

**Minutes of a Meeting of the
WBC Licensing and Control Committee 'B' of
Worthing Borough Council**

Gordon Room, Town Hall, Chapel Road, Worthing

Monday 18 September 2017

Councillor Paul High (Chairman)
Sean McDonald

*Noel Atkins
Paul Baker
Keith Bickers
Callum Buxton
Edward Crouch
Lionel Harman
Joshua High

Susan Jelliss
Jane Sim
Bob Smytherman
Steve Wills
*Paul Westover
Tom Wye

*Absent

The meeting was opened at 6.30pm

LCCB/17-18/01 Declarations of Interest /

The Chairman of the Committee made the following statement

'It is common knowledge that Mr Vinojan Vijayakumar is a former Councillor.

Councillors taking part at this evening's Review Hearing have been asked to consider their position in advance of this evening and notify the Monitoring Officer should they feel that they should be precluded from taking part in the meeting tonight and or obtain a dispensation from the monitoring officer if appropriate.

No one on the committee panel has raised any concern or has raised any issues in relation to having a personal relationship with Mr Vinojan Vijayakumar.

The Council therefore concludes that the panel composed is able to adjudicate on the matter before them this evening.'

Councillors High, MacDonald and Smytherman declared a non pecuniary interest as members of West Sussex County Council.

LCCB/17-18/02 Confirmation of Minutes

Resolved: that the minutes of the Licensing and Control Committee B meeting of held on the 10 August 2016 and the Licensing Control Sub-Committees held on the 8 August 2016 16 November 2016, 1 March 2017 and 9 March 2017 be approved

LCCB/17-18/03 Public Question Time

There were no questions from the public

LCCB/17-18/04 Items Raised Under Urgency Provisions

There were no urgent items

LCCB/17-18/05 Licensing Act 2003 - Application for a review of a premises licence under section 51 - Molotov Cocktail and Vodka Bar

Before the Committee was a report by the Director for Communities, a copy of which was circulated to all Members, a copy of which is attached to the signed copy of these minutes as item 5. The report before members detailed an application from Sussex Police for the review of the premises licence for Molotov Cocktail and Vodka Bar, the review sought revocation of the Licence. In the past the licence was the subject of a review application made by Sussex Police in November 2012. That application was successfully mediated and the Committee resolved at hearing on 23 January 2013 that a mediated agreement reached between the applicant and the licence holders be approved. This included the replacement of the then DPS and a number of new conditions of licence were imposed. The current review was being sought following alleged breaches of the premises licence and further concerns regarding the intoxication of patrons. It was contended that the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) had failed in discharging a duty of care to their patrons which had culminated in the death of a patron.

Presenting officer outlines application

The Licensing Officer introduced the report to the Committee and the applicant confirmed that the Licensing Officer had produced an accurate outline of the application.

Members questioning of the presenting officer

A Member asked the presenting officer why there had been no mediation attempted between the parties. The presenting officer told members that there was some hearsay to suggest that Sussex police had refused a request to mediate.

Applicant to present their case

The Barrister for the applicant made a representation which is summarised as follows:

- The case before members was serious. A review in 2013 had resulted in a suspension, a change of DPS and the imposition of a significant number of conditions. However, problems identified had not abated but had gotten worse;
- Drunkenness at the premises was permitted and encouraged;
- There had been multiple breaches of the premises licence;
- Events on the 19 February had led to the death of a patron.
- As subsequent inquest into the death had lead the coroner into adding the following “i am minded to add a rider that (the deceased) at the time, was under the influence of alcohol, and severely intoxicated, and that has led directly to her death”
- Members attention was drawn to the very high drug levels located after a swab had been taken at various locations throughout the premises;

- Members were told that the case highlighted a cycle of failure and improvement and replacement of the DPS would not improve the situation as the problems were rooted in deeper company bad practice;
- The case before members dealt with a number of breaches of the licence and it was therefore felt inappropriate to seek the addition of further conditions if the premises could not apply its current conditions;

The meeting was shown CCTV video which showed the patron who lost her life leaving the premises and walking through various streets as she dispersed from the club. The video showed her staggering from side to side and resting against a wall at one point.

PC Jones from Sussex Police made a representation which is summarised as follows:

- The submission from the Premises licence Holder suggested that there was no requirement to have SIA licensed door staff on the evening of the 19 February as there was no regulated entertainment on that evening. However, the premises licence stipulated that there must be door staff present if there was regulated entertainment or after 10pm in any case;
- Members were told that despite being told that there was no regulated entertainment, a post from the Facebook page from the Molotov showed a poster advertising a Live soul singer would be performing on that night. A copy of that post was circulated to members and is attached to the signed copy of these minutes;
- There was evidence that although entries were not allowed after 23:00, someone was allowed to enter after that time (approximately 23:10);
- Requests for CCTV footage were not supplied when requested from the manager James Lanz;
- when the CCTV footage was not forthcoming from Mr Lanz, PC Jones and a colleague resorted to waiting outside the premises for him to arrive and then stayed with him whilst the footage was searched for and downloaded;
- Assertions that the unlicensed doorman was only present to manage staff was still against SIA regulations;
- Members were told of the sophistication of the equipment used to test for drug samples and that readings taken by some of the samples were some of the highest in Sussex. Mr Lanz had sited another premises in Worthing and had alleged that it had received higher readings than the Molotov. Members were told that the premises sited by Mr Lanz had in fact received significantly lower drug readings.

Members asking questions of the applicant

A Member asked how the premises was encouraging drunkenness, the Committee was told that by allowing drunkenness in the premises, allowing people into the premises who were drunk and not dispersing those who were drunk correctly.

A Member asked if fabrication of documents was a criminal offence, which was confirmed

Respondent asking questions of the applicant

The Barrister for the applicant asked why the Police had not accepted an offer for mediation. The meeting was told that communication from the respondent had indicated that the basis of mediation would be on the basis of additional conditions, however the Police were of the view that additional conditions would not be effective and so did not engage in mediation.

The Barrister for the respondent asked why no blood sample had been taken from the deceased who had passed away and suggested that there could have been other factors involved such as medication or other substances. PC Jones told the Committee that he couldn't answer that question because he was not involved in the initial criminal investigation.

Representation of the public health lead for alcohol and drugs

The Public Health Lead for Alcohol and Drugs made a representation which is summarised as follows:

- Alcohol was a psychoactive substance and although there was a degree of personal choice there came a point where people lose the ability to make rational choices;
- There had been a tragic loss of life in February but a subsequent Police visit in June had shown that there were still patrons intoxicated in the premises;
- There should be confidence that patrons would be safe in the premises environment and that the deceased was in a vulnerable state and should have been supported to leave safely for home;

Questions from members for public health lead for alcohol and drugs

A Member asked if vulnerability was a subjective matter and was told that the video clearly showed the patron very unsteady on her feet and would consider her to be vulnerable.

Representation from the Licence holder

The Barrister for the Licence Holder made a representation to the Committee which is summarised as follows:

- The barrister stated that it was easy to blame the premises for the death of the deceased but that statements from the Licence holder stated that the deceased had been refused service early in the evening;
- It seemed that the deceased had 'topped herself up' at the premises as there were indications that she had consumed alcohol earlier in the day;
- The DPS sought to make sure that the premises was well run and had sought to make improvements to the handling of the licence;
- There had been an assertion from the Police that there was no other option other than to revoke the licence, however, the premises was redeemable and was an important commercial asset to the town;
- There was disappointment that there was no option of mediation because the premises was able to change and with advice, would do so;

The Licence holder and former DPS made a representation to the Committee

- There was no live entertainment on the Evening in question although a singer had come in for a sound check earlier the licence of the premises stipulated that doorman need to be used if there was regulated entertainment;
- The deceased had ordered a single Jack Daniels and Coke at 8pm and 9pm but was refused when she asked for another drink at some time between 9.30pm and 10.15pm, the manager at the time had a discussion with the deceased and determined that she was 'tipsy' but should not be allowed another drink and she had been allowed to spend the rest of the evening dancing;

- The premises did not have a problem with drugs and there were measures in place to prevent drug use such as the use of a toilet attendant and horizontal surfaces in the bathrooms;
- Notes could have contaminated the areas that had received the positive drug tests;
- The DPS openly admitted that some mistakes had been made;
- There had been an attempt to tidy up the conditions of the licence as they were contradictory in some places;
- The Employment of a new DPS had seen an improvement in the quality of paperwork, this had been coupled with a number of current security being 'let go' due to poor quality paperwork and record keeping;
- The licence holder was willing to meet with the Police to address the issues.

The New DPS made a representation which is summarised as follows:

- Members were told that the new DPS had been in post for a few weeks but had begun to reorganise the operation of the premises. This had begun with a new Security Company alongside meetings and training with all staff;
- Emphasis was being given to making sure that people got home safely and new posters had been created promoting the 'drink aware' campaign.

Members questions for the Respondent

A Member asked for clarification about regulated entertainment and whether or not any had been taking place on the 19 February and was told that there had been no regulated entertainment. The licence holder was questioned on the matter further and was of the opinion that he interpreted the conditions of the licence to mean that SIA doorstaff needed to be employed when there was regulated entertainment but it was pointed out that condition 3 of annex 3 stipulated that doorstaff must be employed from 10pm or when there was regulated entertainment taking place.

A Member said that the premises had been in breach of a third of the conditions of its conditions and asked if this was reflective of a well run business. The respondent told members that he did not accept the accusations in their entirety although it was conceded that there were some deficiencies. It was asserted by the respondent that the conditions of the licence were misleading and impossible to adhere to, he had met with the Licensing team on three occasions before handing a request to vary the licence. A Member asked for clarification that the licence holder had, in 2013, accepted the mediated imposed additional conditions on the licence. The licence holder confirmed that this was the case.

A Member referred to evidence supplied by the Police and asked if the letters of support submitted by the respondent were solicited and dictated. The barrister for the respondent told the committee that those who had written were asked to write letters and not coerced. It had not been the intention to script answers although it appeared the letters had not followed a script.

A Member asked for clarification as to why there appeared to be discrepancies with the door incident and refusals log i.e the entries were repeated with a different date placed above them. The Manager purported that he had received the entries from the doorstaff and passed them onto the police without checking them.

A Member asked why it had taken time to hand over CCTV recording to the Police. The Manager of the premises told members matters were complicated by leave and the time it took to download and copy the information.

The applicant asking questions of the respondent

The manager of the premises was asked why he did not know the content of the door incident and refusals log when he handed it to police and if he checked the log regularly. The premises manager told members that he viewed the notes from door staff every evening but they were taken away to be written up by the partner of the head doorman.

The barrister for the Police pointed out that the licence holder had contended that the licensing conditions were ambiguous but had not said that the conditions were unworkable when they were agreed in 2013. He pointed out that the conditions of the licence stipulated that SIA doorstaff should be present from 10pm or during the provision of regulated entertainment and asked why this condition was misleading.

The barrister noted that the licence holder had denied that there was regulated entertainment on the evening of the 19 February (an evening where there had been no door staff and a patron had later died) and asked why there was a facebook post advertising regulated entertainment dated the 18 February. The manager of the premises stated that the evenings were not profitable and had been stopped, the facebook post had been scheduled to go up but he had forgotten to remove it. The barrister drew the Committee's attention to part of a witness statement provided by the bar supervisor that stated 'I recall seeing the lady dancing by herself, the singer had finished by then'. Members were told by the respondent that there had been a soundcheck and there had been no regulated entertainment.

The barrister for the police noted that the statement from the bar manager had indicated that he did not speak to the deceased whereas the licence holder had claimed in his representation that the manager had spoken with the patron at length. The licence holder told the committee that as far as he was aware the manager had spoken with the patron.

The barrister for the Police noted that despite claims the bar did not have a drug problem and had measures to prevent drug use there were high readings in male and female toilets and also the bar and toilet attendants stool. The manager stated that the surfaces could have been contaminated with bank notes although he conceded that he was not an expert in the matter.

The barrister for the Police pointed out that on a recent Police Licensing visit people were observed as being intoxicated. The licence holder told members that if someone was intoxicated they would be asked to leave the premises.

Questions for the respondent from the public health lead for alcohol and drugs

- It was put that the time that the deceased had spent in the bar would be enough time for the alcohol consumed there to have been broken down and that she would have had to arrive at the premises in a similar level of intoxication when she left. The manager of the premises told members that they looked for slurred speech, unsteadiness and drowsiness to determine if someone was intoxicated. Upon further questioning the manager told members that his staff did not think that the deceased had a high level of intoxication.

Summing up of the Applicant

The barrister for the police summed up and it is summarised as follows

- Conditions on a licence were not a 'technicality' and were a serious matter and any breach of the premises licence was a criminal matter;
- The licensing objectives had been undermined which was not tolerable when came to harm or potentially could come to harm;
- The premises had demonstrated a persistent failure to appreciate the danger of allowing people to get drunk;
- Drug readings from the premises were very high and couldn't be dismissed by claiming that 'everyone has a problem'
- The number of breaches were large and the endpoint had been reached. A Number of assurances had been made but they were a replication of assurances made in 2013.

Summing up of the public health lead for alcohol and drugs

- The public health lead for alcohol and drugs stated that she stood by her representation and told members that the revocation of the licence was the only option.

Summing up of the respondent

The barrister for the respondent summed up which is summarised as follows:

- The breach of a licence was grounds for a prosecution but no prosecution had been made;
- The Police had intimated that the premises were 'in the last chance saloon' but it was submitted that not anywhere near the 'last chance saloon';
- It was not accepted that there had been irresponsible trading;
- The premises was not a hopeless cause and had began to make adjustments including the appointment of a new DPS;
- There were alternatives to a simple revocation;
- There would be an effect if the premises were closed. There would be an impact on the economy, a financial impact on the town and countless people dependent on the trade;
- There had been no prosecution and the coroner had made a statement but not a finding of how the deceased had become intoxicated;
- The case was not a case of revocation

The Chairman confirmed with all parties that they had nothing further to add.

The meeting adjourned at 9:30pm

The meeting reconvened at 10:52pm

The meeting was told that in reaching its decision the Committee had given due regard to the statutory licensing objectives, Worthing Borough Council's Statement of Licensing Policy, Guidance under section 182 by the Home Secretary and Licensing Act 2003, Human Rights legislation and the rules of natural justice. The committee considered the application, both written and oral relevant representations from the Police including CCTV footage as well as the written and oral representations and testimony and relevant information supplied by the licence holder which included witness evidence. In discharging its functions the Committee did so with a view to promoting the Licensing objectives, the relevant objectives here were the prevention of crime and disorder and public safety.

Resolved: that the licence be revoked

Reasons for decision: The Committee has taken into account the concerns of the Police, the Public Health Department from West Sussex County Council and the Licensee and have concluded that additional conditions would be inadequate despite recent efforts by the Molotov to make improvements. The Licensing Committee is satisfied that the current position would continue to undermine the prevention of crime and disorder and public safety objectives. To simply re-emphasise conditions, which clearly have not been adhered to in the past will prove to be ineffective going forward and will not prevent further breaches of the law in future and consequently would not promote the Licensing Objectives.

Previous conditions placed on the licence have been breached and not adhered to. Those breaches include:

- Not providing CCTV /body worn video footage as per the licence requirements to Police on request or within a reasonable period or ensuring CCTV equipment/body worn video is operational in accordance with Home Office Guidelines and reporting deficiencies when required;
- Management, staff, door staff failing to adopt and implement a dispersal policy at the time to ensure patrons leave the premises safely;
- Bar staff and Door staff not being proactive or assisting patrons whilst on their premises to ensure safe levels of consumption of alcohol;
Not ensuring provision of training records to the Police and the Local Authority as required;
- Failing to maintain and provide an incident/refusals register
- The police provided Vulnerability Awareness Training in February 2016 this doesn't appear to have had an impact.

This demonstrates that there is poor management of the premises that there is a disregard for the current conditions on the licence, which compromises both the crime and disorder and public safety licensing objectives.

The committee has taken into account the concerns of the police and the Licensee and takes the view that a revocation is necessary and proportionate to ensure the licensing objective of Crime and Disorder and public safety is maintained.

The meeting was declared closed at by the Chairman at 11:15pm, it having commenced at 6.30pm.

Chairman