

## **DURHAM COUNTY COUNCIL**

At a Meeting of **Statutory Licensing Sub-Committee** held in Council Chamber - County Hall, Durham on **Tuesday 22 May 2018 at 10.00 am**

### **Present:**

**Councillor C Carr (Chairman)**

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

Councillors D Hicks and J Maitland

### **Also Present:**

Councillor P Crathorne

Councillor C Hampson

Helen Johnson – Licensing Team Leader

Gill Proud – Solicitor, DCC

### **Applicants**

Chris Southey – Solicitor

Chief Superintendant Jane Spraggon

Inspector Rachel Stockdale

Detective Constable Dean Haythornthwaite

### **Premises Licence Holders – Stonegate Pub Company Ltd**

Philip Kolvin QC – representative

Graeme Cushion, Solicitor – representative

Helen Charlesworth – Managing Director

Rob Hawkesworth – Head of Risk Management

Stephen Rucastle – DPS

Graham Jones – Director of Operational Support

Steve Howe – Managing Director, Phoenix Security

### **Other Persons**

Councillor David Freeman

Councillor David Freeman on behalf of St Nicholas Community Forum

Nick Rippin on behalf of Roberta Blackman-Woods MP

### **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 13 March 2018 were agreed as a correct record and were signed by the Chairman.

Prior to the commencement of the proceedings the Chairman Councillor Carr stated that the Sub-Committee had noted in the papers that part of the representations were not relevant to the review. Although the Sub-Committee had sight of the full representations they were only able to take into account those representations that were relevant to the particular premises which were subject to the review. The management of the City Centre and requests for a review of the Council's Licensing Policy were outside the scope of this review and would not be taken into consideration when determining the outcome of the review.

The Sub-Committee acknowledged the Police report which clearly stipulated that the purpose of the review was not to examine the cause of or to apportion blame for the tragic accident which resulted in the death of Olivia Burt. That was the province of other investigations which he believed were ongoing.

The role of the Licensing Authority in hearing this review was to consider the evidence submitted by all of the parties in order to determine whether the licensing objectives relating to Public Safety and the Prevention of Crime and Disorder were being promoted by the current conditions on the Premises Licence of Missoula.

### **5 Application for the Review of a Premises Licence - Missoula, Unit 7, Freemans Place, Walkergate, Durham**

The Committee considered a report of the Licensing Team Leader regarding an application for the review of a Premises Licence in respect of Missoula, Unit 7, Freemans Place, Walkergate, Durham (for copy see file of Minutes).

A copy of the application and supporting documentation which included additional information from the Licence Holder and Durham Constabulary had been circulated to Members.

Gill Proud, Solicitor – DCC, advised that all parties had been informed of late submissions received the day before the hearing by St Nicholas Community Forum which was of footage taken outside the premises. The Sub-Committee was informed that the request by the Forum to rely on the video footage had been withdrawn.

The Sub-Committee was also informed that agreement to a revised Operational Plan had been reached, following further discussions between the Police and the Premises Licence Holder. A copy of the revised Operational Plan was circulated to everyone present and the Sub-Committee was informed of further minor revisions, as follows:-

It was proposed that the final sentence on page 1 be amended to read 'The premises' operating plan, and any changes thereto, shall be agreed with the Licensing Authority and the dedicated Licensing Unit of Durham Constabulary'.

Members were also informed of a proposed additional condition that 'no person under the age of 16 years shall be admitted to the premises after 10pm'.

The Chairman asked if the Licensing Authority had been consulted on the proposed Operational Plan. Members were informed that the Operational Plan had been agreed by the Police and the Licence Holder but the Licensing Authority had not been involved in their discussions.

At this point the Licensing Team Leader was invited to present her report. In taking Members through the report the Officer referred to the statement of Mr Rob Hawkesworth and she clarified that the Licensing Authority had not been involved in discussions about the Operational Plan early in 2017; these discussions had been with the Police and the Fire Authority only. Inspector Stockdale interjected that at no point during the discussions had an agreement been reached around a policy for dealing with the matter of queuing.

The Licensing Team Leader continued that Section 182 Guidance issued by the Secretary of State had been revised in April 2018, however there had been no amendments to the relevant sections of the Guidance included in the report.

There were no questions of the Licensing Team Leader.

Mr Chris Southey, Solicitor for Durham Constabulary addressed the Sub-Committee. He referred Members to the statements of Inspector Stockdale and Detective Constable Haythornthwaite and advised that the officers were present to respond to questions.

Mr Southey advised that the Police had made application as a Responsible Authority to review the Premises Licence of Missoula. The application was confined to a request for a modification of the conditions of the Premises Licence, following the death of Olivia Burt, a student of Durham University. Students had gone to the premises that evening in huge numbers and the premises had been full to capacity with a large crowd outside. It would be improper to comment further on the tragic accident and the death of a young person was shocking but trying to find a scapegoat and a solution could result in a hasty decision that was not appropriate going forward. There were certain measures that might helpfully improve processes, and although the Police were not saying that if such steps had been in place in February the accident would not have occurred or that they would prevent another death, they believed that the Operational Plan would ensure that there was a more effective operation of the premises in future.

Mr Southey advised that the premises had traded for several years, formerly as The Slug and Lettuce and had attracted no concerns from the Police. During February 2017 there were discussions between Mr Hawkesworth, Head of Risk Management for the Licence Holders, and Phoenix Security following possible overcrowding

inside which had been raised on behalf of another premises trading in the locality. The Police entered into discussions with the premises which included the management of queues outside. There had been no cause for concern for the Police following this, and between 7 February 2017 and 6 February 2018 there had been no warning signs.

Mr Southey stated that to Missoula's credit they had closed the premises immediately following the accident, and had re-opened gradually. The Licence Holders had not shrunk from their responsibilities to examine the Licence, and discussions had been productive. The Police acknowledged that the circumstances on 7 February 2018 were without precedent and with the Licence Holders the Police had reviewed the following:-

- ineffective communications between management, staff and door staff;
- uncertainty around reporting and acting upon incidents;
- failure to assess risks;
- inadequate communications between the premises and those promoting events.

Mr Southey provided a summary of what the Operational Plan hoped to achieve and the responsibilities of Stonegate Pub Co. Ltd to address in terms of:-

- management of queues outside the premises on Wednesdays during the academic year;
- deployment of security staff on a Wednesday, Friday and Saturday night;
- escalation assessment – reporting of incidents;
- dispersal of customers at end of operating hours;
- effective communication – so everyone knows what everyone else is doing;
- advance notification of larger events over 325 people to the Police;
- consultation with the Police in advance where events used a promoter;

The responsibility of Phoenix Security and Walkergate as a whole was outside the direct responsibility of Missoula.

To conclude he asked the Sub-Committee to adopt the revised Operational Plan as part of the Premises Licence, including the condition that no person under the age of 16 years shall be admitted to the premises after 10pm.

There were no questions of Mr Southey.

Councillor Freeman, other person was invited to address the Sub-Committee. As local Ward Councillor he advised that he was fully supportive of the review which related to the licensing objectives 'prevention of crime and disorder' and 'public safety'. In being reminded by the Chairman that the Sub-Committee could not take into account comments about the whole of Walkergate, the Councillor stated that since the re-branding of the premises it was apparent that the operators were trying to attract students by holding promotions nights. He considered there to be two key issues; ensuring that the premises did not exceed capacity, and queue management. He asked the premises not to hold promotions nights, to look at

drinks pricing, not to serve alcohol to those already drunk, and for queue management and security to be improved. He acknowledged that the revised Operational Plan could resolve some of these issues, reduce risk and produce a safe environment for customers.

Councillor Freeman was advised that it was an offence to serve alcohol to someone already under the influence, and the operators of Missoula should be aware of this.

Nick Rippin was invited to address the Sub-Committee on behalf of Roberta Blackman–Wood MP. Mr Rippin explained that the MP had prepared a statement which he would read out, and was reminded by the Chairman that the Sub-Committee could only take into account representations regarding Missoula, and not Walkergate as a whole or the Council's Statement of Licensing Policy. Mr Rippin informed Members that the MP supported the review following the tragic events of 7 February 2018 and was pleased that a review had been requested which she considered was the first time in 10 years that interest had been shown in taking action. Drastic changes needed to be made to Missoula; the licensing hours had not changed since 2005. Queuing to access the premises was unsafe with a number of steep stairways and there were no measures in place to protect customers. There had been a number of reports of anti-social behaviour which suggested that the licensing objectives of 'public safety' and 'prevention of crime and disorder' were not being promoted. At this point the Chairman interjected to question the relevance of the reference to anti-social behaviour to Missoula. Mr Rippin acknowledged that the issues of anti-social behaviour were not attributed to Missoula. He concluded by stating that these were truly tragic circumstances and Ms Blackman-Woods MP hoped someone was listening now.

The Licensing Team Leader advised that the Licensing Authority had responded directly to the MP during the consultation period in connection with her representations, highlighting that the Statement of Licensing Policy and Walkergate were separate matters to this hearing.

Mr Southey explained that there had been contact between the MP and the Police recently and the MP had been broadly supportive of the action taken by the Police.

Councillor Freeman then addressed the Sub-Committee on behalf of St Nicholas Community Forum. He explained that the Forum was a Residents Association that covered Claypath, The Sands and Walkergate. Their submission did refer to issues beyond Missoula which he would not address. The Forum supported his views as Ward Councillor and that of the MP, and that any amendments to the Premises Licence should address the management and procedures in place on the date of the tragic accident, and should also look at licensing hours. The Forum felt that 2am was too late and contributed to the anti-social behaviour problems residents experienced after this hour when people left Missoula and other premises.

There were no questions of the other persons.

Mr Philip Kolvin addressed the Sub-Committee on behalf of the Board and Management of Stonegate Pub Co. Ltd and expressed their deep regret and deepest condolences to the family of a young woman whose whole life had been

ahead of her. The premises aimed to offer fun and safe nights, and the Board and Management were profoundly sad that the accident had happened, and this had guided the company's thinking ever since.

The Police had accepted that the purpose of the application was not to examine cause or to assign blame; this was the subject of an ongoing investigation which his client was fully co-operating with, but the purpose of the review was to look at what needed to be done to achieve the licensing objectives of public safety and prevention of crime and disorder. It had been an iterative process between Missoula and Durham Constabulary which had resulted in the Operational Plan.

Mr Kolvin provided background to Stonegate Pub Co. Ltd, a company which had been established in 2010, with 700 venues, of varying sizes, some of which were large nightclubs. Annual attendance at all of their premises was around 100 million people across their whole estate. They had never experienced queue issues or a barrier falling and causing injury which underlined their shock at what had happened and their determination to prevent it happening again.

Referring to Mr Hawkesworth's statement he advised that safety was discussed at Board level, and that there was a Risk Management Group and extensive portfolio of corporate risk assessment for each and every premises. The company retained an internationally renowned safety consultant who undertook audits twice per year at every premises. Mr Hawkesworth was assisted by an Operational Risk Manager.

In terms of Missoula, the premises was a well-appointed mid-sized bar capable of accommodating 900 people, 650 comfortably. The venue security was operated by Phoenix Security which was licensed by the Security Industry Authority (SIA) and each door supervisor was also licensed by the SIA. In addition Phoenix Security had an accreditation known as 'approved contractor status gold standard' – a voluntary scheme for those who wanted to quality assure their work, and were champions in 2015.

Mr Rucastle had been in the licensing industry for 20 years and was a highly experienced Manager. 160,000 people visited the premises per year. The venue had not attracted significant Police concern and the security system had been in place for a year. There were 10 security officers, observed by the Police and Management. On the night of the terrible accident Mr Rucastle and his Assistant Manager were supervising events at both doors; security had not been left to the door supervisors.

The tragic accident had caused a root and branch review with the involvement and assistance of Durham Constabulary. The company closed the pub and re-opened in stages, and there had been an iterative process between the Police and Missoula to bring the Operational Plan to fruition.

He asked Members to note that much of the Plan was particular to student nights and noted that the Police viewed the Plan as a starting point for discussion with other venues in the City Centre.

Mr Kolvin then took Members through key points in the Operational Plan:-

- There were 14 people handling one queue at a single level.
- The Plan may be subject to revision with the agreement of Durham Constabulary.
- Some areas of the Plan were outside the control of Missoula, Part A.
- The Plan was incorporated into the Licence, any breach of the terms of the Plan would form a breach of the Licence.
- Missoula must exercise due diligence when contracting with security from time to time as appropriate.
- Section A of the Plan dealt with the complex as a whole, security staff provided public reassurance to those frequenting the complex and also ensured that noise did not adversely affect guests at the Premier Inn, or the residents.
- Section B dealt with Missoula and set out control measures for each evening. On Wednesday evenings there would be 10 security personnel from 10pm with 4 SIA security stewards in the complex area. There would therefore be 14 staff supervising the queue, in contrast to the arrangements in place on 7 February 2018.
- Risk Assessments – the Plan gave details of the External Risk Management and control measures. All incidents were to be reported immediately to the DPS or Manager on duty who would determine whether further action was required in accordance with the escalation assessment.
- At busy times a member of management would be in attendance in the outside areas to monitor customer numbers and ensure that problems were reported.
- CCTV system must be in full working order.
- Queue system. Photographs of the proposed queue system had been circulated to all parties and Mr Kolvin explained in detail how this would work with reference to the photographs. In the event that more people arrived than could be accommodated in the snaked queue system, those people would queue in the upper level at Millennium Place.
- The planters were to be changed within the next fortnight and between the planters stretched fabric barriers would be used.
- Dispersal Policy. Starting within the venue, staff would ensure that the music was turned down in the last half hour and lighting levels would gradually decrease. SIA staff would ensure that this was carried out and would also help customers plan a safe route home or to find the nearest public transport. Verbal communications would be relayed by radio to complex security and vulnerability awareness among staff was essential. There was signage in place asking customers to be mindful when leaving the premises.
- Communication. The forms of communication were set out at pages 11 and 12 of the Plan which ensured that everyone was aware of the roles of everyone else.
- Radio contact. Radios linked to security, who linked to the City and therefore the Police and Walkergate.
- An escalation assessment was set out in Schedule 1 to the Plan which ensured that where incidents occurred the actions specified were followed.
- Advance notification was to be provided for large events.

The Chairman noted that the table did not include Bank Holidays and Sundays before Bank Holidays. Mr Kolvin confirmed that this could be added to the Plan. Mr Rucastle stated that Bank Holidays would operate in the same framework as a Saturday with a separate risk assessment.

Mr Kolvin then dealt with the other representations submitted. In terms of Councillor Freeman's comments about drinks prices he advised that his client was bound by minimum pricing and drinks were equally as expensive and in some cases more expensive than other premises on the complex.

He appreciated that St Nicholas Community Forum wished to make broader points about the complex as a whole but he reminded the Sub-Committee that Section 14.45 of revised Section 182 Guidance made it clear that cumulative impact was not a relevant consideration. The Forum had requested a reduction in licensing hours but Mr Kolvin explained that there was no evidence of nuisance or anti-social behaviour emanating from Missoula.

He hoped that it was very clear that the company was determined that this terrible accident could not happen again. The presence of Missoula's team at the hearing showed that the company took its responsibility very seriously.

Councillor Maitland asked if pre-paid nights included drinks and was advised that the fee was for admission only.

In response to questions from the Licensing Team Leader Mr Kolvin advised there would be no separate VIP access, and in accordance with the Plan it was proposed that the Police and Responsible Authorities would be notified at least 14 days in advance of a large event. Mr Southey added that a period of notice was required for any events that may require further measures.

In response to a question about the use of TENs which may allow events beyond 2.00am, Mr Kolvin explained that whilst the Licensing Act 2003 allowed TENs to be served for up to 10 days per year there were safeguards; objections by the Police and Responsible Authorities to an application would require consideration by a Sub-Committee, and all conditions on the existing premises licence could be applied to a TEN.

All parties were invited to sum up. Mr Southey referred to the comments made about the relationship between the Police and the Licensing Authority and Members were advised that they had a good working relationship. The discussions between the Police and the Premises Licence Holder were born out of tragic circumstances and although the Police had consulted with the Licensing Authority there had been some difficulties due to the Licensing Authority's involvement in the investigation. The Licensing Team Leader confirmed that both Authorities worked closely together and held a weekly operational meeting.

Mr Kolvin advised that he had nothing further to add.

At 11.50am the Sub-Committee **Resolved** to retire to deliberate the application in private.

After re-convening at 13.20pm the Chairman delivered the Sub-Committee's decision:-

**Resolved:**

That additional conditions be added to the Premises Licence as follows:-

Additional Conditions

- a) The terms set out within the Operational Plan dated 22 May 2018 (with exception to Part A - The Walkergate Complex as a whole and those provisions which recite the express responsibilities of SIA Security Staff) will be adhered to by the Licence Holder at all times. Reference on page 1 to the plan being revised in agreement with Durham Constabulary and the Licensing Authority is not agreed. If there is to be a revision to the Operational Plan this shall be submitted in accordance with the provisions for varying a licence as set out in the Licensing Act 2003.
- b) There is to be no separate queue for VIP access to the premises. Entry will be gained to the premises via the normal queue system outlined in the Operational Plan.
- c) The system in relation to queuing should not prevent ingress and egress to the lift providing access to the Gala level.
- d) Bank Holidays and associated Sundays (immediately prior to the Bank Holiday Monday) will be operated as per the proposed Saturday operating schedule at page 4 of the Operational Plan.
- e) No person under the age of 16 years shall be on the premises after 10pm.