

REGULATORY COMMITTEE

At a meeting of the Regulatory Committee on Wednesday, 12 January 2011 in the Council Chamber, Runcorn Town Hall

Present: Councillors Philbin (Chairman), Loftus (Vice-Chairman), Fry, Howard, Inch, A. Lowe, Murray and Wallace

Apologies for Absence: Councillors Bryant and E. Ratcliffe

Absence declared on Council business: Councillor Tony McDermott

Officers present: G. Ferguson, K. Cleary, J. Tully and L. Capper

Also in attendance: None

ITEMS DEALT WITH UNDER DUTIES EXERCISABLE BY THE COMMITTEE

REG13 APPLICATION FOR THE REVIEW OF PREMISES LICENCE RELATING TO THE ESTABLISHMENT VICTORIA SQUARE WIDNES

Action

The Committee (acting as Licensing Committee under the Licensing Act 2003) met following an application to review the Establishment Old Town Hall Victoria Square Widnes made by Cheshire Police.

In attendance was the applicant Cheshire Police represented by Paddy Whur (Walker Morris Solicitors) also in attendance were Superintendent Sarah Boycott, PC Chris Carney Inspector Simon Blackwell and Ian Seville Police Licensing Officer.

In addition the Premises Licence Holder Stephen Lawler was present and represented by Martin Stafford (DWF Solicitors) also in attendance were Dennis Riley Designated Premises Supervisor and Steve Gibbons Head Doorman.

The Council's legal advisor, John Tully, introduced the parties, outlined the procedure to be followed and summarised the nature of the application. Mr Tully also advised the Committee of the following documents which

were to be referred to at the hearing:-

- The committee item (coloured blue)
- The initial review application documents from the Police received 15 November 2010 (coloured white). This was referred to as the “White Bundle”.
- The additional information from the Police received from Cheshire Police on 4 January 2011 (coloured pink). This was referred to as the “Pink Bundle”.
- The amended information from the Police received from Cheshire Police on 11 January 2011 (coloured green). This was referred to as the “Green Bundle”.

To avoid confusion Mr Tully explained that the agenda contained a verbatim extract from the White Bundle and summarised the content of the White Bundle. The Pink Bundle replaced pages 10 to 25 of the White Bundle (thereby extending the period in which incidents were listed to 1st January 2011). The Pink Bundle also included a statement by Superintendent Boycott. The Green Bundle replaced pages 22 to 32 of the Pink Bundle and comprised an amended statement by Superintendent Boycott. Mr. Whur confirmed that this was a correct summary.

The premises licence holder had previously supplied to the Licensing Section (on 11th January) and to the Police a DVD comprising CCTV footage of Victoria Square but had not submitted any documents relating to the hearing.

The Police grounds for the review were set out in the committee item. The full review file was copied and sent to the Committee members prior to the hearing.

The hearing

Prior to the hearing commencing Mr Whur requested an additional 10 minutes for the applicant to put their case making a total of 30 minutes. Both the Committee and Mr Stafford agreed to the time extension.

Mr Whur presented the case on behalf of the Applicant Cheshire Police and called on Superintendent Boycott, PC Carney and Inspector Blackwell to give evidence relating to the documents supplied by the Police.

The question was raised as to whether it was appropriate for the Committee to consider those incidents in the Pink Bundle which had occurred prior to 17th August 2010. Those incidents had already been taken into account by the Committee at a hearing held on 17th August 2010 in

respect of the same premises.

Mr. Whur confirmed that he would not be repeating the incidents prior to 17th August 2010 since the application was a stand alone application on the facts post-dating that hearing. However, PC Carney, in his evidence, insisted that he wished to include all incidents contained in the Pink Bundle.

It was noted by all parties and by the Committee that although an appeal was pending against the decision of the Committee of 17th August 2010, that appeal had no bearing on the current application.

The Police had been reminded that at the hearing held on 17th August the Police had repeatedly praised the good management of the premises and the good relationship that they had with the management.

Mr. Whur stated that the Police had become increasingly concerned about the management starting immediately following the hearing on 17th August 2010. Problems were increasing. Incidents came to a head on 9th November 2010 (Pink Bundle page 16) at which a breach of a licensing condition was found and the attitude of the management was unacceptable. A review was requested following this incident. Incidents had still continued to occur even following the request for a review of the premises licence. It was felt that the number of incidents was wholly disproportional when compared with the other licensed premises in the area (the White Bundle pages 29 to 31 were referred to and especially the graph on page 31). It was alleged that good management had not been exhibited.

In his evidence PC Carney stated that he had taken great pains to ensure that all of the incidents (in the Pink Bundle) were directly linked to the premises. He had thought that he had had a reasonable relationship with the management but the breach of condition incident on 9th November 2010 was the straw which broke the camel's back. He also pointed out the number of incidents which post dated the application for a review. He felt that there had been a change in attitude after the review had been requested.

PC Carney was asked about whether the incidents could be ranked in relative seriousness and whether an opinion could be given about whether the management could be considered culpable in those incidents.

Superintendent Boycott gave the reply and stated that she was mainly concerned with the level of assaults. She had picked out 17 cases since 17th January 2010. The Police had not been able to stop people from getting hurt. She felt that there had only been a veneer of co-operation from the management. With reference to her statement regarding premises in Warrington (Green Bundle pages 10 and 11) the Chairman pointed out that the Committee was only interested in what was happening at the premises in Halton.

Neither Superintendent Boycott nor PC Carney answered the two questions set out above.

The Police were asked whether, since the premises represented about 50% of all those drinking in the area, it might be expected that it might generate about 50% of the crime. Superintendent Boycott disagreed. In her opinion the larger the premises the greater the responsibility to reduce crime.

PC Carney disputed the 50% figure (even though it was pointed out that this was the figure given by the Police at the hearing on 17th August 2010). On his figures there was a total capacity in the area of 3000 of which 800 were accounted for by the Establishment. He repeated that the crime rates were disproportionate and referred again to the graph on page 31 of the White Bundle.

The Police were asked why the local elected members had received no complaints from the public about the Establishment. PC Carney replied that he thought there were lots of complaints. He also felt that there had been complaints to the Council's Environmental Health Department. He was directed to page 5 of the agenda which showed that there were no representations by the Environmental Health Department.

The Chairman referred to page 5 of the Green Bundle where Superintendent Boycott mentions the cost of policing and the allocation of Police resources. He pointed out that these were not issues which the Committee could take into account. This was not challenged.

After a short break Mr Stafford put the case for the premises licence holder and called on Stephen Lawler Premises Licence Holder and Dennis Riley Designated Premises Supervisor to respond to points made by the Police and Members. He began by showing CCTV images of Victoria Square. It

was shown to demonstrate the relatively small number of people in the Square.

The capacity figures alleged by the Police were disputed. The figures should be 2850 of which the Establishment accounted for 800. But capacity was not the point. Actual occupancy was not the same thing. The Establishment accounted for most of the actual occupancy in the area.

It was denied that the management had ceased to co-operate with the Police: he felt that it takes two to break down a relationship. The management still intended to work with the police.

Mr. Stafford alleged that the list of 104 incidents in the Pink Bundle did not bear scrutiny: some should not be on the list. He highlighted the incident on 25th December 2010 (Green Bundle page 9) and the incidents in the Pink Bundle pages 17 to 19.

The Police were requesting a serious sanction to be imposed. The incident on 13th/14th September (Pink Bundle page 19) was simple "suspicious activity". That should not be on the list. The incidents in December all fell away when analysed. There were no violent assaults in September. The next was on 3rd October (Pink Bundle page 12). There were 5 incidents in 5 weeks warranting concerns but these were lost in the volume of paperwork. Mr Stafford said that he would not address the issues in Warrington.

In reply to a question as to why there had been no contact with the Police since 19th October Mr Lawler said that there had been meetings with the Police and referred to the meeting on 4th November (Pink Bundle page 15).

Asked why the action plan (White Bundle page 27) had not been signed Mr Lawler said that a lot of the items in it had already been done. He said that people will get drunk but when spotted they will be removed. The action plan was not signed because the review had been requested by the Police.

With regard to the drugs incidents Mr Lawler said that there were 13 incidents on the list. Three of these were from one operation which was conducted with the full co-operation of the management. Nine of the incidents arose when the assistant manager contacted the Police to hand over drugs which the door staff had confiscated.

As for the breach of condition on 9th November (Pink Bundle page 16) Mr Lawler disputed the Police version of the events. He agreed that music should have been turned off but said that the assistant manager had been called away to speak to the police. As for the assistant manager not knowing that he must produce a copy of the licence to the Police on demand Mr Lawler said that he had been issued with a final written warning.

Mr Stafford then showed a second set of CCTV images of Victoria Square. They were designed to show a degree on criminality going on in the Square in front of a Police vehicle.

With regard to the graph on page 31 of the White Bundle Mr Riley went through the bars which were closed for all or part of the time. The bars which were open were not busy. He was insulted by the graph. The Establishment got all of the trade. They operated a wrist band system. On Fridays they get 400 to 600 people. On Saturdays it is 800 to 1000. They also have a student night on Mondays from Warrington University which is all wrist-banded.

As for the incident on 9th November they know when they have to close. Mr Riley confirmed that a final written warning had been issued to the assistant manager.

In summing up Mr Stafford said that Mr Lawler wished to voluntarily offer a reduction in hours on Fridays and Saturdays from 05.00 to 04.00.

Mr Stafford referred to paragraph 5 and paragraphs 22 to 25 of the Council's statement of licensing policy.

The issue was whether what was being requested by the Police (the White Bundle page 6) was a proportionate and necessary response. Mr Stafford also referred to paragraph 11.24 of the section 182 Guidance because this had been referred to by the Police in their application (White Bundle page 6). It was not appropriate to use this that the Police quotation was partial. Mr Whur said that he was not pursuing this point. The Committee was asked to think of the commercial viability of any conditions imposed. Mr Tully was asked whether the Committee could take into account commercial viability. He advised the Committee that while it was not a licensing objective and therefore not relevant as such it was relevant to the issue considering what was a proportionate and necessary response.

Mr Whur then summed up his case. He said that the

Licensing Committee have to determine what will promote the licensing objectives. He referred to paragraph 11 of the Council's statement of licensing policy. Superintendent Boycott was a very senior officer to be attending a licensing hearing.

The number of assaults which had occurred since the last hearing was of particular concern: He referred to the incidents in the Pink Bundle on 22nd August, 29th August and 30th August.

He did not believe that the licensing objectives were being promoted by the management. With regard to the second video why hadn't the Police been notified of the criminal activity?

Mr Whur referred to the Section 182 Guidance paragraphs 11.1, 11.16 and 11.19 (and later, paragraph 11.24).

As for the offer to reduce hours on Fridays and Saturdays this was a sop. Most incidents happen before this time.

The Establishment are the biggest licensed premises: they should be the best.

The Police had heard nothing during the hearing to change their minds.

The premises were taking up a disproportional amount of Police time.

The Chairman asked for clarification as to whether the Police were still asking for revocation. Mr Whur confirmed this was so.

The Chairman pointed out that the case presently under appeal had nothing to do with the present case. He also pointed out that this was the first case before the Committee where the Police were asking for revocation without having used any of their other powers first (e.g. Section 53A, section 160 and section 161). Mr Whur confirmed that these other powers were not available. The incidents relating to the Establishment were not, individually, serious enough to trigger other powers.

The Committee then retired for 1 hour and 40 minutes to consider the matter.

RESOLVED: That

Having considered the application in accordance with Section 4 Licensing Act 2003 and all other relevant considerations the Committee made the following determination:-

1. The request that the premises licence be revoked be rejected.
2. The request that if the Committee was not minded to revoke the premises licence that the hours be restricted for the sale of alcohol to 01.00 and the venue closed by 01.30 be rejected.
3. The hours of operation of the premises licence be varied as follows:-

Category O – Hours the premises are open to the public

Fridays and Saturdays – 10.00 to 04.00

Category B – (Films (Indoors), E - Live Music (Indoors), F – Recorded Music (Indoors), G – Performance of Dance (Indoors), I – Making Music (indoors), J- Dancing (Indoors), K – Similar to L or J (Indoors, L – Late Night Refreshment (Indoors), M – Supply of Alcohol (Indoors)

Fridays and Saturdays – 10.00 to 03.30

4. The following additional conditions be imposed on the premises licence

Incidents of Violence:

1. The Licence Holder shall ensure that customers are continually monitored for signs of aggression/temper/argument so that situations are diffused before they get out of hand.
2. The Licence Holder shall ensure that if patrons are ejected they must be monitored to ensure that violent behaviour does not continue immediately outside. If necessary The Licence Holder shall ensure that the Police are informed at an early stage.

Drunken customers :

1. The Licence Holder shall ensure that Bar staff/door staff shall be attentive as to how intoxicated customers are becoming. If bar staff detect such a

matter then Doorstaff shall be informed.

2. The Licence Holder shall ensure that Notices are displayed in bar area to this effect
3. The Licence Holder shall ensure that If it is believed that a customer is drunk then further service shall be refused.
4. The Licence Holder shall ensure that Door staff shall refuse entry to all customers who appear drunk.

Drugs :

1. The Licence Holder shall ensure that a rigorous drug search policy is implemented. Anyone failing to comply shall be refused entry.
2. The Licence Holder shall ensure that all positive searches are notified to Police immediately and CCTV images to be noted. (No staff to put themselves at risk in attempts to detain offenders)
3. The Licence Holder shall ensure that all Staff are vigilant for signs of drug use and report any suspicious activity to the Designated Premises Supervisor or duty manager

Underage Persons :

1. The Licence Holder shall ensure that anyone (especially females) entering the premises who appears to be under 25 years of age who will be asked to prove their age. Accepted methods of proof of age are: passports, photo driving licences and PASS accredited proof of age cards e.g. Validate, Connexions, Citizen Card, Prove It Card. If any such person fails to satisfy the licence holder by means of such proof of age that they are 18 years old or older that person shall be ejected from the premises forthwith.
2. The Licence Holder shall ensure that anyone (especially females) who appears to be under 25 years of age who is consuming alcohol or attempting to purchase alcohol will be asked to prove their age. Accepted methods of proof of age are: passports, photo driving licences and PASS accredited proof of age cards e.g. Validate, Connexions, Citizen Card, Prove It Card. If any such person fails to satisfy the licence holder by means of such proof of age that they are 18 years old or older that person shall be ejected from the premises forthwith.

Time that the variations shall take effect

The determination shall come into effect in accordance with section 52(11) Licensing Act 2003 at the end of the period given for appealing against the decision or if the decision is appealed against as soon as the appeal is disposed of.

Reasons for the determination

The Committee accepted that all of the incidents or occurrences referred to in the Police evidence (in the Pink Bundle and the Green Bundle) took place as a matter of fact. However, the Committee did not accept the conclusions which the Police had reached on the basis of those incidents.

The Committee did not consider it appropriate to take into account incidents which had already been the subject of a determination by the Committee at the hearing on 17th August 2010 and considered the incidents subsequent to 17th August. The Committee felt that a correct decision had been arrived at on that occasion.

It was not acceptable that the Police should use incidents against the licence holder which were patently unreasonable. For example, when the assistant manager called the police (on 9 occasions) to hand over drugs seized in the execution of its drugs search policy the management should have been commended. Instead, cases are recorded against the management. A number of other incidents were vague such as "suspicious behaviour" (Pink Bundle page 19) or were not "incidents" at all, such as the meetings between management and the police (Pink Bundle pages 14 and 15). The breach of licence conditions on 9th November 2010 (Pink Bundle page 16) was not acceptable but had been dealt with appropriately. Also, undertakings as to better staff training had been given.

The issue of assaults was of concern to the Committee. It was difficult for the Committee to establish the relative seriousness of most of the assaults from the Police evidence. The Police had failed to link the issue of assaults (or indeed any of the criminal activity) with any culpability on the part of the management (despite being asked to do so).

The reduction in hours on Fridays and Saturdays as volunteered by Mr Stafford was accepted by the Committee.

The additional conditions set out above are based on the proposed action plan on page 27 of the White Bundle. The ambiguities in the original wording (such as "considerably

more”, “more attentive” and “more frequent”) have been removed and the proposed underage checks have been tightened up to include a ‘challenge 25’ policy.

The Committee did not feel that the statistical approach set out on page 31 of the White Bundle was correct. It did not compare like with like.

The Committee felt that revoking the premises licence (or reducing the hours as requested by the Police) would not be proportionate or necessary on the evidence before it.

The acceptance of the reduced hours as volunteered by Mr Stafford together with the additional conditions imposed by the Committee were proportional and necessary in re-establishing a proper relationship between the premises licence holder and the Police.

The Chairman stressed at the conclusion of the hearing that the Committee hoped that the premises licence holder and the Police would meet as soon as possible to sort out any differences between them.

Meeting ended at 10.50 p.m.