exclude a licensable activity from the scope of the licence (or qualifying club activity from the certificate). (Note: activities can be excluded from the licence for a period of time up to 3 months if considered appropriate. Activities can also be excluded from certain parts of the premises if appropriate). If so, state the activities excluded and if the exclusion is time limited or limited to certain parts of the premises:

.....

.....

.....

- To remove the Designated Premises Supervisor
- To suspend the licence for a period of not exceeding 3 months
- To revoke the licence or withdraw the club premises certificate.

Reasons for determination:

- Prevention of Crime and Disorder
- Protection of Children from Harm

Reasons (state in full): for both objectives

The Sub Committee considered the suspension of the licence unnecessary and were happy with the conditions already agreed namely 1-6 and 9-13 submitted by the Police and agreed by the applicant, they felt that condition 7 was disproportionate and not necessary for the licensing objectives. An alternative condition was agreed and is found at :-

7. All serving staff will be trained in- house by the Licence Holder who will within a month provide a copy of his syllabus to the Council’s Licensing Officer, for the approval of the Sub-Committee. The syllabus will be equivalent to the BII responsible alcohol retailing course. The Licence Holder will keep a register of all staff training.

Condition 8 was no longer relevant as the DPS had already left.

Public Safety

Reasons (state in full):

.....N/A.....

.....

.....

.....

Prevention of nuisance

Reasons (state in full):

.....N/A.....

.....

.....

.....

.....

PRINT NAME (CHAIRMAN): Councillor Patrick Sellar

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

Date: 17.11.2009
