

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber - County Hall, Durham on **Thursday 2 August 2018 at 10.00 am**

Present:

Councillor L Marshall (Chairman)

Members of the Committee:

Councillors L Brown and C Hampson

Also Present:

Councillor G Darkes

Councillor M Wilson

K Robson – Senior Licensing Officer

S Buston – Legal Adviser, DCC

Mr J Smith - applicant

Ms Suceveanu - applicant

Mr C Holland – legal representative of the Licence Holder

Mr M Walsh – representative of the Licence Holder

Mrs A Walsh – representative of the Licence Holder

Mr I Wilson – other person

Mr P Knox – other person

Mr Brightwell – other person

Mrs P Keegan – other person

Mr J Walker – legal representative of Durham Constabulary

Sgt C Dickenson – Durham Constabulary

PC D Haythornthwaite – Durham Constabulary

1 Apologies for Absence

There were no apologies for absence.

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 19 June 2018 were agreed as a correct record and were signed by the Chair.

5 Application for the Review of a Club Premises Certificate - The Leather Cap Sports and Social Club, 1-2 Browning Street, Easington Colliery

Prior to the commencement of proceedings Mr Holland, Barrister for the Licence Holders asked to address the Sub-Committee. He explained that the Police concerns focused on the incident of 3 March 2018 and the actions of the DPS. The removal of the DPS was an option that the Police wished to be considered and Mrs Walsh wished to step down from this position. The situation was unusual in that the Leather Cap Sports and Social Club held both a Club Premises Certificate and Premises Licence. Mr Walsh had made application for both licences at the time of purchase to ensure a wider pool of customers to help the premises when it first re-opened. The Club did not now need a Premises Licence and Mr Walsh was willing to surrender it.

This would regularise an unusual situation and mean that the supervisory role would be the responsibility of the members of the Club's Committee. As a club the premises would be able identify its pool of customers; ie members and their invited guests.

If Members were minded to allow the Club Premises Certificate with additional conditions the Premises Licence would be surrendered forthwith.

Mr Holland continued that the conditions for both the Club Premises Certificate and the Premises Licence were aspirational rather than legally enforceable. In consultation with the Police, additional conditions were offered relating to the CCTV arrangements, the provision of an incident book, and that the Club 'will' report any incidents of violence immediately to the Police. The applicant had complained about horses tethered outside his house and although it was difficult to appreciate how this related to his clients' premises, this practice would be discouraged by way of signage and gentle reminders from the Club.

Mr J Walker, the Barrister for Durham Constabulary confirmed the agreement of the Police to the measures offered by Mr Holland.

Questions were invited of Mr Holland. Mr Smith the applicant queried how the tethered horses, which were owned by Club members, could not be connected with the premises. The Licence Holders had refused to take any action regarding this matter.

Following a further query from the applicant, Mr Smith was advised of the distinctions between the Club Premises Certificate and the Premises Licence.

Mr Smith was invited to address the Sub-Committee and prior to stating his case explained that he wished members to disregard a number of pages from his submissions, in view of the content which he did not want to be in the public domain

(pages 40, 41, 44, 45, 46, 47, 48, 101, 109, 110, 111, 115, 116, 118-122). Mr Smith was informed that in accordance with the provisions of the Licensing Act 2003 the documentation formed part of his review application and had therefore been published, but had been redacted to remove any reference to personal information.

At 11.10am the Sub-Committee **Resolved** to retire in private to discuss Mr Smith's request.

After re-convening at 11.20am the Chair advised that the Committee had determined that the documents were in the public domain and therefore could not be disregarded, but she asked Mr Smith to focus his representations on the matters he wished the Sub-Committee to take into account.

Ms Suceveanu, the applicant's mother addressed the Sub-Committee with the aid of an interpreter. She stated that she was the owner and occupier of the property. Her son worked away but came home once every two weeks or once a month, and at weekends. She liked Easington Colliery as it was a quiet area, and it was an unpleasant surprise on her first night in the property to find that a person had written on the walls that they should leave as they were not welcome. She did not take this warning into consideration as every time she went shopping she was smiled at on the street. This was why the incident on 3 March 2018 was very troubling. Her son had witnessed the assault as he was at home. The DPS did not intervene at all and after 20 minutes her son called an ambulance. She was then on her own until 8 May 2018 and with empty properties on either side. Her only neighbours were the Club's owners. She welcomed the Barrister's comments as he had tried to offer a solution. She had also experienced very loud music. Customers were outside the premises until 11pm because of the hot weather as the room in the Club was small; this meant it was very noisy. Her son had tried to knock on the owners' door three times to discuss issues but no-one answered. They did not complain until 10 May 2018 as they wanted to try to communicate with the owners but they did not want to speak with her and her son. This was the first time she had met them.

She was sorry that she had to involve her son but she wanted peace of mind. She often saw young people consuming alcohol, when there was usually trouble.

Mr Smith then addressed the Sub-Committee. He stated that he was at home on 3 March 2018 when Club members were aggressively harassing a person in the street. Other Club members tried to hide any trace of the assault and did not call the Police. He had handed over his CCTV recording. 15 customers had been arrested. On 8 May 2018 he had tried to speak with the owner of the Club but he refused to answer the door. In letters Mr Walsh had threatened to take him to court and had confirmed that he was able to manage his Club members.

On 10 May 2018 around 15 people were outside his house shouting racist and harassing words for around three hours when on the phone to his mother. They also tethered a horse in front of their house. Mrs Walsh was shown the CCTV footage which clearly showed this and took no action. When the Police attended they intimated that Mr Walsh was behind the attacks. The situation became worse and Mr Smith gave details of a further incident on 3 July 2018 at around midnight

when a person with an axe smashed their front door. He suspected that the attacks were from members of the Club.

Referring to a posting at page 39 in the Bundle, he advised that this abuse had been written by a friend of Mr Walsh.

Mr Smith continued that there was a lot of noise emanating from the premises and drunk people from the Club used the park. He had witnessed a group of children drinking alcohol close to the premises; he recognised that the glasses were those used by the Club.

Members were provided with copies of photographs of the CCTV footage from Mr Smith's property.

Questions were invited of the applicant. Mr Smith was asked if he had evidence that linked the people from the Club to the premises. Mr Smith referred to DVD footage from 10 May 2018. Consideration was given to whether this should be shown and it was determined that the photographs could be relied upon.

Upon questioning by Mr Holland, Mr Smith advised that during the incident of 3 March he understood that the person outside the premises who he referred to as the owner of the Club was Mr Walsh. Mr Holland clarified that Mr Walsh was not in the country at the time the assault took place.

Mr Holland asked Mr Smith about Facebook postings he had made against the Club and Mr Walsh. The Sub-Committee noted that these had not been included in the evidence submitted. Mr Holland advised that he had raised the matter as Mr Smith had referred to Facebook within his submissions, and that he claimed that he was a victim, yet his client had been the subject of a repeated barrage of allegations from Mr Smith.

Reference was made to the ongoing criminal investigation following the incident on 3 March by Mr Holland who relied upon the Police to make application to consider the information in private under Regulation 14 of Hearings Regulations 2015. Mr Walker advised that he could not see how discussion about the incident of 3 March 2018 in public would prejudice any investigation at this stage.

Mr Holland continued by asking Mr Smith to clarify who he thought the owner was as there was some confusion as to whether it was Mr or Mrs Walsh in his grounds for review. Mr Smith responded that it was either Anne Walsh or Michael Walsh but when he made application he had believed it be Mrs Walsh in ground 1.

Mr Holland noted that Mr Smith had complained about noise but that he had not provided any audio of this.

Mr Smith advised that he had submitted audio and relied upon this evidence. Therefore after a short adjournment all parties heard the audio recorded from upstairs in Mr Smith's property. Mr Smith advised that the house was double-glazed and had 100mm insulation in the walls. The recording was of music playing.

Councillor Hampson asked if Mr Smith had ever complained to Environmental Health about noise levels. Mr Smith confirmed that he had but he had not pursued his complaint further because he considered that it could be dealt with as part of his review application. Mr Holland disputed this stating that the complaint had been closed on 9 July 2018 by an Environmental Health Officer. Mr Smith advised that he had written to Mrs Walsh to advise that he did not intend to proceed with his complaint.

Ms Suceveanu added that they often experienced noise between 5pm and 11pm. The door was always open in the afternoon when customers were outside drinking. The music was played at a maximum level and customers spoke loudly above it.

Mr Holland continued his questioning of Mr Smith and referred to the CCTV photographs and made the point that none of the images shown were outside the licensed hours of the premises. Mr Smith clarified that the time displayed on the photographs was one hour behind. Mr Holland also considered that the sample produced by Mr Smith, being at 18.30hrs on a Monday and on a day when the weather was very hot, was totally unrepresentative of a normal evening at the Club.

Referring to the incident on 10 May 2018 when Mr Smith had been subjected to a campaign of harassment for 3 hours by 15-20 people, Mr Holland noted that the CCTV ran for less than 30 seconds and that there were only 2-3 people in the photographs at any one time. Mr Smith advised that the photographs should be examined together which would provide an overall picture of the incident.

Following a further question about Mr Smith's reference to children consuming alcohol from glasses which he had said were from the premises, Mr Smith advised that he could not confirm if the Club had sold the alcohol.

When asked by Mr Holland what he wished the Sub-Committee to consider, Mr Smith asked that the Members appreciate the area and the level of horror experienced. Mr Smith wished for the area to become peaceful again without worrying about being harassed or that something would happen if they went out into the street. This was a Club in a residential area. To suppose that he had particular issues with this business was untrue. He did not want his family to come to harm because of the Club which had tried to destroy the area. He wanted a safe place where normal families could live normal lives.

At this point Mr Walker stated that the Police took any allegations that were made seriously, either by perception or fact, but whether those made were linked to the premises was not confirmed at this time. Referring to the incident of 3 March 2018, the manner in which the night was managed had been assuaged by steps the premises were proposing to take, and these were welcomed by the Police. In view of this the representations made within the submissions of Sgt Dickenson were withdrawn.

Mr Holland was invited to address the Sub-Committee on behalf of the Licence Holders. Mr Holland asked questions of Mr Walsh who responded that he had been in the armed forces for 10 years, and was an engineering consultant for oil companies around the world. Mr Walsh was now retired and had purchased the

premises in 2015 at which time it was not trading. He had no former experience of working in pubs, apart from squadron bars. The premises had been fully refurbished from the ground up and had re-opened in May 2015. He had also made application at the time for a Premises Licence because Easington Colliery was a very depressed area and the premises would not succeed purely as a Club; passing trade was necessary. He had always intended to surrender the Premises Licence once the Club was up and running. He now had 183 members which was enough for the premises to survive solely as a Club. The average age of members was around 61-62 and the members were multi-national. He refuted the allegations of racism – he had worked all over the world and had friends from different countries; he just saw the good in people. The hours for the sale of alcohol in respect of the Club Premises Certificate were less than the Premises Licence. In reality the Club did not trade the hours specified, closing around 11.30pm on Saturdays and between 9.30 and 10pm during the week. The music ceased at 9.00pm. The windows were fixed and the fire door was acoustic with automatic closing to mitigate against noise. He accepted that there had been an issue during the hot weather when customers had wedged the door open. He proposed to install air conditioning in the future. Customers entered the property through the external door into a corridor before entering the lounge through a further acoustic fire door. There was a small function room upstairs, which operationally was occupied by fewer people than the permitted fire capacity.

The premises engaged with the community and had fit in very well since opening. It had an adult and junior football team, and he had formed the Easington and District Branch of the Royal British Legion. He was Chairman of the Branch and of the Club, which had 10 Committee members.

Karaoke was held on a Monday afternoon and the Royal British Legion met each Friday between 7 and 10pm. There were three Clubs in Easington Colliery but no public houses.

Referring to the grounds for review, Mr Walsh advised that he was out of the country on 3 March 2018 when the assault took place. He and his wife had learnt from the incident and accepted that the Police must be called immediately if there were any incidents. An incident book would be provided and he had recently joined the Pubwatch Scheme.

He was willing to surrender the Premises Licence and understood that the Club Premises Certificate was for members and guests only.

In terms of the allegations of noise after midnight he advised that these were completely untrue; he did not stay open after the licensing hours or have 'lock-ins'. People did use the benches on the tarmacked area outside to the right of the premises and there was a smoking shelter to the left.

With regard to the allegations that intimidation, harassment or abuse was not discouraged, Mr Walsh demonstrated that this was not the case by stating that he had worked closely with the Police on two occasions. On an occasion when the windows of Mr Smith's property had been broken, the Club had volunteered the

CCTV evidence to the Police. Mr Smith had not tried to communicate with Mr Walsh about issues regarding the Club.

With regard to the posting of an electronic communication by a customer (page 39 in the Bundle), Mr Walsh confirmed that the person was a friend and it was posted on an open Facebook page in reply to the comments made by Mr Smith about the Club. His friend had admitted that he had 'lost it' and had apologised to the Police.

Mr Smith had tried to provoke him on Facebook and he had reacted because the abuse was constant, however he understood that he should not have responded to the posts and had apologised.

In respect of horses being tethered outside Mr Smith's house, Mr Walsh advised that this was part of the culture of the area. A lot of customers owned horses and traps who shopped in Easington Colliery and then visited the premises with their families. When the car park was full they tethered their horses on Council owned land near to Mr Smith's home. Whilst he could not see anything wrong with this practice, he advised that he would erect a notice to discourage this and would try to enforce it. He was also trying to raise money to install horse ties on their own land.

In conclusion there was no truth to the ground for review that he supported racism and that the premises did not respect their hours of trading. Some members had been loud outside but he had asked them to be quiet. The witnesses present at the hearing were representative of the people who frequented the premises.

Mr Holland then asked questions of Mrs Walsh who advised that since the 1990s she had worked in premises in Kent, two clubs in Easington and a club in Horden.

They lived next to the premises which was accessed by a communicating door. The premises employed four bar staff, one of which was her daughter who worked full time and who was also a Personal Licence Holder. She and her husband both acted as relief bar staff. The youngest club member was in their late 30s and customers were always the same, visiting the Club every day at different times.

Mrs Walsh was asked to recount in detail the incident that occurred on 3 March 2018 and her own actions during this. Mrs Walsh had not seen the assault and had helped the injured person when she had found him outside, at which time she had called the Police. Mrs Walsh appreciated that she should have called the Police as soon as the incident inside the premises had occurred which was following the meeting of the Royal British Legion.

Mrs Walsh advised that she would be pleased to be relinquished of her position as DPS.

Mr Holland then asked questions of witness Mr Knox, who advised that he was a member of both the Club and was Vice-Chairman of the Royal British Legion Branch. He had known Mr and Mrs Walsh for three years and had found them to be very kind and considerate. It was the best Club he had been to in the Easington District and he visited practically every day. He advised that he was one of the organisers of the Branch meeting on 3 March 2018. Mr Knox provided details of the

incident from his own perspective, agreeing with Mrs Walsh's recollection of the events. He recalled Mrs Walsh coming into the Club and asking for help outside.

Questions were invited of the Licence Holders.

In response Mr Walsh advised that the persons involved in the incident on 3 March 2018 no longer frequented the premises. Members were barred for a minimum of 6 months for inciting violence and were reported to Pubwatch. Minor matters usually resulted in a customer being barred for a month. This had been effective and a number of people were expelled from the Club when it first opened. Any new applications for club membership required two references from existing members.

Mr Smith asked Mrs Walsh if she had witnessed the person who was assaulted in the street crying, and if she was aware that he was disabled with special needs. Mrs Walsh advised that she had never met him before and in response to further questions reiterated that she could not see what had occurred as she was behind a number of people. She had called the Police when she had found the injured man on the ground outside. She disputed Mr Smith's statement that she had said that the injured man had just fallen in the street, and that club members had covered traces of the assault.

Mrs Walsh was asked what she recalled seeing on 10 May 2018 at 16.01 when the applicants were subjected to harassment and a horse had been tethered outside their property. Mr Holland advised that the DVD evidence had not been presented in this regard.

Through Mr Holland, Mr Smith asked Mr Walsh if he recalled telling him that the incident on 3 March 2018 did not happen and had posted a comment on Facebook to that effect. Mr Holland advised that this was not disputed by Mr Walsh.

Following a further question from Mr Smith, Mr Walsh replied that Mr Smith had not tried to communicate with him about issues with the Club, and that there was no letter in the Bundle of Evidence to confirm that he had.

All parties were invited to sum up.

Mr Smith stated that having a members club in the area would never solve issues with criminal groups and they would never have peace. He was concerned that a person could be treated in this way and that the Club and members were protecting themselves.

Mr Holland advised that he would not call his three other witnesses and asked for their written representations in support of the premises to be taken into account. He referred the Sub-Committee to the agreement that his clients had reached with the Police. In accordance with Paragraph 9.2 of Section 182 Guidance the Police had a key role and should be the main source of advice. The Police had rightly made representation and it was to Mr Smith's credit that he had submitted the review application; it was accepted that an assault was an issue that should be examined. Alcohol may have played a part but there may also have been deeper more serious issues with the protagonists. With the benefit of hindsight Mrs Walsh could see how

she could have behaved differently. They did not have an incident book as they did not have incidents but she accepted that there should have been one in place at the time. Mrs Walsh was relieved to relinquish the role of DPS. He asked the Sub-Committee to bear in mind the 'lighter touch' approach for Clubs as they were self-regulatory.

Whilst the review had been properly brought about, there was some personal animosity between Mr Smith and the Club. The response of Mrs Walsh to the incident of 3 March 2018 had been explained. There were no complaints about noise under investigation by Environmental Health, and Mr Smith's other allegations were devoid of evidence. He requested the Sub-Committee to dispose of the review application by the measures agreed between his clients and the Police. This would be an appropriate and proportionate approach. The Club offered a wide community benefit in an area that had really suffered in recent decades, and the application had been a huge personal embarrassment to Mr and Mrs Walsh.

At 2.30pm the Sub-Committee **Resolved** to retire to deliberate the application in private. After re-convening at 3.20pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer, the written and verbal representations of the applicants together with CCTV images and an audio recording, the written and verbal representations of the Licence Holders' Barrister, Licence Holders and witnesses, and the written and verbal representations of the Police and their Barrister. 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 following additional conditions be imposed upon the Club Premises Certificate at Annex 3:-

- i. A CCTV system shall be installed and maintained in proper working order, to the satisfaction of the licensing authority and in conjunction with the local police. Such system shall:
 - a) be operated by properly trained staff
 - b) be in operation at all times that the premises are being used for a licensable activity
 - c) ensure coverage to the licensed premises internally and externally
 - d) provide continuous recording facilities for each camera to a good standard of clarity, such recordings shall be retained for a period of 28 days and shall be supplied to the licensing authority or police on receipt of a request from the authority for

disclosure demonstrating an exemption to the first data protection principle as per the Data Protection Act 1998

- ii. All incidents occurring at the premises will be recorded in an Incident Book maintained by the club. The details which will be recorded in the Incident Book are: the time and date of the incident; the name or full description of any person(s) involved (including staff members), whether the incident was recorded on CCTV, and the signature of the person making the entry. This book will be available at all times for inspection by the Police and other Responsible Authorities upon request.
- iii. Management will deal with any disorder at the very earliest time after seeing the customers getting rowdy and will involve the police for assistance should they fear the situation is going to escalate.
- iv. Notices will be clearly displayed requesting all patrons respect neighbouring residents upon entry and exit to the premises and that patrons shall refrain from tethering horses etc on adjacent public land. Signage wording to be agreed with the licensing authority.

6 Application for the Review of a Premises Licence - The Leather Cap Sports and Social Club - 1-2 Browning Street, Easington Colliery

The Premises Licence was surrendered by the Licence Holders.