

## **DURHAM COUNTY COUNCIL**

At a Special Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2  
- County Hall, Durham on **Thursday 11 October 2018 at 11.00 am**

### **Present:**

**Councillor L Marshall (Chairman)**

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

Councillors L Brown, P Crathorne and M Wilson

### **Also Present:**

S Grigor – Legal Officer

H Johnson – Licensing Team Leader

Mr F Kearney - Applicant/Licence Holder

Mr M Foster - Applicant's Solicitor

Mr T Robson - TJR Licensing

Mr S Mooney - Durham Constabulary - Solicitor

Sgt C Dickinson - Durham Constabulary

PCSO M Robinson - Durham Constabulary

### **1 Apologies for Absence**

Apologies for absence had been received from Councillor J Blakey.

### **2 Substitute Members**

No notification of Substitute Members had been received.

### **3 Declarations of Interest**

There were no declaration of Interest.

### **4 Application to Vary a Premises Licence - Chaplains, 17-21 Front Street, Consett**

The Committee considered the report of the Licensing Team Leader that asked Members to consider and determine an application from Mr Kearney for the variation of a premises licence for Chaplains, Consett (for copy of report, see file of minutes).

A copy of the location plan of the premises and the application form had been circulated to Members, together with additional information that had been provided from the Applicant and Durham Constabulary.

The application was scheduled to be heard on 24 September 2018, however members adjourned the meeting to allow all parties to have sufficient time to view the additional information which was submitted by the applicant's solicitor on 19 September 2018. The hearing was re-scheduled for 11 October 2018 and all parties were advised to submit any additional paperwork by 4 October 2018. CCTV footage had also been submitted which would be viewed in the hearing today.

The Applicant wished to extend the current hours for the Sale of Alcohol on a Friday and Saturday night, also Bank Holiday Sundays and Boxing Day until 04.00 hours. He also wished to extend the provision of Live and Recorded Music, Performance of Dance and Similar entertainment all indoors on a Friday and Saturday night, also Bank Holiday Sundays and Boxing Day until 04.30 hours. The Applicant did not propose any additional condition on the operating schedule.

During the consultation period the Licensing Authority received two representations, one from Durham Constabulary and one from a local taxi firm. The representation from the local taxi firm was later withdrawn.

Responses were received from Durham County Council Planning Authority, Durham Local Safeguarding Children Board, Durham County Council Environmental Health Authority, Durham County Council Public Health Department and Fire Safety Authority confirming that they had no comments to make in relation to the application.

Mr S Mooney who was representing Durham Constabulary indicated that they objected to the extra hour due to the likely effect on the promotion of the relevant licensing objectives which are the Prevention of Crime and Disorder, Prevention of Public Nuisance and Public Safety. He would ask Sgt Dickinson and PCSO Williamson to also address the Sub-Committee.

Durham Constabulary's initial objection refers to the policy and the table at appendix B which sets out the framework for licensing hours and based on the authority's guidance a premises like Chaplains should have an end time of 1.00 am. This is simply guidance and can depart from it but look at the reasons why the framework came about in the first place. He referred to Section 182 Guidance which explains a lot about licensing premises in County Durham which operate until late hours. He then referred to Consett which was a growing problem and the guidance of 1.00 am was not just picked from a list of times and Chaplains already operate beyond the 1.00 am guidance. Durham Constabulary would submit that pushing the boundaries beyond the framework would have a significant bearing on the likelihood for crime and disorder and is why the framework does not stipulate say 5.00 am.

He went on to say that the infrastructure was not in place to deal with these times, he was not saying that Chaplains was a poorly managed establishment. Mr Robson had conducted an assessment of the premises but this was only for an hour,

Durham Constabulary accepted that it was a well-run business and they needed to make a profit and that times were hard as admitted in the statement of Mr Kearney. The threat of the business closing down was not the highly relevant factor, it was the set up outside the premises which could not cope with the volume of patrons leaving at that time. The transport infrastructure was poor with no buses running at that time, Mr Kearney had offered to operate a shuttle bus but more than one would be required to cover the various areas. Taxis were also limited and the lack of transport could lead to a pinch point and customers walking home which would cause a disturbance to the community. There was only one take away open at that time and there were problems of people gathering at takeaways. There was also a lack of support network at that time in the morning as Consett Friends who provide an invaluable service to vulnerable people have raised concerns that the increase in hours they won't be able to be present which would be an obvious issue of police resources which is already thin on the ground at that time of the morning.

Mr Mooney referred to the relevance of the Thwaites plc V Wirral Borough Magistrates Court case and was not clear on what basis this had been produced as one of the key findings of the appeal case was that the Licensing Committee must add more weight to the hearsay evidence of the responsible authority in any objections to a licensing application. Durham Constabulary were an expert responsible authority with serving police officers giving evidence of concerns. They had considered the past problems and 15 TENS were manageable by the community and Durham Constabulary but if the application was granted 15 nights then become 123.

Sgt Dickinson showed the Sub-Committee some CCTV footage of an incident held on the 15 July 2018 at 4.12 am when a TEN was in place that night and Chaplains was the only premises open at that time.

Councillor Brown asked how far from Chaplains was the incident. The Member was advised that Chaplains was 25 metres away.

Sgt Dickinson referred to the footage with also showed a male walking around with beer in a glass, an ambulance was called which was a drain on other resources. A pizza establishment was open which was not licenced to be open at that time and there was only two officers on duty and noise could still be heard from the Front Street. She indicated that Chaplains was a well-managed premises but they could not police what patrons did when they left the premises.

Sgt Dickinson circulated a colour copy of the graph shown at page 55 which showed alcohol related incidents at Consett and Front Street, Consett between the hours of 3.00 am and 4.00 am which would increase from 4.00 am to 5.00 am if the application was granted.

The premises had an option for 15 TENS and if the application was granted then this would be increased to a possible 123 nights a year. Sgt Dickinson stated that she is a serving police officer and did police the night time economy which was a strain on officers as they were in demand for longer hours. The types of crimes were highlighted on the graph and incidents take up a significant amount of time for the police. She referred to the footage which saw a male run into a resident's

garden which affects the wider community as people were woken up by drunken people, these were not reported so they were hidden victims and the behaviour outside the premises is what impacts on the likes of public nuisance.

PCSO M Williams then addressed the Sub-Committee and stated that Mr Kearney had taken over the premises in April 2018 and when she had visited the premises on the 14 April 2018 she did not see Mr Kearney at the premises. She also visited the premises on the 4 August 2018 and again did not see Mr Kearney but she had spoken to his son to find out their plans as they had submitted a number of TENs. He advised that he had submitted an application to extend their hours and she had advised that she believed Durham Constabulary would not support an application. Consett Street Friends who are a voluntary group aged between 21 to 70 who assist the police and are a local church group and have raised concerns. They are unable to assist the police by staying out later they had not obtained a statement from them as they wanted to remain impartial.

Mr Foster the Solicitor for the Premises Licence Holder referred to taxi Marshalls which Durham Constabulary had used in Durham city centre with some success. Durham Constabulary responded that this was not funded by the police.

Mr Foster then stated that Red Velvet had been mentioned but his client had nothing to do with these premises but they accepted that there had been issues with drugs and crime and the licence was revoked. He then referred to the footage shown for the 15 July 2018 which was outside Singers Bar and Captain Cod had a 24 hour licence and had alcohol off sales until 3.00 am which also included deliveries. Durham Constabulary responded that the incident was 4.20 am and off sales was until 3.00 am.

Mr Foster referred to the six incidents for 2018 and stated that three of the incidents were before his client had took over the management of the premises.

Sgt Dickinson responded that TENs had been in place when Mr Kearney had taken over the premises.

Mr Foster responded that it was Mr Kearney's son who was in control of the premises. Sgt Dickinson responded that incidents had happened when TENs were in place. Mr Foster responded that Mr Kearney was not in control of the premises at this time.

Sgt Dickinson referred to the incidents and the only place that was open at the times was Chaplains. Mr Foster responded that there was no evidence that the incidents were linked to Chaplains and asked if CCTV footage had been obtained. Sgt Dickinson responded that CCTV footage had not been obtained but Chaplains was the only premises open. Mr Foster advised that Chaplains was not the only place open at 3.00 am.

In response to questions, Sgt Dickinson indicated that the CCTV footage from the Council was not available but was not required for a Section 4 order and the footage obtained from the body cameras was sufficient. For a public order there

was no requirement to interview witnesses. She confirmed that Red Velvet was not well managed and she was not saying that Chaplains was poorly managed.

Mr Mooney indicated that the management of the premises was not the issue it was the extension of the licensable hours and what was happening when patrons left the premises, which impacted on the licensing objectives.

In response to questions from Mr Foster, PCSO Williams accepted that she had visited the premises to establish if they intended to make an application to vary the premises licence. She confirmed that she had not asked to speak to Mr Kearney when she attended the premises as his son was always at the premises and was the one who attended the Pub Watch meeting. She indicated that she was in and out of the premises on a number of occasions for routine visits.

Mr Kearney advised Members that when the PCSO visited the premises on the 4 August 2018 he was at the premises and was behind the bar and he assumed they were just chatting to his son as they had not asked to speak to the Designated Premises Supervisor.

Mr Foster speaking on behalf of the Applicant indicated that Mr Kearney is the leaseholder and took over the lease on the 27 April 2018. His client had made an application to extend the current hours and if granted would allow him to trade to 4.00 am on a Friday and Saturday night and Bank Holidays and Boxing Day. Mr Foster asked that Members make a decision on how relevant the representation from Durham Constabulary was and the likely affect.

He then referred to Mr Kearney's witness statement and the appendices which provided more information on the premises and included a list of TENs and notices, policies and procedures and details of the ID Scan system together with a copy of the refusal log and a copy of the Thwaites Case.

He referred to the Thwaites case and the dangers of speculating and not having full evidence and decisions should be made on evidence and that representations could withstand scrutiny at a hearing.

Mr Foster explained that Chaplains was a bar and night club in Consett that was a three storey building which used to be a church which was operated by Mr Kearney which was then sold. Mr Kearney was now back in control of the premises, his son had ran the premises for a period of time but his lease finished in February 2018. Mr Kearney had spoken to the landlord and agreed that he would take over the lease on 27 April 2018. Since taking over the premises his client had held TENs to 4.00 am which had worked well so an application was submitted to increase the hours. He believed that they had established that they could operate without an adverse impact, there was no evidence of fights they had door supervisors in place and was a well-run premises which currently operated until 3.00 am but they felt they could operate until 4.00 am.

Mr Kearney addressed the Sub-Committee and explained that he had worked in the licensing trade 20 years ago and had never had any trouble or a blemish on his record. He left the licensing trade to concentrate on his grey hound business. He

had noticed that a lot of public houses were boarded up in Consett and the same was going to happen to Chaplains so he spoke to the owner who asked him to have a go at rescuing the premises. He had a few TENS which went well and the extra hour made the business viable. During the TENS there was only one minor scuffle and he had female door supervisors. He even carried out the cleaning himself so that he could check for signs of drugs or empty bottles.

He then referred to the incident shown on the CCTV where they were wearing shorts and indicated that they could not have come from Chaplains as they have a dress code which was smart casual, they did allow trainers but no shorts.

He indicated that Singes was open until 3.30 am, who also own Captain Cod so people were still around as they sold alcohol. He had spoken to the owner of the local taxi firm and he had offered to supply and pay for taxi marshalls and on this basis the local taxi firm agreed to work the extra time. They had done a test with taxi marshalls that worked well and the taxi drivers were now keen to do the work.

In response to questions, Mr Kearney advised that he had two taxi marshalls in place who were door men and one use to be a taxi marshall at Durham. The taxi marshall operated from 10.00 pm and he paid for the service. He advised Members that he had previously won 'Best Bar None' on several occasions, he won categories for the best pub, bar and club and overall winner and was runner-up in the national 'Best Bar None' final. He went to the House of Parliament for the final and was presented with a special recognition award from the Chief Constable.

Mr Kearney's Solicitor asked him about his policies and procedure and the training provided. Mr Kearney stated that he offered training which was in excess of that required as his bother owned a safety advisory company.

With regard to the day to day control of the premises Mr Kearney indicated that he owned the business and was the Designated Premises Supervisor, his son had attended some of the pub watch meetings as he was still interested in the business and he had other commitments but he no longer had these commitments and attended the last two pub watch meetings. He referred to the pub watch meetings being disbanded and it was himself who got them reinstated and when he could attend he was in attendance. His son had no role in the premises but socialises in the club and knows everyone and advises him on who is problematic.

Mr Foster then asked Mr Robson who owns TJR Licensing to address the Sub-Committee. Mr Robson indicated that he was formerly employed by Durham Constabulary and was now a Licensing Consultant.

He attended Chaplains Bar at 11.30 pm and carried out an hour's observation of the venue from outside the premises. He saw no incidents while conducting his report. Following his observations outside he met with Mr Kearney and his son as agreed, Mr Kearney was not aware that he had arrived early to carry out observations outside the premises.

He referred to the ID scanner system which he had been shown how to use and the CCTV equipment, both of which were good systems and representatives attended

the pub watch meetings. He also had the opportunity to view the policies and procedures which were very good quality and met the requirements. He then referred to the ratio of door supervisors which was 1:100 and Mr Kearney often steps over and used 1:75. While he was in the premises there were four door supervisors two on the door, one on a pedestal next to the DJ stand and one checking the premises. They also used a body scanner wand on the door to search for weapons which he observed the Door Supervisors using.

He then referred to taxi marshalls and he was aware that Durham City Centre used taxi marshalls from 2004 which were initially paid for by the Council. Marshalls control the que which is a disciplined method and they have a direct radio link.

He commented that they had 11 TEN events to extend the hours and there had been no objections by the responsible authorities and no incidents had been reported by the responsible authorities of any undermining of the objectives. He referred to the Thwaites Case and how it was essential to produce real evidence and there was no evidence associated with incidents to undermine any of the licensing objectives.

In response to questions, Mr Robson indicated that he thought an hour and a half after the premises opened was sufficient time to carry out his assessment. He also confirmed that the log submitted was a refusal entry register. Mr Kearney confirmed that he compiled a written register which was ancillary to the scanner.

Mr Mooney referred to the dress code for Chaplains and that the policy at page 59 mentions tracksuits and sportswear but no reference to shorts.

Mr Kearney responded that no shorts were permitted and commented that sportswear is expensive.

Mr Mooney asked if there was a policy in relation to shorts not being permitted. Mr Kearney responded that if this was not in the policy then he would arrange for it to be included, but he could confirm that no shorts were permitted.

Mr Mooney asked if they could confirm why there was a requirement for taxi marshalls.

Mr Kearney confirmed that the partner of a taxi company had indicated that people were rowdy in the streets.

In response to questions, Mr Kearney stated that they had 220 patrons for the TEN and the capacity of the premises was 320.

Sgt Dickinson asked if they had contacted Durham Constabulary to ascertain if there had been any incidents.

Mr Kearney referred to PCSO Williams commenting that Durham Constabulary had 21 days to find something to refuse the application.

Sgt Dickinson then referred to the number of staff employed and how he signed the register if he was not on the door. She also asked if they had the power to conduct searches at the door.

Mr Kearney confirmed how many staff he employed and that his door staff advised him of any refusals so that he would include it on the register. They had signs placed at the entrance to advise of searching and this was referred to on page 9 of their Operations Policy and Procedures. They were also installing a metal detector.

Councillor Wilson asked why Mr Kearney was completing the refusal register and not the door supervisors and if he had a refusal log for the bar.

Mr Kearney responded that he was the responsible officer and the door supervisors recorded the refusal on the machine. They did not have a refusal log for the bar which TJR Licensing had indicated that they needed to have and this was now in place but they have never had a refusal.

Councillor Crathorne referred to Mr Kearney's statement and sought clarification if the public house which his son operated was a different premises.

Mr Kearney confirmed that it was a different premises.

Councillor Crathorne asked if Mr Kearney could be 100% sure that none of the incidents were related to his premises.

Mr Kearney confirmed that he did not allow shorts and that singers were open until 3.30 am.

Councillor Brown asked Mr Kearney if he was willing to fund the taxi marshall and if so, for how long.

Mr Kearney indicated that he was happy for this to be a condition on his licence.

In summing up, Mr Mooney addressed the Thwaites case and that the committee should be aware of any speculative concerns about a premises and should give such evidence any due weight. The footage showed problems and the job of licensing was to advert risk. The requested operating hours were substantially beyond those stated in the policy and would not promote the licensing objectives. Some incidents had taken places during the TENs and if granted it would be 123 nights a year which would hit the infrastructure and there were limited takeaways. Durham Constabulary would urge the application to be refused due to an increase in crime and disorder.

Mr Foster, in summing up referred to page 55 of the Thwaites case and the guidance which addresses how to consider evidence from responsible authorities. He asked that Members considered the impact of the application and weather an experienced operated which had been acknowledged by the police and they are happy overall how the premises was operated. There was no evidence that any TENs were poorly operated and the hours had been tested and the police did not object to the TENs.

It was the duty of the operator to promote the licensing objectives and he asked that Members look at the measures in place, details of which were provided. The premises were run well to 3.00 am so could do the same to 4.00 am. Conditions had been offered but he asked for flexibility of the DPS having to be present and asked that this be changed so it was a personal licence holder. He then referred to page 23 of the policy and a number of factors needed to be considered which was a robust operating schedule and conditioned premises, a good operator and there was no reason to believe this would not continue and was evident with the TENs. He commented that this was not the end of the process and if issues could be reviewed and asked that the application be granted with the conditions put forward as there was no evidence to convince otherwise.

At 1.00 pm the Sub-Committee **Resolved** to retire to deliberate the application in private. After re-convening at 1.35 pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader, the written and verbal representations of the Licence Holder and his solicitor, and the written and verbal representation of the Police together with CCTV images. 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 variation of the premises licence be granted as follows:-

<b>Licensable Activities</b>	<b>Days and Hours</b>
Provision of Plays and Boxing or Wrestling (indoors)	Monday to Sunday: 10:00 until 02:30 hrs
Films and Indoor Sporting Events (indoors)	Monday to Sunday: 10:00 until 3:30 hrs
Live Music, Recorded Music, Performance of Dance, Other Entertainment similar to Live or recorded music or dance performance (all indoors)	Sunday to Thursday: 10:00 until 03:30 hrs Friday and Saturday: 10:00 until 04:30 hrs Bank Holiday Sunday and Boxing Day: 10:00 until 04:30 hrs
Late Night Refreshment (indoors)	Monday to Sunday: 23:00 until 03:30 hrs
Sale by retail of alcohol (on the premises)	Sunday to Thursday: 10:00 until 03:00 hrs Friday and Saturday: 10:00 until 04:00 hrs Bank Holiday Sunday and Boxing Day: 10:00 until 04:00 hrs An additional hour on the day when

	British Summertime commences, New Year: from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day
Proposed Opening Times	Sunday to Thursday: 10:00 until 03:30 hrs Friday and Saturday: 10:00 until 04:30 hrs Bank Holiday Sundays and Boxing Day: 10:00 until 04:30 hrs An additional hour on the day when British Summertime commences. New Year: from the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day.

The following additional conditions be imposed upon the Premises Licence:

- a) The Personal Licence Holder or Designated Premises Supervisor is present in the licensed area of the premises between 22.00 hrs and closing.
- b) Two taxi marshalls to be employed for the taxi company (which is located at the rear of the premises) from 2.30 am until 5.00am when the premises is open until 4.30am