

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Council Offices, Spennymoor on **Tuesday 7 June 2016 at 10.00 am**

Present:

Councillor J Hart (Chairman)

Members of the Committee:

Councillors B Graham and A Hopgood

Also Present:

Y Raine – Senior Licensing Officer

S Buston – Solicitor – Litigation

Westlea Foodstore

Mr S Mooney – Force Solicitor, Durham Constabulary

PCSO Haigh – Durham Constabulary

Sgt M Urwin – Durham Constabulary

Mr C Cooper – Local Weights and Measures Authority

Mr K Singh – Premises Licence Holder

Mr G Singh – Proposed DPS

Mr A Vedhara – Messrs Singhs' representative

Hill Island Brewery

Mr D Hall – Senior Environmental Health Officer

Mr M Griffin - applicant

1 Apologies for Absence

Apologies for absence were received from Councillors Carr and Hampson.

2 Substitute Members

There were no substitute Members.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The Minutes of the meeting held on 20 April 2016 were agreed as a correct record and were signed by the Chairman.

5 Application to Vary a Premises Licence to Specify an Individual as Designated Premises Supervisor - Westlea Foodstore, 4 West Grove, Seaham

Consideration was given to the report of the Senior Licensing Officer regarding an application to vary the Premises Licence for Westlea Foodstore, 4 West Grove, Seaham, to specify an individual as the Designated Premises Supervisor (for copy see file of Minutes).

A copy of the application and supporting documents had been circulated to Members, together with representations received from Durham Constabulary. The Sub-Committee was informed that since the report had been prepared additional comments had been received from the Police which had been sent to all parties.

Mr S Mooney, Force Solicitor, Durham Constabulary addressed the Sub-Committee advising that over the years Westlea Foodstore had been managed by a number of different people and had regularly been linked to underage sales. The premises had failed 3 test purchases and had become a magnet for children because of poor management.

Mr G Singh had held the position of DPS since 25 April 2016 and was also DPS of G and M Convenience Store. On a visit to the premises it was found that there was no refusals register, no evidence of staff training or training records, and the CCTV had not been working for 3 months. These were within the responsibility of the DPS.

It was very concerning that a male who was employed at the premises was a suspected over-stayer and was awaiting removal from the UK. This was a very serious matter.

A further test purchase had been carried out in the spotlight of these proceedings, yet had failed and alcohol had been sold to a young person. Taking all these matters into account he believed that the circumstances were exceptional and asked Members to refuse the application.

PCSO Haigh referred to the additional bundle of evidence submitted by the Police and confirmed that on 4 May 2016 a visit was made to G and M Convenience Store, at which Mr G Singh was Premises Licence Holder and DPS, to assess the management of the premises and the adherence to conditions. This was part of checks carried out with regard to the application to vary the DPS at Westlea Foodstore. During the visit a number of issues were highlighted with regard to the adherence to Annex 3 conditions added to the Premises Licence at a review hearing in 2011.

PCSO Haigh took Members through his witness statement which confirmed that there was no refusals register, training or training records and that the CCTV system was not working and had not been for 3 months according to the male who was serving during the visit.

The statement also provided details of the checks carried out on the male shop assistant who was arrested on 5 May 2016 for the offence of 'knowingly remaining beyond the time limited by leave'. When arrested he had asked for Mr G Singh to be notified. On 6 May 2016 the Police received confirmation that the male was awaiting removal from the UK.

PCSO Haigh then gave details of the failed test purchase on 17 May 2016 at Westlea Foodstore and noted that Mr G Singh was the DPS of the premises at the time.

He concluded that the role of DPS was a position of responsibility and accountability and should not be taken lightly. Mr G Singh had shown a lack of robust management and leadership at G and M Convenience Store.

Mr Vedhara the representative of Mr K Singh and Mr G Singh, asked if the Police were aware of the break-in, during which the CCTV hard drive had been stolen together with the till drawer where the refusal slips were kept, the lottery system and cigarettes.

The meeting adjourned to allow the Police to obtain details of the burglary.

After re-convening Sgt Urwin explained that on checking the Police system, on 8 May 2016 criminal damage had been caused by a youth kicking the external door of the rear yard. This was disputed by Mr Singh who advised that it was during a burglary on 26 April 2016 that he lost all his stock. Further checks by Sgt Urwin with the Crime Record Unit confirmed that the burglary had taken place, however of the list of items reported stolen there was no mention of a till or refusals slips.

Councillor Hopgood asked if a refusals register and training records had been provided since the visit to the premises. Mr Mooney confirmed that none had been produced and he would have expected Mr Singh to provide these documents before the hearing.

Mr Vedhara addressed the Sub-Committee on behalf of Mr K Singh and Mr G Singh as a friend. He advised that he had stepped in to represent them because they were worried that they may be misunderstood during the hearing. Mr G Singh advised that he had worked in a store for 15 years and was confident with the written word. He had been worried that he would be misunderstood because he was nervous at these proceedings.

Mr Vedhara referred to the male serving in the shop during the Police visit and advised that he had only worked there 3 days so would not have been aware that the CCTV had been out of operation for 3 months. He believed he would also have said anything to keep himself out of trouble.

With regard to Mr G Singh's suitability as DPS he advised that he had held the position since 2011. Mr K Singh had recently purchased the premises as his first business and would apply to be DPS following his CRB check. His good friend Mr G Singh had offered to carry out the role in the meantime.

Mr G Singh believed that these were unfortunate circumstances and put it down to the stress of financial loss and that he was now being served with a review application in respect of his own premises. Mr Singh was only in the role of DPS at Westlea Foodstore on a temporary basis.

Mr Mooney asked Mr Singh about the suspected over-stayer. Mr Singh responded that he needed more staff after the burglary and the male had walked into the shop asking for work. He had provided a driving licence and National Insurance details and had said that he had an application with the Home Office for a visa. Mr Singh had asked to see the male's passport who advised that he would bring it to the store the following week. Mr Singh produced a copy of the driving licence and national insurance details for Members.

Upon further questioning from Mr Mooney, Mr Singh advised that the male had received training while he was waiting for his passport to be produced. When the male was arrested he had asked for Mr Singh to be notified because he had been in the shop at the time of the sale.

Councillor Hart noted that the address on the driving licence was in Norwich and was told that the male had recently moved.

Mr Mooney asked what steps Mr Singh had taken to uphold the licensing objectives since the visit on 4 May 2016 and the failed test purchase.

Mr Singh advised that he had given staff full training in Challenge 25. Mrs Kennedy, the member of staff who had failed the test purchase, confirmed that she had received training and had signed the training record. He had not brought the training record to the hearing.

Following a question from Mr Mooney about the refusals register, Mr Singh explained that G and M Convenience Store had an EPOS till system which produced refusal slips. These were then retained in the till and this system had been in operation since 2015. The slips were in the till when it had been stolen. An EPOS till system had been ordered for Westlea Foodstore.

Councillor Hart asked Mr K Singh why he felt that Mr G Singh could be DPS at both stores given the historical problem at Westlea Foodstore. Mr G Singh replied that he was carrying out the role only until Mr K Singh was in a position to make application himself.

Councillor Hart asked why the CCTV was not immediately rectified, given the current scrutiny of the premises and the fact that the Police considered that the exceptional circumstances warranted a request for refusal of the application.

Mr Singh advised that he had lost everything in the burglary and the CCTV would cost a lot of money when he already had doors and shutters to replace.

Upon further questioning from Councillor Hart about the test purchase and whether he felt he had failed in giving his staff adequate training especially as it had occurred so close to the hearing, Mr Singh advised that he had now asked staff to

be very careful and that he had not had good luck with the burglary and the suspected over-stayer.

Questions were then asked by Members of Mr Singh's employment of the suspected over-stayer. Mr Singh explained that the male had walked into the shop asking for work and had advised that he had experience working in off-licences. He had trusted him and needed staff. When he was arrested Mr Singh had only been absent from the store for about 20 minutes.

Upon further questioning it was established that the day before the arrest Mr Singh had been in Birmingham most of the day. Mr Singh confirmed that the male had been working in the shop that day but at a time when the premises was quiet. Alcohol sales usually took place after 5pm.

Mr Vedhara advised that they had not produced documents because the Solicitor who had represented both Mr Singhs at the last hearing had not asked for any information from them up to the Friday before the hearing. Mistakes had been made by Mr Singh but he believed that these could be rectified.

All parties were invited to sum up.

Mr Mooney stated that whilst it was unusual it was relevant to refer to another store in this case. Mr Singh had been in breach of conditions of his Premises Licence for G and M Convenience Store. The CCTV system had not been working for 3 months and this was supported by the fact that it was still not in operation. There were no training records and a refusals register was not used. Mr Singh had advised that the refusals slips were kept in the till which he had said had been stolen yet there was no record of this. Mr Singh had employed a male without carrying out checks, and then left them in a responsible position of selling alcohol.

Mr G Singh had been DPS at Westlea Foodstore since April 2016. Reference had been made to bad luck but in his view this was poor and inefficient management. Steps could have been taken to improve management of the premises but had not been. The Police submitted that the circumstances were exceptional and asked that the application be refused.

Mr G Singh was sorry and humbly requested the Sub-Committee to give him a chance and he would do everything he could to rectify his mistakes.

At 11.40am the Sub-Committee retired to deliberate the application in private. After re-convening at 11.55am the Chairman delivered the Sub-Committee's decision.

In reaching the decision the Sub-Committee had considered the report of the Senior Licensing Officer, the verbal and written representations of the applicant, the proposed DPS and responsible authority, Durham Constabulary. Members also considered the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the application to vary the Premises Licence to specify an individual as Designated Premises Supervisor, be refused.

6 Application for Review of a Premises Licence - Westlea Foodstore, 4 West Grove, Seaham

In view of the Sub-Committee's decision to refuse the application to vary the Premises Licence to specify Mr G Singh as DPS, Mr K Singh, the Premises Licence Holder requested an adjournment of the review hearing to seek legal advice.

The Chairman asked Mr C Cooper of the Local Weights and Measures Authority, the applicant, for his views. Mr Cooper considered that the hearing should still proceed because of the continuing problems with the premises. He was aware that the DPS could be replaced again but he was not confident that those who continued to work on the premises would take the necessary steps to ensure that the business was managed in the proper manner.

Mr Mooney of Durham Constabulary supported the Local Weights and Measures Authority stating that the Licence holder had not put forward any substantial grounds for adjourning the hearing.

The Sub-Committee retired to consider the request for an adjournment at 12.10pm. After re-convening at 12.15pm the Chairman advised that the Sub-Committee had decided to grant the request for an adjournment with the hearing to be re-convened at the earliest possible date.

Resolved:

That consideration of the application for a review of the Premises Licence be adjourned.

7 Application for the Grant of a Premises Licence - Hill Island Brewery, Unit 7, Fowler's Yard, Durham

Consideration was given to the report of the Senior Licensing Officer regarding an application for the grant of a Premises Licence in respect of Hill Island Brewery, Unit 7, Fowler's Yard, Durham (for copy see file of Minutes).

Mr S Buston, Solicitor – Litigation advised that the Police had not formally objected to the application but had requested a number of conditions to be added to the licence. Mr Griffin had volunteered certain conditions for consideration by the Sub-Committee.

Mr D Hall, Senior Environmental Health Officer addressed the Sub-Committee. He advised that the premises did not have any sanitary facilities but could be open 7 days a week. It was not acceptable to expect members of the public to use the public toilets at Fowler's Yard.

Councillor Hart asked if the updated internal plan supplied by the applicant was acceptable to Environmental Health. Mr Hall confirmed that if the revised layout complied with Building Control requirements Environmental Health would have no objections.

The applicant indicated that he would have no objections to the actions proposed by Environmental Health being incorporated into the Premises Licence.

Mr Griffin, the applicant was invited to address the Sub-Committee. He advised that he had been trading for nearly 14 years supplying beer to local free houses, however these were now becoming sparse. He was now selling beer from a market stall. He had been operating with Temporary Event Notices but these only allowed 21 days per year. He did not want to run the premises as a pub 24/7.

Following questions from Councillor Hart, Mr Griffin explained that the premises would be open 2pm to 11pm on Friday and Saturday and may open on a Sunday lunchtime with a quiz night during the week. Beer would continue to be brewed on the premises so the majority of time would be used for manufacturing. Mr Griffin also confirmed that he would carry out all those actions Environmental Health deemed necessary.

Councillor Hopgood referred to the amended floor plan and asked how access would be gained to the upper floor as the stairs were to be removed. Mr Griffin advised that he would gain access to the upper floor using the outside staircase but this area was for storage use only with no public access.

Councillor Graham referred to the recommendation of the Fire Officer that the maximum occupancy of the building should be no more than 40 persons and Mr Griffin confirmed that he would comply with this limit.

Mr Griffin asked if the conditions could be granted for on-sales only during the works to allow off-site sales. Mr Griffin was advised that this would not be possible and was encouraged to have ongoing dialogue with the relevant authorities during the construction period.

At 1.10pm the Sub-Committee retired to deliberate the application in private. After re-convening at 1.25pm the Chairman delivered the Sub-Committee's decision.

In reaching the decision the Sub-Committee had considered the verbal and written representations of the applicant and Environmental Health, the written comments of the Fire Officer and the additional conditions suggested by the Police. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the application be granted subject to the following conditions:-

General - all four licensing objectives

- a) The premises will be managed in line with the four licensing objectives and government legislation.
- b) Written protocols will be in place detailing policies, procedures, roles and responsibilities in the effective implementation and management of the licensing objectives. This documentation to be held on-site and to be made available upon request.
- c) All staff should undertake an accredited age-related sales training course, including 'proxy sales', before they start employment and should undertake in-house refresher training every six months. Accredited training should be renewed every two years and any new staff should undergo accredited training before commencing duties. Temporary staff should be given facilitated training before commencing duties. Facilitated training should be document and held on-site.
- d) Authorised staff, employed by Durham Constabulary, shall have free access to all parts of the licensed premises, at all reasonable times, for the purpose of inspection to ensure compliance with the terms and conditions of the premises licence and to ensure the promotion of the licensing objectives.
- e) All staff training records will be signed and held on-site and made available to the relevant authorities upon request.
- f) The premises may be required to employ door staff at the reasonable request of Durham Constabulary where concerns are identified and/or when the premises are used as a vertical drinking establishment where little or no seating is provided. Durham Constabulary can agree, in consultation with the Premises Licence Holder, the number of staff required at these times. Any such door staff shall be licensed by the Security Industry Authority and wear a visible licence badge issued by the SIA.
- g) The Premises Licence Holder must maintain a register of any such door staff, showing the name, date of birth, residential address and licence number. The register shall also show the date and time each member of door staff started duty and finished their duty and details of any incident that occurs during that period of duty.
- h) The register must be kept at the licensed premises and be readily available for inspection during licensed hours, by responsible authorities, at reasonable request.
- i) The premises will provide written evidence of the maximum capacity (including staff) for the premises and this written evidence will be

displayed at all entrances and exits. This capacity will be confirmed and set by County Durham & Darlington Fire & Rescue Authority.

- j) Live music will cease at 23:00 hours, except for New Years' Day when it shall cease at 01:00 hours. All windows and doors will be kept closed after 22:00 hours, apart from doors used for entrance and egress.
- k) A Personal Licence Holder and/or the Designated Premises Supervisor will be present on the premises:
 - i) After 22:00 hours when licensing activities are taking place
 - ii) At all times the premises are a 'vertical drinking establishment' where little or no seating is provided

The prevention of crime and disorder

- l) Visual inspection and personal interaction with customers will enable staff to determine if a customer is fit to be sold alcohol. If staff believe a person to be intoxicated with drink or drugs they will be refused.
- m) CCTV will be installed and maintained to Home Office standards and recordings stored for a minimum of 28 days. The system will incorporate a batter back-up system to enable continuous recording in case of any blackout or failure. The premises will ensure that at least one trained member of staff is available to operate the system at all times the premises are open. Such staff will download any images requested by an authorised officer at reasonable request.
- n) Notices will be clearly displayed at the entrance and around the premises, stating CCTV is in operation.
- o) An operational weekly log report must be maintained and endorsed by a signature, indicating the system has been checked and is compliant. In the event of any failings, any actions taken are to be recorded.
- p) The premises will provide suitable devices (USB or discs) for the storage of downloaded images and these devices will be securely stored. These devices will be made available to relevant authorities on reasonable request.

Public safety

- q) Where PubWatch exists, the premises will be an active member and will attend meetings and join activities.
- r) The premises shall maintain an incident book and record/report all instances of disorder both inside and directly outside the premises. This documentation shall be held on-site and made available to the relevant authorities on reasonable request.

Sanitary accommodation provision

- s) Two self-contained toilets are required with a wash hand basin for each toilet. Basins to be provided with hot and cold running water or water at a suitable temperature (instantaneous water heater).
- t) Toilet doors to be fitted with self-closers and mechanical extract ventilation to the external air (this will remove the need for the sanitary accommodation to have lobbies).
- u) Internal surfaces to be impervious easily cleaned.
- v) The dimensions of the toilets to conform to current building regulations.

Health & Safety

- w) If the bar is to be in the basement and the main drinking area is on the ground floor there are obvious implications as regards slips from people carrying glasses of beer up the staircase. The treads would need to be covered in an appropriate non-slip surface covering.
- x) Mezzanine floor barrier to be fitted with a lower kick plate. This is to prevent items rolling off on to the floor below.
- y) Positioning of the furniture on the ground floor should be such that it helps to discourage people leaning over, standing and drinking at the barrier to minimise risk of items being dropped on to persons below.

Food Safety

- z) The bar is to be provided with a wash hand basin with hot and cold running water. All surfaces to be impervious easily cleaned.
- aa) A sink to be provided to the food room with hot and cold running water. A larger Belfast style sink is advisable to enable effective cleaning of equipment.
- bb) Existing concrete floor if level and sealed with a good quality floor paint to enable effective cleaning would be acceptable in the food room (brewing and bar area). An effective and resistant floorcovering to the food areas ie 'altro' style non-slip floor covering.
- cc) Walls/ceiling surfaces to be impervious easily cleaned.

The prevention of public nuisance

- dd) The Designated Premises Supervisor (DPS) shall actively work with local Beat Officers/PCSOs in the reporting of any incidents connected to the premises.
- ee) No alcohol will be consumed in any of the areas directly outside of the premises unless covered by a Temporary Event Notice.

The protection of children from harm

- ff) Challenge 25 shall be enforced. A refusals register shall be held within the premises and all refusals will be logged along with any behaviour associated with the refusal. All staff will be trained in its use. The refusals register will be made available to relevant authorities upon request.
- gg) Persons known to be, or suspected of buying alcohol on behalf of children will be refused and reported to the Police. The premises will work with the Police to minimise the risk of proxy provision/proxy sales (alcohol purchased or obtained by young people by relatives or older friends).
- hh) The premises shall display poster regarding Challenge 25 and proxy sales.
- ii) Children under the age of 16 years must be accompanied by an adult at all times whilst inside the premises and must leave the premises by 22:00 hours.
- jj) Children aged between 16 and 18 years must leave the premises by 23:00 hours.
- kk) Staff will be trained before making sales of alcohol in their responsibilities under the Licensing Act 2003. All staff, responsible for selling age restricted goods, to be trained to implement the age verification policy. Staff training shall include the risk from proxy sales. Training records for staff shall be maintained and refresher training to be provided annually.