

DURHAM COUNTY COUNCIL

At a Special Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2, County Hall, Durham on **Tuesday 23 January 2024 at 1.30 pm**

Present:

Councillor L Mavin in the Chair

Members of the Committee:

Councillors L Brown, C Hampson and M Wilson

Also Present:

S Grigor (Council's Solicitor)

H Johnson (Licensing Team Leader)

J Armstrong (Premises Licence Holder)

D Craig (Licence Holder's Legal Representative)

P Clarke (Durham Constabulary Legal Representative)

Sergeant C Dickenson (Durham Constabulary)

Inspector P Carter (Durham Constabulary)

A Lawson (Durham Constabulary)

L Charlton (Other Persons)

J Keers (Other Persons)

J Tooner (Other Persons)

J McDonald (Other Persons)

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 Application for the Review of a Premises Licence following a Closure Order - Bar 1, 28-30 Front Street, Consett DH8 5AQ

The Chair welcomed everyone to the meeting and introductions were made. The Council's Solicitor outlined the procedure for the hearing.

The Licensing Team Leader presented the report of the Corporate Director of Neighbourhoods and Climate Change, to determine an application for the Review of a Premises Licence following a Closure Order in respect of Bar 1, 28-30 Front Street, Consett, County Durham. A copy of the application and location plan had been circulated together with additional information and CCTV footage received from Durham Constabulary, additional information from PubWatch and the Licence Holder (for copy see file of minutes).

It was reported that the Licensing Authority received a closure order from Peterlee Magistrates' Court on 9 January 2024 in respect of Bar 1, 28-30 Front Street, Consett, which stated that the premises must remain closed until the expiry of the order which was 31 January 2024. The Licensing Authority must review the premises licence within 10 working days and make a determination of the review of the premises licence within 28 days after the closure order is received.

Members were provided with details of the options available to the Sub-Committee.

All parties were given the opportunity to ask questions of the Licensing Team Leader.

Mr Clarke, Durham Constabulary's Legal Representative was invited to address the Sub-Committee. He advised that Durham Constabulary were seeking revocation of the premises licence as the information provided showed that serious incidents were not reported to the Police and they were only made aware of this particular incident by the ambulance service. The premises staff were obstructive and not willing to provide statements to assist in the investigation of the serious incident that led to the closure order from Peterlee Magistrates' Court.

With regards to public safety and prevention of crime and disorder, it was noted that risk assessments addressing issues had not taken place at the premises and if dynamic risk assessments were in place, they were not suitable and fit for purpose as incidents were reoccurring at the premises. People who were on the PubWatch list were allowed in the premises and there was insufficient door staff and security. There were no measures in place to prevent weapons from being brought into the premises which lead to the stabbing incident where two people were injured.

Durham Constabulary's statement listed various instances whereby an unconscious male had been found at the premises. There had been reports of a large scale disorder where a machete and crowbar had been seen, door staff acted inappropriately when a suicidal male was in distress and cocaine had been found at the premises during a force wide drug operation.

With regards to the prevention of public nuisance, Mr Clarke advised that a member of staff had said to Police that he and his door team could not or would not refuse entry to people as it may cause trouble which consequently would not provide a safe and controlled environment. Police had asked for CCTV footage to assist with investigations and were told that CCTV cameras were not working properly or were not provided in a timely fashion.

With regards to protection of children from harm, there had been occasions where underage children had been found intoxicated at the premises. There had been two incidents at Bar 1 involving a 17-year-old male and door staff had taken no action. An incident was reported whereby two people had been assaulted at the premises and both victims were under 18-years-old. There was also an incident where a 16-year-old male with a Bar 1 stamp on his hand was arrested for theft and later admitted that he had been inside the premises.

Mr Clarke commented that Bar 1 was simply Bar Lux renamed, with the same people who ran Bar Lux in different positions within the business. The Magistrates Court put a closure order on the premises as they were concerned with what was going on at the premises and the Licensing Committee closed Bar Lux because of the concerns they had with how the premises was operating. He added that issues were escalating and there was no willingness from the License Holder to work with the Police. The Magistrate pointed out that the premises put profit before public safety therefore was not a fit premises and the licence should be revoked.

Sgt Dickenson addressed the Sub-Committee and requested that the CCTV footage be viewed in private due to the ongoing investigation of the incident and in accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

At 1.55 pm the Sub-Committee **Resolved** that that the public be exclude from the hearing for the Sub-Committee to view the CCTV footage in private.

At 2.15 pm, members of the public returned to the hearing.

Sgt Dickenson advised that Bar Lux licence was revoked on the 31 July 2019 and a new application was received in September 2019 for Bar 1 at the same location with Mrs J Armstrong listed as the new DPS and S Jakeman listed as the Premise License Holder. Sgt Dickenson raised concerns at the time that this was just a front and Mr Toshi, formerly of Bar Lux, was still running the Bar 1 premises and it later transpired that he currently worked as door staff at Bar 1 and the building lease was in Mr Toshie's name.

Sgt Dickenson visited the premises to view CCTV footage and the room had various computers which was later identified that this equipment was used

for crypto mining and when questioned S Jakeman she said the equipment was Mr Toshie's and she did not know anything about it.

CCTV footage was provided showing Mr Toshie serving behind the bar and removing large quantities of cash from the cash register and only one member of door staff on the front door.

Sgt Dickenson referred to an incident on the 23 December 2023 where an intoxicated male was ejected and collapsed outside the premises and had to receive CPR and the premises did not notify the Police of the incident. She also referred to the night of the stabbing and advised that two people under 18 were found in the premises.

All parties were given the opportunity to ask questions of Durham Constabulary.

Responding to queries from Mr Craig, the Licence Holder's Legal Representative, Sgt Dickenson clarified that the order had been made by the Magistrate Court and the period of time had been made by consent of all parties. Durham Constabulary agreed a shorter period as they were aware that the Licensing Regulation would then come into effect and would have to be determined by the Licensing Sub-Committee within 10 days.

Mr Craig noted the extensive log of incidence that had occurred at the premises and asked if it was accepted that there had been less incidents in 2023 than there were in 2022. In response, Mr Clarke explained that the real number of incidents were unknown as the premises were not reporting incidents to the Police. He added that substantial evidence of concerns had been provided and they had not received any disputes in relation to the evidence provided from the License Holder or her Legal Representative.

Responding to further questions from Mr Craig, Sgt Dickenson confirmed that there were a number of Temporary Event Notices that were agreed by a different decision maker and the man that was arrested on 31 December 2023 in Harrogate was identified from the CCTV footage provided by Durham County Council. Footage from inside the premises was eventually received and confirmed that this footage was better quality than CCTV from the street camera.

Mr Craig asked if there were any premises in Consett that operated with a knife arch condition and if there had been any incidents of wounding while Bar 1 had been closed. Sgt Dickenson advised that Chaplin's had a knife arch condition due to previous instances that had happened at the premises before she was involved in licensing, and she was not aware of any wounding incidents since the premises had closed.

He referred to the CCTV footage from the incident on 27 December 2023 and observed that the perpetrator was not ejected from the premises. Sgt Dickenson confirmed that the perpetrator walked out unescorted, however he was involved with the females that were ejected from the premises.

Councillor L Brown asked if Temporary Event Notices were in place on the 23 and 27 December 2023. She noted that three members of staff were at the scene of the stabbing incident on 27 December 2023 and queried who called the ambulance service. Sgt Dickenson confirmed that Temporary Event Notices were in place on both dates and it was CCTV operators who called the ambulance service.

PubWatch Representatives were invited to address the Sub-Committee. It was noted that the written representation had been circulated to all parties and there was nothing further to add. All parties were given the opportunity to ask questions.

Mr Craig, the Licence Holder's Legal Representative was invited to address the Sub-Committee. He advised that a Temporary Event Notice was in place on the night of the incident which was agreed by Durham Constabulary and there had been no objections from Environmental Health. He highlighted that conditions do not apply unless a Statutory Licensing Sub-Committee intervenes, therefore there was no door supervision conditions imposed on the premises license. At the time of the incident, the Temporary Event Notice was not in operation at that point as the licensable activities were authorised up to 2.30 am. He added that 3 door staff was the normal requirement and a ratio of 1 member of door staff to 100 people was acceptable and in accordance with guidelines, with a capacity of 280 people within the premises, 3 members of door staff was not unreasonable.

The incident initially took place inside the premises and highlighted that there were no conditions on the licence in relation to metal detection. He added that incidents involving weapons could have happen at any premises and unfortunately the issue was on the increase, therefore it was important not to apportion blame to licensed premises especially when there was no condition on the license to carry out searches.

With regards to the incident being reported to the Police, Mr Craig advised that there was a three minute gap between the incident occurring and the Police arriving at the scene and he suggested that the premises calling for the ambulance had been escalated in the correct way and the criticism was unfair.

With regards to the CCTV footage requested, he explained that Mrs Armstrong was under a lot of pressure on the night of the incident and had to make a judgement call not to eject everyone into the street where there was

a crime scene. Mrs Armstrong did assist the Police with CCTV footage which played a part in identifying the people involved.

In relation to claims of underage sales, he suggested that a statement from a competing premises or a PCSO being able to identify that someone was underage from the CCTV footage was not sufficient evidence and the correct procedure to address the issue of underage sales would be to undertake test purchases.

Mr Craig referred to the incident where a machete had been seen and advised that Mrs Armstrong had said that this did not happen and there was no CCTV footage to support that this had happened. With regards to the incident on 23 December 2023, the customer was removed from the premises and was last seen by Mrs Armstrong sitting on the wall opposite the premises and was fine other than being intoxicated.

Mr Craig clarified that Mr Toshie was not involved in the running of the business and with regards to removing cash from the till, this was a routine step to ensure limited cash was in the cash register to avoid any security issues. He emphasised that Mrs Armstrong was responsible for running the premises.

He noted that providing security and door staff was a challenging industry since Covid and Mrs Armstrong accepted that cover had been spread thin due to a member of staff on maternity leave and another member of staff calling in sick. He asked that the Sub-Committee consider removing Mrs Armstrong as DPS as a condition. In addition, Mr Craig referred to the guidance relating to proportionate steps and suggested that existing non-mandatory conditions be removed and replaced with the conditions that were being proposed in the additional information that had been circulated to all parties. The ID scanner was an effective tool for age verification and would act as a deterrent for underage people gaining access and people would be less inclined to commit offences while in the premises.

He highlighted condition 8, the requirement to search customers after 21:00 hrs which would be a huge undertaking for the premises, however would address concerns. Any serious assault would be reported to the Police without delay and every effort would be made to preserve any crime scene, protect the customers and apprehend the culprit.

Following comments made regarding a member of Consett PubWatch, the Sub-Committee adjourned at 3.00pm to seek legal advice. After reconvening at 3.10pm, the Chair advised Mr Craig to concentrate on the representation in question.

Mr Craig explained that a review application would be requested when there was a pattern of increased incidents and a level of escalated Police engagement by way of meetings, forewarnings or requests for minor variations. He noted in 2023 prior to the incident, visits had taken place and the Police had no concerns regarding the premises. He stated that that there had not been any major failing of the licence conditions and argued that the incident could have happened at any licenced premises that night. He added that the premises had assisted the Police and not tried to obstruct in any way. He asked the Sub-Committee to consider whether the proposal was fair and proportionate in the circumstances.

It was noted that Mrs Armstrong had a striving character and she recognised that she needed to engage more positively moving forward. She ran the business on her own in a difficult area and it was suggested that the picture presented does not reflect the narrative leading up to the incident. He highlighted that the Temporary Event Notices would not have been allowed if the Police had concerns. Mr Craig felt it was unfair for Mrs Armstrong to lose her business due to the actions of others and asked the Sub-Committee to consider enforceable conditions be added to the premises licence instead of taking her business away.

Mrs Armstrong was given the opportunity to address the Sub-Committee. She explained that her job was the main source of income for her household and detailed her relevant experience in running a premises. She explained that she was under extreme pressure on the night of the incident and acknowledged that she had taken on too much being the Licence Holder, DPS and Head Door Supervisor.

In relation to the number of door staff employed at the premises, Mrs Armstrong explained that normally there would be four members of staff, however this had reduced to three due to maternity leave. She argued that the Police just wanted to close the premises even though this had been the only major incident in four years and the Police were not willing to work with them.

Mrs Armstrong explained that she left Consett PubWatch as she felt it was badly organised and biased towards certain establishments and was aware that certain premises allowed people in who were on the PubWatch list. She felt that she could still be informed of anyone on the PubWatch list, however advised that she would rejoin if required as a condition on the licence. She reiterated the fact that she never committed the crime, however she was being punished more than the person who actually committed the crime. She was willing to work closely with authorities to ensure that further incidents did not occur and would accept any conditions necessary for her business to remain open.

All parties were given the opportunity to ask questions of the Applicant.

The Licencing Team Leader asked Mrs Armstrong that, upon reflection, did she feel that anything could have been done differently that night. Mrs Armstrong acknowledged that she could have dealt with the Police better and could have employed additional staff, unfortunately there was no way to foresee incidents. She was disappointed that the Police did not recognise what staff members did to help the victim that night.

In response to a query regarding point 6 of the search policy, Mrs Armstrong clarified that everyone entering the premises would be searched and they operated the Challenge 25 policy so that anyone who looked under 25 would go through the ID scanner. Mr Craig advised that wording in point 6 of the Search Policy would be amended to provide clarification. Mrs Armstrong added that the Police would be called immediately if any weapons were found.

Responding to questions regarding a new DPS and Welfare and Vulnerability Engagement (WAVE) training, Mrs Armstrong advised that her husband had completed the necessary training and would take on the DPS role and WAVE training would be arranged for all staff members if the conditions were granted. The Licencing Team Leader added that the WAVE training was London based and advised that Durham County Council also provided safety training.

The Licencing Team Leader clarified that attending PubWatch meetings would not be a condition of the licence as it was a voluntary scheme, however Licensing Holders were encouraged to actively participate in PubWatch schemes so that issues relating to Crime and Disorder could be addressed. She asked how Mrs Armstrong intended to assure the Sub-Committee that she would be aware of the people on the PubWatch list. Mrs Armstrong advised that she had a good working relationship with Mr Donnelly who attended the meetings or another member of staff would attend the PubWatch meetings on her behalf.

Mr Clarke referred to a meeting with the local authority on the 10 November 2023 where it was agreed that there would be five members of door staff over the Christmas period. Mrs Armstrong stated that four to five members of door staff had been recommended and she agreed to 4 members of door staff and suggested that the reference to five members of staff was an error. She added that four members of staff were scheduled, however this reduced to three due to a member of staff starting maternity leave early. Mr Clarke stated that Mrs Armstrong or her legal representative did not question any of the information supplied by the Police. Mr Craig suggested that a response was not necessary as that was the purposes of the hearing.

Responding to a query regarding the call to the ambulance service on the night of the incident, Mrs Armstrong advised that a member of her staff rang the ambulance service at 2.28 am. Mr Craig noted that the incident occurred at 2.16 am and the premises called the ambulance 12 minutes later. Mrs Armstrong explained that the call was made as the victim was brought into the premises to receive medical attention. She confirmed that she did not provide a statement to the Police regarding the incident.

Mr Clarke highlighted that prosecutions were not possible without statements and referred to further incidents on the 20 October and 12 November 2023 where Mrs Armstrong had been assaulted on the premises. Mrs Armstrong explained that she refused to provide a statement to Police due to repercussions and threats that would affect her family and reiterated that on the night of the stabbing incident, CCTV footage was provided. Mr Clarke added that the representation made with regards to Mrs Armstrong fully engaged with Police was incorrect and her actions do not promote the licencing objectives.

With regards to queries regarding payments showing Bar 1 from the next door property and payments from Bar 1 being made to a car wash in Newcastle, Mrs Armstrong explained that one of her card payment machines was faulty, therefore on busy nights she would borrow a machine from Mr Toshi. She added that the property next door used her card payment machine when their machine was not working. When asked if the Police were notified as this was potential fraud, Mrs Armstrong explained that money was transferred back and the money was properly accounted for through her accountant.

Responding to a question from Councillor M Wilson regarding challenging underage drinking, Mrs Armstrong advised that everyone who looked under 25 would be challenged and once staff were satisfied that the id produced was valid, then their hand would be stamped. It was noted that over the last two years, the number and quality of fake ids had increased dramatically. Responding to a further query regarding serving intoxicated customers, Mrs Armstrong advised that staff were instructed not serve intoxicated customers and would rely on their own judgement and anyone found to be intoxicated would be escorted from the premises.

Councillor L Brown queried how the barring system currently worked. It was explained that pictures of barred customers would be uploaded on a WhatsApp group. Mrs Armstrong advised when she started running the premises PubWatch was a condition on the license, however PubWatch later removed her from the group.

In response to a further question from Councillor L Brown regarding whether her husband could carry out the DPS role if they were concerned with

repercussions, Mrs Armstrong intended to make a statement, however decided against it as she had already received threats and felt she could not rely on the Police to protect them.

Responding to a question regarding Mr Toshi, Mrs Armstrong stated that he was not involved in running the business in any way and explained that she leased the premises from Mr Toshi and he was a friend.

Mr Clarke added that they remained concerned that any incident that may occur within the premises, by Mrs Armstrong's own admission, would still not be reported. He added that the additional conditions had not been sent to the Police until the previous evening and that the lack of response to previous correspondence remained a concern. He added that his was not an isolated incident and that there had been many incidents in the past and incidents would continue if the license was not revoked.

Mr Craig highlighted that the person who used the knife was responsible for the incident. He acknowledged that Licence Holders have a responsibility placed on them and noted there were issues locally in terms of intimidation. He added that Mrs Armstrong had positively engaged with the Police and from the options available, asked that the Sub-Committee impose conditions on the licence and remove Mrs Armstrong as DPS.

At 4.00 pm Councillors L Mavin, L Brown and C Hampson **Resolved** to retire in private to determine the application. After re-convening at 4.30 pm the Chair delivered the Sub-Committee's decision. In reaching their decision the Sub-Committee considered the report, verbal and written representation from the Police, written representation from Other Persons together with the verbal and written representation from the Applicant and her Legal Representative. Members also took into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved:

That the Premise Licence be revoked.