

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber, Spennymoor - Council Offices, Spennymoor on **Wednesday 31 July 2019 at 2.00 pm**

### **Present:**

**Councillor C Carr (Chair)**

### **Members of the Committee:**

Councillors J Blakey and D Brown

### **Also Present:**

Dgt J Mole (Durham Constabulary)  
S Grigor (Council's Solicitor)  
H Johnson (Licensing Team Leader)  
Sgt D Haythornthwaite (Durham Constabulary)  
A Pettengell (Barrister for Durham Constabulary)  
Insp S Jones (Durham Constabulary)  
PCSO M Williamson (Durham Constabulary)  
PCSO F Williamson (Durham Constabulary)  
N Anderson (Licensing Enforcement Officer)

### **1 Apologies**

There were no apologies for absence.

### **2 Substitute Members**

There were no substitute Members in attendance.

### **3 Declarations of Interest**

There were no declarations of interest.

### **4 Any resolution relating to the exclusion of the public during the discussion of exempt information**

That under section 100 (A)4 of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 3 and 5 of Schedule 12A to the said Act.

## **5 Application for a Personal Licence**

The Committee considered a report of the Corporate Director of Regeneration and Local Services which asked Members to consider and determine the application for a Personal Licence.

Members were informed that the Applicant was not in attendance.

The Licensing Team Leader contacted the Applicant who had not submitted a written representation and he confirmed that he had overlooked the date and time of the hearing and requested a further opportunity to attend in person. The Sub-Committee considered that the Applicant should not be given a further opportunity to attend and refused the request to adjourn the hearing.

Following representations from Durham Constabulary, Members noted that the Applicant had been convicted of a relevant criminal offence.

At 1.40 p.m. the Sub-Committee retired to deliberate the application in private and after re-convening at 1.45 p.m. the Chair delivered the Sub-Committee's decision. In reaching their decision Members had taken into account the report of the Licensing Team Leader which included details of the relevant offence, Section 182 Guidance issued by the Secretary of State.

### **Resolved:**

That the Personal Licence be revoked.

The following item was considered under Part A of the Agenda which was open to the public.

## **6 Application for the Review of a Premises Licence - Lux Bar, 28-30 Front Street, Consett**

The Sub-Committee considered a report of the Corporate Director of Regeneration and Local Services, with regards to an application by Durham Constabulary to review the premises licence in respect of Lux Bar, 28-30 Front Street, Consett (for copy see file of minutes).

The Licensing Team Leader presented the report and invited Durham Constabulary representatives to address the Sub-Committee to outline the application under Section 53A of the Licensing Act 2003.

Durham Constabulary's appointed Barrister confirmed the concerns of police as outlined in the statement of Sgt Haythornthwaite and Members viewed

CCTV footage of the incident which had led the Chief Officer of Police to apply for an urgent review.

Councillor Carr referred to the standing position of security prior to the incident as they were standing at the entrance to the building and therefore unable to see what was going on inside. Sgt Haythornthwaite commented on the manner of another individual in the frame who seemed unphased having witnessed the attack.

Sgt Haythornthwaite confirmed that the two individuals who were responsible for the assault were charged with Section 18, the most serious level of injury with intent - Grievous Bodily Harm. Because of the standard of evidence required for a successful prosecution, both individuals pleaded guilty to a Section 47 Assault which was a lower level of crime. The reason for this was that the victim would not allow the CPS to access his medical reports and the therefore the higher level of crime could not be evidenced.

The Sub-Committee asked the Head Door Supervisor for an explanation of what led to the incident. Mr Bell confirmed that on the evening of 1 July one of his female staff had been unwell and he had taken the decision to remove her from duty. There was a new Member of security staff working on the front door who would therefore not have been able to recognise anyone who had previously been barred or was on Pubwatch. Due to new data protection laws, photographs were unable to be circulated as they had been previously. Mr Bell stated that the level of violence in Consett had increased due to an influx of particularly potent Cocaine in the area.

On the night in question, Mr Bell confirmed that he had noticed a strong smell of burning which he spontaneously investigated and found to be a fuse from a smoke machine. Upon his return the assailants had already gained access to the premises and a decision was made to allow them to stay as this was deemed the least risk.

In response to a number of questions from the Chair, Mr Bell confirmed that the door supervisor previously mentioned had only worked one night prior to the evening of 1 July and the risk of removing the two assailants from the bar was to staff, as they were often accused of assault should they have to physically remove a customer.

In response to a question from the Licensing Team Leader, Mr Bell confirmed that the noise of broken glass was what alerted him to the incident as there were only 25-30 people in the bar at the time. He said that it was clear that the victim had been drinking for a long time which could be confirmed by the increased amount of blood loss. An ambulance was called immediately after the incident. He added that a lot of incidents happened in the street outside of the bar, but door supervisors were still expected to deal

with them and had an obligation to record them. It would therefore appear due to incident logs that there had been more incidents than there had.

The Barrister asked Mr Bell if the new member of staff had been briefed on the refusal of entry prior to undertaking the role and he confirmed that it was pointless showing him a list of names as he was unable to identify someone without seeing their face. He confirmed that at the time there was a list of at least 30 people to familiarise new staff with. He suggested that until the drug problem in Consett was addressed, there would continue to be violent incidents.

The Barrister asked why the assailant involved in the main incident had not been banned from the premises following the incident in May and Mr Bell confirmed that he had not been identified from the CCTV. The Barrister referred to the statement of the Officer who attended the main incident who confirmed that the door supervisors had admitted that the individuals involved were 'known to cause a lot of bother' and had given them a four-week ban which had expired. He asked Mr Bell how soon after the first incident, he viewed the footage and he replied that it would have been within a few days of the incident, however he said that the material was defined by the police to produce more clear images were produced, which took longer. Sgt Haythornthwaite was concerned that people who were known trouble makers in the area, had gained entry.

Councillor Carr asked if door supervisors wore body cams and Mr Bell confirmed that they had worn them in the past but they were unreliable as batteries would only last 1.5 hours.

Mr Bell confirmed that if door supervisors noticed behaviour which suggested someone was intoxicated, they would be asked to leave.

The Premises Licence Holders representative, Mr Edge, confirmed that Mr Bell had been asked to attend as a witness to the incident. He admitted that the security company who were employed at the time of the incident had various failings and this had been recognised and rectified by employing an alternative security company.

Sgt Haythornthwaite expressed his concern as to why the victim who could be described as staggering, had gained entry, questioning his level of intoxication and whether he was already intoxicated on entering the premises or whether he had become intoxicated inside.

The Chair noted that the victim was noticeably intoxicated and had he been in the premises for a long period of time, bar staff should have dealt with that accordingly. Mr Edge advised that the former DPS had failed to supervise bar staff and Mr Bell confirmed that there was a stop serve and notify policy

which should be adhered to. The Chair suggested this was a reasonable system which had not worked on this occasion.

In response to a number of questions from the Barrister, Mr Bell confirmed that the decision to allow both men to stay inside the premises was taken following a discussion between 4-5 staff. They had decided to keep him in the premises to keep him calm because they were concerned that he may have been taking the extremely potent drugs which had been referred to previously. Mr Bell advised that he and the other door supervisors were all capable of removing volatile clientele but they were unable to use force.

The Licensing Team Leader asked with regards to the licensing objectives if Mr Bell should have used conflict resolution to eject the individuals and call police. Mr Bell explained that two individuals on such a potent level of Cocaine would be 'like fighting ten' individuals and he did not want to risk them running in 'for the kill'. Mr Bell considered observation was the best resolution for the safety of his staff and both males seemed fine.

Inspector Jones asked Mr Bell to explain how he came to be employed at the premises. He confirmed that he was first employed via a security company who had been hired by the premises Manager, Mr Toshi. Following this Mr Bell had set up his own security business and some of the team had transferred with him.

She asked Mr Bell if on the night in question, whether Mr Toshi had been involved in the group decision behind allowing the two assailants to stay in the premises. Mr Bell replied that it was a poor decision that had been taken following a cumulation of events. The female door supervisor had been stood down and Mr Bell had been investigating a potential fire hazard, which had led to both males gaining entry.

Inspector Jones asked Mr Bell whether staff had received in-house training and if records were kept. Mr Bell confirmed that all staff were trained by the Home Office, through the required SIA scheme. They had to re-register and receive training every 2-3 years, but he had also held regular staff meetings.

Sgt Haythornthwaite talked Members through CCTV of the incident on 27 May 2019. He described the area in which all parties were in as the VIP area, which had been cordoned off with rope. He accepted that on occasions staff may not recognise people on the Pubwatch scheme, but when Police had attended the scene following the incident, one of the door supervisors named one of the assailants and confirmed that he was on Pubwatch and should not have been inside the premises.

This individual was known to be on Pubwatch by at least one member of staff and in addition to gaining entry to the bar, he had also gained entry to the

VIP area. Following a serious assault this individual had returned to the scene to collect his drink, unchallenged by door staff. He clearly had the potential to carry out a further attack. Sgt Haythornthwaite referred to the issues in the area with regards to Cocaine use which Mr Bell had alluded to, yet someone known to be on Pubwatch was allowed to casually drink in the VIP area of the premises.

The Chair allowed Ms J Armstrong, to address the Sub-Committee. As the new DPS she confirmed that the concerns Durham Constabulary had regarding the way the premises had been operating, would not happen in future if the bar was to remain licensed.

Sgt Haythornthwaite referred to the conditions submitted by the Applicant as mitigation and offered a last entry time of 0100 hrs and reduced the last sale of alcohol from 0300 hrs to 0200hrs, however this would not reduce the risk as the two incidents had taken place at 12:35 am and 01:33 am. There had also been an assault in April at 00:45 am which began inside the premises.

On this occasion two males had been involved in an altercation which resulted in one being ejected from the premises and the other advised to wait inside by door staff as the other male was still outside. Police should have been called but instead, after waiting inside for 20 minutes, the male exited the premises and was attacked outside. He was knocked unconscious and as he fell to the ground his head hit a wall and he sustained significant facial injuries. This incident would have been avoided had staff called police, however they were only called after the second and much more serious incident.

Councillor Blakey asked for an explanation from the Applicant, with regards to a social media post advertising a summer rave which had been posted following the interim steps hearing.

Sgt Haythornthwaite added that the post had a flier attached which advertised 'DJ Assault' and made reference to 'no dress code', which gave the impression that there had been no significant changes following the hearing.

Mr Edge explained that the post had been created by the former DPS who had been aggrieved after the removal of his DPS responsibility. He had retaliated by posting the content, but Mr Edge confirmed that he no longer had access to social media. Councillor Carr asked whether the post had been removed and a notice to cancel the event had been put out, but it was confirmed by PCSO Williamson during the meeting that the event was still active.

In response to Sgt Haythornthwaite, Mr Toshi confirmed that he had not yet decided whether the event was going ahead, no acts had been booked or paid for and Sgt Haythornthwaite replied that he would question the decision to promote an event with the wording used on the poster 'no dress code' and 'DJ Assault'. Mr Edge confirmed that part of the new policy was that there would be a dress code.

Councillor Carr asked what would be required in future to book the VIP area and how it would be controlled. Mr Edge confirmed that a member of security would be inside the area and there would be no undesirable clientele on the premises. Mr Toshi had now confirmed that the DPS and the head door supervisor would be paid to attend Pubwatch meetings on a regular basis. The use of photographs was no longer permitted, however there would hopefully be a way of distributing images in future, which could involve recipients signing a declaration to confirm they would only be used for the purpose intended. In addition there would be a file, and security teams would be required to undertake a handover and communicate information at the start of each shift.

The Licensing Team Leader asked who had the overall responsibility for decisions made about security or social media and Mr Edge confirmed that Mr Toshi would be consulted about all decisions in future and he had taken steps to remove access to social media from staff so he would be responsible for all social media posts in future.

Inspector Jones addressed Mr Toshi and asked him to explain why Mr Bell had alluded to making a decision to allow two individuals known to cause trouble to stay on the premises, who Mr Toshi had stated should not have been in there. Mr Toshi confirmed that he was on the premises doing paperwork when the individuals had entered the bar, however Inspector Jones responded that the decision had been made collectively to allow the two males to stay and monitor them.

Mr Edge added that previously door staff had been reluctant to eject individuals, and this was sending out a message to patrons that rules were not adhered to. Mr Toshi had addressed this by recruiting another security company going forward and he was fully aware of the strict policies and hierarchy. The Barrister asked for confirmation on whether Mr Toshi had been part of the decision to allow the two males to stay on the premises and Mr Bell responded that he had made the decision with a number of his door staff and ran it by Mr Toshi.

Councillor Carr commented that he felt some of the comments being made were in an attempt to cloud the Sub-Committees judgement and honesty was required.

PCSO Williamson referred to a statement which had confirmed that when Mr Toshi had taken over the premises she had visited to introduce herself to him. During this meeting they had also discussed apex radios, scanner ID's and she invited him to attend Pubwatch. Nobody had attended the next meeting in January 2019 and she spoke to him again in February to invite him to the next meeting, which again, nobody attended.

On the 18 February 2019 she was alerted to an incident where a female had fell asleep in the club and when she had woken, it was closed and she had to exit using a fire door. Despite assurances that the security company would attend the next Pubwatch meeting, they had still not turned up – the first meeting which was attended followed the first serious incident.

The Licensing Enforcement Officer presented her report and confirmed that she had heard nothing that would change the views expressed by the Licensing Authority as outlined in the report.

Mr Edge addressed the Sub-Committee on behalf of the Applicant and confirmed that when the owners had taken over the bar, they were inexperienced and did not have a strong team around them, or have strong policies in place. They deeply regretted the incidents which had taken place and felt badly let down by the former DPS and security company and although they knew they had overall responsibility they expected that as professionals, they should have known what they were doing and expected so when hiring them.

They hoped that the robust policies and procedures they now had in place, a reduction in opening hours, a last entry of 01.00 hrs, and a requirement of 3 personal licence holders on the premises at one time, would ensure a safer environment.

They believed they should be given one last chance to turn the business around and they were intent on making the business work. Mr Toshi had recruited a new security company who had knowledge of the local area and they had been given strict instructions of a no tolerance policy. To identify individuals on Pubwatch they were able to share photos amongst themselves on a private messaging group and there would always be a member of the security team present at meetings because Mr Toshi had agreed to pay staff to attend.

Mr Edge agreed that the CCTV was not pleasant and although not everything was done correctly, they had been short of security staff on both occasions. A new security company had been hired and detailed discussions had already taken place with Mr Toshi about his requirements going forward. Mr Toshi had recently reapplied for a Personal Licence as there had been so many changes since he received it previously. Management had cooperated

with police and the former DPS had been removed and replaced with someone experienced.

He referred to Section 182 guidance of the Licencing Act and with reference to reviews;

11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.

Me Edge suggested that there were three occasions that PCSO Williamson had spoken to the Premises Manager, and where an action plan should have been produced to provide and evidence expectations.

He suggested that the new policy of attending Pubwatch meetings could be added as a condition on the licence. There were a minimum of 4 staff who would be required to attend so there would be no excuse for not being represented.

Mr Toshi addressed the Sub-Committee and acknowledged that he had made mistakes but he was willing and able to follow the licensing objectives. He was always on the premises when it was open, which would enable him to monitor staff closely. He would ensure that there was a no tolerance approach to those who were known to cause problems as he wanted to run a safe and successful business.

In response to a question from Councillor Brown with regards to progress with Durham Constabulary following the interim steps hearing, Mr Edge confirmed that despite speaking to Sgt Haythornthwaite, they had been unable to mediate and he believed this was predominantly due to the social media post.

Sgt Haythornthwaite argued that the Applicant was relying on adhering to conditions that should have been adhered to in the first place, had the licensing objectives been met.

Ms Armstrong confirmed that since she had taken over as DPS, all bar staff and door supervisors had received training and had a training file which would be monitored and updated. She confirmed that no decisions would be

taken by any staff without consulting herself or Mr Toshi and Pubwatch meetings would be attended by herself. She confirmed that she took her role seriously and had experience in the trade as she had formerly ran a nightclub with a no tolerance policy. Staff could soon be replaced if they did not adhere to the policies.

Ms Armstrong said that to ensure the safety of customers the DJ would be issued with a radio in order to alert security to any incidents immediately. There would also be a member of the security team positioned throughout the premises so that all areas were viewed at all times and regular toilet checks would be undertaken. Door staff would have bodycams and if anybody on Pubwatch did get in the bar or appear intoxicated, there would be a refusals register to record all incidents.

In response to a question from Councillor Carr, Ms Armstrong confirmed that there was excellent CCTV in the building and Mr Toshi confirmed that 12 cameras covered every angle of the building.

In response to a question from the Barrister, Mr Toshi confirmed that he had spoken to PCSO Williamson on 3 and 5 June however his recollection was that she was unhappy due to non-attendance at Pubwatch meetings. Mr Toshi agreed that he was reluctant to attend Pubwatch meetings due to anxiety for which he was receiving medical treatment for.

Councillor Blakey was concerned by the attitude of the DPS, having referred to staff as easily replaceable. The Sub-Committee had heard of the importance in remembering faces and the result of allowing someone known to cause trouble to enter. When listening to Mr Bell describe the establishment, he had made reference to 'suicide Sunday', and she commented on the importance of permanent staff who could familiarise with customers.

Councillor Carr asked Mr Toshi how it was possible for him to be on the premises at all times when running another business. Mr Toshi confirmed that his restaurant had different opening hours to the bar and therefore he was able to operate from both premises during their individual opening hours.

In response to a question from Sgt Haythornthwaite, Mr Toshi confirmed that since he had opened the bar in December, he had employed four security teams. This had been as a result of various issues such as providing inadequate cover, or people who were exhausted having worked all day prior to their shift. He admitted that he had struggled to find the right company, however a security company who were familiar with Pubwatch and already had door staff in Consett had been hired and he was confident in their ability.

In response to a question from Sgt Haythornthwaite, Mr Toshi confirmed that he had not instructed anyone to contact police during the incident in April when a man had been inside the venue for 20 minutes. Sgt Haythornthwaite suggested that Mr Toshi had played an equal part in bad decision making and had a level of responsibility for the situation his premises had found themselves in. Sgt Haythornthwaite confirmed that he was not confident there would be a significant change if Mr Toshi remained in control of the Premises Licence. Ms Armstrong confirmed that she had been employed to run the bar and she would take the pressure of decision making from Mr Toshi.

In response to a question from the Licensing Team Leader, Mr Toshi confirmed that he would not be employing the same door staff – they were a different company who could produce policies and procedures without hesitation. The Licensing Team Leader confirmed that the CCTV was worrying and the events which had been described lead her to believe that the public had been running the premises and that staff had been reluctant to intervene. She asked how he would describe the establishment and whether the summer rave poster was typical of the nature of the business. He replied that the event was a one-off and the premises was a normal nightclub venue. Ms Armstrong confirmed that if the event went well, they would consider having another, but there were no plans to make it a regular event.

The Licensing Team Leader asked if there was reluctance from security staff to remove people from the premises and confirmed that as a former door supervisor, she would have been relied upon to escort someone out of the premises for various reasons, such as if they were found to be on Pubwatch, under age, intoxicated, or causing trouble. Mr Edge confirmed that going forward, there would be a requirement to remove people during those type of scenarios and Mr Toshi agreed.

Councillor Carr noted that the Sub-Committee were looking for reassurance that there would be no more preventable incidents and the police were not convinced that Mr Toshi was capable of ensuring this.

Councillor Blakey referred to the CCTV footage viewed by the Sub-Committee and she had to determine whether the Premises Licence Holder had the ability to ensure a standard of business which would avoid somebody losing their life. Councillor Carr added that coincidentally the One Punch campaign had been inspired by a man who was tragically killed in a nightclub in Consett.

Ms Armstrong confirmed that although she was not there when the incidents had occurred, there were people who would be afraid of intervening with these particular people. Mr Toshi had hired staff on the assumption they were capable and willing to carry out their role, but they had let him down.

She assured the Sub-Committee that if the licence was granted, the premises would be ran exactly how they expected it to be.

The Councils Solicitor queried the statement which had been referred to by PCSO Williamson as it had not been circulated in advance of the hearing. The Barrister apologised that it had been referred to and in the interest of fairness, he withdrew the evidence presented.

In summing up, Sgt Haythornthwaite confirmed that the test on which the decision lay was on the balance of probabilities and one of the licensing objectives was for the prevention of crime and disorder. This premises had been the subject of three concerning incidents and although the Sub-Committee had heard from staff that they were in control, there had been a number of excuses for the incidents which had taken place.

It was true that Consett had a number of problems but this was no excuse for not adhering to policies and procedures. Sgt Haythornthwaite referred to the explanation which had been given regarding the social media post and it proved that there was still an issue with regards to the control management had over the business and he was not satisfied that there would be a material change in the way it operated. Despite enlisting a new DPS, the fact remained that Mr Toshi would remain responsible for the day to day management of the premises.

Mr Edge summed up on behalf of the Applicant and asked that if Members were minded towards revocation due to the concerns that remained, he would request a suspension of the licence to give the management team the opportunity to review the information which had been submitted and to fully understand their roles and responsibilities. He considered that with a strong DPS and a new well-established security company, the business could be turned around. A period of suspension would also give management the opportunity to advertise the business as under new management and make people aware of a strict dress code and changes to hours of business.

Finally Mr Toshi assured the Sub-Committee that the business would operate in a completely different way to what it had been and rules would be strictly adhered to at all times.

At 5.10 p.m. Members retired to deliberate the application and at 5.20 p.m. the Chair delivered the Sub-Committees decision.

## **Resolved**

That the Licence be revoked.