

Item 5 - Additional Information from Premises Licence Holder

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BEFORE THE STATUTORY LICENSING SUB-COMMITTEE OF DURHAM
COUNTY COUNCIL

Application for the Review of a Premises Licence

In Re Memory Lane, 51 Church Street, Seaham SR7 7HF

20TH MAY 2024

WRITTEN REPRESENTATIONS ON BEHALF OF THE PREMISES LICENCE
HOLDER

PURSUANT TO SECTIONS 51(3)(C) AND 52(2),(7)(8) LICENSING ACT 2003

David Comb, counsel (instructed by Swinburne Maddison Solicitors) for the respondent.

15th May 2024

The Premises: History and Character

1. On 25th August 2021 a premises licence was granted for the sale of alcohol at premises known as Memory Lane, 51 Church Street, Seaham SR7 7HF (**“the premises”**) . The premises licence holder and DPS has at all times been Mrs. Emma Bird.
2. The premises has traded as a public house with a *Motown* music theme i.e. playing music from the 1970s era. The premises attracts a clientele broadly in the age range of 40-70 years. There have been no prior incidents of crime or disorder recorded at the premises. The premises belongs to the Pub Watch scheme and has at all times engaged cordially with the local Licensing Officer.
3. The premises has never before been subject to review proceedings, for example for the purpose of adding additional license conditions.

4. The true character of the premises is perhaps reflected in the following correspondence provided by a Town and County Councillor, Mayoress Elect of Seaham and patron of Memory Lane:

From:

Date: Mon, 13 May 2024 at 22:10

Subject: Memory Lane

To:

To who it may concern.

My name is

I am years old, a Seaham Town councillor, County councillor and will be Mayor of Seaham from 14th May 2024.

This email is a personal opinion about my experiences of Memory Lane.

I visit this establishment every time I go out which is approximately twice a month. It is a friendly and popular place for the community and I've always felt safe whenever I have visited. I've never known or heard about any trouble until the night in question. I was in at the time of the trouble and am so upset that a group of strangers have come into our local and destroyed it. The regulars never act in this way. They have respect for Emma, L and P who are lovely caring people with the public interest at heart.

In my opinion this pub shouldn't be closed at all.

Kind regards

Councillor

The Incident

5. On 20th April 2024 at approximately 11.08pm a serious incident of violence occurred in the premises' external area (**"The Incident"**). A member of staff called an ambulance and police officers quickly attended the scene.

6. CCTV footage was not immediately viewable upon request but was provided to the police shortly afterwards. The Review report indicates that a suspect has been identified and that the CCTV footage provides very powerful evidence.

7. The commercial footing of Memory Lane is an unwritten partnership agreement between Mrs. Bird and her two aunts. Dispute has arisen because upon request, Mrs. Bird's aunt has refused, or been unable, to produce satisfactory books or financial records. When the respondent has complained about this, the Aunt withheld control of the CCTV operability.

8. It was in the above circumstances that on the date of the incident, the respondent was obliged to attend the premises and direct the investigating officers to her Aunt, who appears to have provided the footage to the police.

9. The respondent has now, at her own expense, installed a new and independent CCTV system, over which she retains control.

Submissions: The Applicable Legal Principles

10. It is submitted that upon a careful analysis of The Incident and the broader circumstances relating to the premises, a revocation of the premises is unnecessary and/or disproportionate.

11. That necessity and proportionality are touchstones under the Licensing Act was confirmed by the Administrative Court in *Daniel Thwaites Plc v Wirral Borough Magistrates' Court v The Saughall Massie Conservation Society, Wirral Metropolitan Borough Council* [2008] EWHC 838 (Admin):

40. The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is necessary to promote the four licensing objectives set out in section 4(2). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, section 18(3)(b), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must "take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives" (the steps in subsection (4) include the grant of the licence subject to conditions). Section 34(3)(b), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is necessary to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

"Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose."

41. The Guidance also refers a number of times to the need for regulation to be "proportionate".

This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being “necessary”, it must in my view be confined to that which is “proportionate” and one can understand why the Guidance spells this out.

12. Whether or not a particular step taken pursuant to the Act is necessary and proportionate must be measured against the familiar Licensing Objectives set out in section 4 of the Act:

- “(2) The licensing objectives are—
- (a) the prevention of crime and disorder;
 - (b) public safety;
 - (c) the prevention of public nuisance; and
 - (d) the protection of children from harm.”

13. The range of powers, exercisable by the Committee pursuant to a finding that a measure or measures is necessary and proportionate to achieve the Licensing Objectives are contained in section 52 of the Licensing Act 2003:

“(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers [appropriate]¹ for the promotion of the licensing objectives.

- (4) The steps are—
- (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Submissions: Application of the Legal Principles to the Facts

14. The Committee is invited to scrutinise with the care the application for review and also the conditions currently attached to the premises license.

15. The Premises License Provides:

“The premises will ensure that a trained member of staff is available to operate the CCTV system at all times and download any images requested by Police or an authorised officer of the local authority and provided within 48 hours of a request being made.”

16. It is acknowledged that a trained member of staff was not available to download CCTV images for the police immediately upon request. That is a material consideration to which it is respectfully submitted that the Committee ought to have regard. However, it should also be noted that the CCTV was functional and that footage was provided “within 48 hours of a request being made”. Furthermore, upon a reading of the review application, this CCTV appears to be the cornerstone piece of evidence in the police investigation:

“CCTV has captured the assault in full and it shows a horrific attack on the victim who has significant injuries to his face. The victim has been punched over a dozen times to the face whilst he appears unconscious displaying a clear intent to cause serious harm to the victim.”

17. Whilst a limited criticism of the CCTV operability was justified, it is submitted that the review application has veered into criticisms that cannot properly be characterised as a breach of licensing conditions. For example:

“The conditions around CCTV is not being adhered to when the system cannot be accessed [sic] within the venue and despite it being a Saturday evening with karaoke [sic] on there were no doorstaff present at the venue.”

18. In reply to this it should be noted that the premises is not subject to a licensing condition of operating with door staff, whether on a Saturday, during karaoke, or at all. It should be noted that the Committee has power to impose such a condition, as a lesser proportionate alternative to premises closure.

19. The review application goes on to make the criticism that:

“The incident also took place after 11pm when the bar should have been closed and the cctv shows that patrons appear to be intoxicated. Due to the difficulties in obtaining CCTV it has not yet been possible to get the inside camera's (as the police's focus have been on this serious assault) to see if alcohol sales were taking place after 11pm.”

20. What the review does not make clear is that the incident took place at just 8 (eight) minutes past 11pm. There was no obligation for the premises to be closed by that time, only for sales of alcohol to have ceased. The Committee will be aware that it is standard industry practise to permit time for “drinking up”. Furthermore, the reference to sales of alcohol after 11pm is simply not evidence based but rather speculative.
21. The Review application submits that the licensing objective of preventing harm to children is engaged at the premises. However, it is submitted that there is simply no evidence of this. No children were present during The Incident and none were in the vicinity. There is no suggestion of underage sales or any similar problem concerning children or young people.
22. It is further submitted that there is an absence of an Incident Log at the premises. However, a copy of the same is appended to this application. Whilst it is acknowledged that the premises does not have a formal drugs policy, anti-drugs posters are situate at the entrance and toilets. Moreover, it is submitted that drugs use has never been a problem at the premises and in the circumstances, the absence of a formal policy is of limited practical detriment.
23. In conclusion, it is submitted that the Incident was an aberration and that the evidence does not support the conclusion that the premises license by necessity must be revoked to further the licensing objectives. Further and in the alternative, it is submitted that if some measure or measures are necessary to achieve the licensing objectives, this can proportionately be achieved by measures short of revocation.

2024

JAN 1 Mon
JAN 2 Tues NO CONCERN
JAN 3 Wed No incident
JAN 4 THURS " "
JAN 5 Fri No incidents
JAN 6 Sat No incidents
JAN 7 Sun " "
JAN 8 Mon " "
JAN 9 Tues "
JAN 10 Wed No incidents
JAN 11 THURS " "
JAN 12 Fri No incidents
JAN 13 SAT No incidents
JAN 14 Sun NO incidents
JAN 15 Mon " "
JAN 16 Tues " "
JAN 17 Wed No incidents
JAN 18 THURS " "
JAN 19. Fri No incidents
JAN 20 SAT No incidents
JAN 21 Sun
JAN 22 Mon " "
JAN 23 Tue
JAN 24 Wed No incidents

JAN 25 THURS
 JAN 26 Frid No incidents
 JAN 27 SAT No incidents
 JAN 28 Sun
 JAN 29 Mon Refused service as no id -
 JAN 30 TUES
 JAN 31st WED No incidents
~~JAN~~ Feb 1 THUR
~~JAN~~ Feb 2 FRI No incidents
~~JAN~~ Feb 3 SAT No incidents
 Feb 4 SUN
 Feb 5 MON
 Feb 6 TUES
 Feb 7 WED No incidents
 Feb 8 THUR
 Feb 9 FRI No incidents
 Feb 10 SAT No incident
 Feb 11 SUN Empty drug packet in bin (coserve)
 Feb 12 MON 1 case injury 1 case 10 no #/ #
 Feb 13 TUES no incidents #/ #
 Feb 14 WED No incidents
 Feb 15 THURS
 Feb 16 FRI No incidents
 Feb 17 SAT No incidents
 Feb 18 SUN

Feb 19 th	Mon	No incidents
Feb 20 th	Tue	" "
Feb 21 st	Wed	No incidents
Feb 22 nd	Thur	" "
Feb 23	Fri	No incidents
Feb 24	Sat	No incident
Feb 25	Sun	" "
Feb 26	Mon	" "
Feb 27	Tue	" "
Feb 28	Wed	No incidents
Feb 29	THUR	" "
Feb ^{March} 1	fr	No incidents
Feb March 2 nd	Sat	No incidents
Feb March 3 rd	Sun	" "
Feb March 4 th	Mon	No incidents
March 5	Tue	" "
Mar 6	Wed	No incidents
Mar 7	THUR	" "
Mar 8	Fri	No incidents
Mar 9	Sat	No incidents
Mar 10	Sun	No incidents
MAR 11	Mon	" "
MAR 12	Tue	" "
MAR 13	Wed	No incidents
MAR 14	THUR	" "

MAR 15	FRID	No incidents
MAR 16	SAT	No incidents
MAR 17	SUN	
MAR 18	Mon	NO INCIDENTS
MAR 19	Tues	NO INCIDENTS
MAR 20	Wed	No incidents
MAR 21	THURS	NO INCIDENTS
MAR 22	Frid	(2 LASSES ARGUING) Everything OK
MAR 23	SAT	NO INCIDENTS
MAR 24	SUN	
MAR 25	Mon	NO INCIDENTS
MAR 26	Tues	NO INCIDENTS
MAR 27	Wed	Refused someone admunk
MAR 28	THUR	NO INCIDENTS
MAR 29	Fri	No incidents
MAR 30	SAT	No incidents
MAR 31	SUN	NO INCIDENTS
APRIL 1	Mon	NO INCIDENTS
APRIL 2	Tues	NO INCIDENTS
APRIL 3	Wed	No incidents
APRIL 4	THUR	NO INCIDENTS
APRIL 5	Frid	SCUFFLE ^{2 LADS} IN YARD
APRIL 6	SAT	NO INCIDENTS
APRIL 7	SUN	NO INCIDENTS

APR 8	Mon	No incidents
9	Tues	
10	Wed	No incidents
11	THUR	
12	Fri	No incidents
13	SAT	No incidents
14	Sun	
15	Mon	
16	Tues	
17	Wed	No incidents
18	THUR	
19	Fri	No incidents
20	SAT	Fight in back yard 2 males Police call.
21	SUN	No incidents
22	Mon	No incidents
23	Tues	No incidents
26	Wed	No incidents

SAT APRIL 20th

2 MALES Fighting in back yard.

and myself
were working behind the bar
when someone came into bar and
said there was a fight in
back yard went straight
out and I followed. but
seeing all the blood I
couldn't go out as I have a
phobia of blood. came.
straight back in and said he
needed an ambulance so I
passed my phone to who
phoned 999. I then phoned
Emma the licensee who then came
straight down. then 1 policeman.
arrived. just before Emma

16:21

5G



Pub Watch



30 Aug 2023

Is it 9 or 9:30

08:48

9.30

08:48

Thanks

08:48

Sorry, I can't make it this month 😞
Doctor's appointment x

09:11

No worries

XX

09:12

Sorry I can't make it today, but I need to
speak to the licensee officer plz any
chance you can give her my number x

09:17 ✓

~ Emma added ~

Thanks x

09:54 ✓

~ Emma added ~

~ Emma added ~



17:22



Re: 11/23/23

To: [Info](#)

Hi it's Emma

- > Sent: Thursday, November 23, 2023 at 7:15 PM
- > From:
- > To:
- > Subject:
- >
- > Please send
- >
- > Images of damage
- > Receipt for purchase
- > Invoice for fixing cameras.
- >
- > Thanks again
- > DURHAM CONSTABULARY, Protecting Neighbourhoods, Tackling Criminals, Solving Problems...Around the Clock
- >
- > NEIGHBOURHOOD POLICING: Use your postcode to get access to local news and events from your Neighbourhood Policing Team, at <https://www.durham.police.uk>
- >
- > This email carries a disclaimer, a copy of which may be read at <https://www.durham.police.uk/Pages/E-Mail-and-SMS-Text-Disclaimer.aspx>





through my phone can't do the
wot time Saturday plz thanks Emma
bird

Sun, 24 Sep at 11:14

Hi Emma. Would you be available to
come down at 1pm?

Yes where at

When

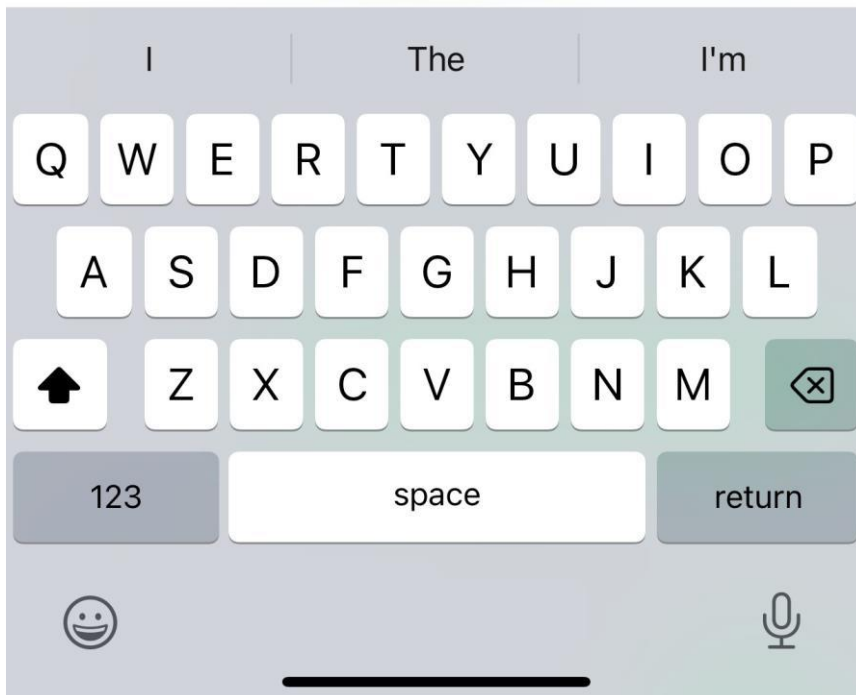
1300 at Seaham police station

On way x

Fri, 6 Oct at 14:36

Subject

+ | Text Message |



----- Forwarded message -----

From:

Date: Mon, 13 May 2024 at 09:44

Subject: cctv and security installation

To: Emma Bird

Good morning Emma

Please apologise for my late returning my email regarding my visit to your premises memory lane church street yesterday regarding CCTV Security and to confirm the following.

I was unable to commission the expensive DVR you purchased due to it being an incorrect model to match the TVI cameras installed on the premises at church Street.

I have been able to find an equivalent replacement based on the app you used to access the CCTV via the Internet and have ordered it this morning.

The unit will arrive Wednesday 15th and I will attend the premises and commission the cameras and unit and hard drive to start receiving images and have Internet access for you security and licencing requirements this week as soon as I have the unit.

All the cameras you currently have do not need changing and have a decent enough image being 4mp picture quality.

I will make sure the recording will cover up to 60 days which is normally twice as much required for licensing purposes.

As agreed I will also place the unit in a secure area and in a strong box as requested to secure it from removal or tampering.

Please pass my number on to whoever needs clarification on the above matter and rest assured the cctv will be fully operational this week.

I have many public house customers who I currently manage for my clients and around 30 years experience in installation and service of CCTV Fire and Internet services in the licence trade.

We have had many successful retrieval of sensitive material to help the police in their enquiries.

These have been both inside the premises of the customer safety or patrons of the establishment or general recording externally of images of passing traffic.

Should I be of any further assistance please do not hesitate to contact me on _____ assuring you of my best intentions at all times

Kind regards

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