

# **LICENSING SUB-COMMITTEE**

## **MINUTES OF THE MEETING HELD ON MONDAY, 28 MARCH 2011**

**Councillors Present:** Jeff Beck, Gwen Mason and Andrew Rowles

**Also Present:** Sarah Clarke (Team Leader - Solicitor), Ros Haynes and Alan Lovegrove (Licensing Officer), Jessica Broom (Clerk)

### **PART I**

#### **1. Declarations of Interest**

There were no declarations of interest.

#### **2. Application No. and Ward: 11/00262/LQN Bricklayers Arms (Purple Lounge), 137 Bartholomew Street, Newbury, RG14 5HB**

The Sub-Committee considered a report (Agenda Item 2) concerning an application for the review of a premises licence under Section 51 of Licensing Act 2003 for the premises the Bricklayers Arms, 137 Bartholomew Street, Newbury RG14 5HB.

In accordance with the Council's Constitution Inspector Malcolm Whittaker (Thames Valley Police) Sarah LeFevre, Barrister, (Licensee Agent) and Ian Pearson, Business Relations Manager (Licensee) addressed the Sub-Committee on the aforementioned application.

Alan Lovegrove representing the Licensing Authority presented his report to the Sub-Committee. On 17<sup>th</sup> February 2011 West Berkshire Council Licensing Department received an application from Superintendent Robin Rickard of Thames Valley Police, Newbury Police Station, Mill Lane, Newbury for the review of the Premise Licence for The Bricklayers Arms (Purple Lounge), 137 Bartholomew Street, Newbury under Section 51 of the Licensing Act 2003.

The consultation period for the above named premises ran from 18<sup>th</sup> February 2011 to 17<sup>th</sup> March 2011. Within the prescribed 28 day consulting period the Licensing Department received one other representation from Ros Haynes Service Improvement Manager, Safeguarding, West Berkshire Council. Her representation and grounds for the review were based on the licensing objective 'The Protection of Children from Harm'.

The application to review this licence by Thames Valley Police related to the following licensing objectives:

- (1) The Prevention of Crime and Disorder
- (2) The Protection of Children from Harm

Details of the grounds for this review would be explained in full by a representative of the Thames Valley Police and Ros Haynes. At the review hearing the authority could take any of the following steps which they considered necessary in order to promote the licensing objectives:

- (a) modify the conditions of the licence;
- (b) exclude licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months;
- (e) revoke the licence.

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For this purpose the conditions of the licence would be modified if any of them were altered or omitted or any new condition was added.

Inspector Whittaker addressed the Committee. He was representing Inspector David Milsom of the Newbury Town Centre Neighbourhood Team, who was the applicant from Thames Valley Police. Inspector Whittaker presented the report that Inspector Milsom had provided in the application. The grounds for the review being requested were the failed test purchases. At 3:05pm on Saturday 27<sup>th</sup> November 2010 two females aged 15 and 16 were served two pints of Fosters Lager. On Saturday 29<sup>th</sup> January 2011, two 16 year old females were sold two bottles of Smirnoff Ice. Fixed penalty notices were issued to the sellers on each occasion.

Two further conditions of the Licence had also been breached. The first being that door staff would be present on Thursday, Friday and Saturday nights from 22:00hours. The second that no children would be permitted onto the premises after 21:00hrs. At 8pm on Saturday 15<sup>th</sup> January 2011 – two Police Community Support Officers were patrolling outside the premises and found a female who was known to them.

Test purchasing was usually carried out where concern had been raised regarding premises. Thames Valley Police had serious concerns regarding this premise in relation to the licensing objectives of the protection of children from harm and prevention of crime and disorder. They had therefore requested a review of this licence. The police were recommending that the license be suspended for a period of three months and that the additional conditions that the Police had put forward are also implemented. There were some changes since the report had been produced and the Police now wished to remove recommendation no. 3.as set out on page 7 of the agenda and to change recommendation 2b from four weeks to six weeks for the training.

Sarah LeFevre, on behalf of the Licence holder, put two questions to the Police:

- She queried whether or not the Police could confirm that between 3 and 2 weeks ago there had been an unsuccessful test purchase. In this instance alcohol was not sold. Police representatives could not confirm this to their knowledge, neither could Alan Lovegrove.
- Regarding condition 2b on page 7, she asked if an example could be given of another nationally approved accredited curriculum for training of staff. This could not be provided at the hearing.

In response to questions from Councillor Jeff Beck, Thames Valley Police clarified that:

- Condition 2a related only to staff selling alcohol;
- Condition 1 related to any incident – it would be a judgement call staff would have to make to ensure those points were covered and the incident was properly recorded;
- Condition 7a, regarding the designated premises supervisor conducting written assessment – it would be a subjective decision that was required. It would be simpler to have certain hours when door staff were present.

Mr Dean from Thames Valley Police added that a few premises were now asking for the requirement to have door staff on duty to be removed from their conditions. Where this request was made licensees were being asked to undertake risk assessments for different activities and evenings. This was to show they had demonstrated due diligence in deciding whether or not to have door staff present. This practice had had a good history of working well in other areas, including Reading.

Ros Haynes addressed the Sub-Committee and stated that they had reviewed the information provided and felt there was a general lack of training amongst the staff. Safeguarding was everyone's responsibility and they had a duty to prevent young people

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from being drunk in the town centre in particular. She was willing to accept conditions recommended by the police.

Sarah LeFevre addressed the Sub-Committee on behalf of the License holder. Punch had an estate of about 6,000 licensed premises nationally. This premise was held as a tenancy since the end of 2009 by the current tenants. The Licence Holders felt that the evidence presented by the Police and the failure of the test purchases was not acceptable and they took this matter extremely seriously. They had questioned whether this tenant could remain at the premises. Punch would prefer to support its tenants, but had decided to remove the tenants from the premises including the Designated Premises Supervisor. This was an indication from Punch of its good faith in the matter.

Regarding the breach of the condition on 15<sup>th</sup> January with the young girl outside being drunk when police arrived, Punch had looked at the CCTV footage from that evening and had found no evidence that she had been in the premises that evening. Sarah LeFevre suggested that the Sub-Committee regard her reports with some scepticism. To the best of their understanding she had not been in the premises at all. Regarding the incident on 30<sup>th</sup> January where no door staff had been present and the drunken man had entered the premises, the man was refused alcohol and asked to leave. There were door staff on duty but they were inside the premises not outside – they were unsure if this was therefore a breach of the condition.

The steps the Sub-Committee took had to be necessary and proportionate. The conditions that the Police had proposed were accepted by the Licence Holders and they had already been implemented. Conditions 1,2a and c, 3 (withdrawn by police), and 4 through to 8 were all accepted by Punch. The only issue they had was with regard to recommendation 2b - that the training be delivered by a particular institute and administered within 6 weeks. They accepted that training was needed, as set out in 2a, but did not think 2b added anything to the previous condition. Some staff might be part time or students and it might be difficult to obtain their attendance at this particular institution. Finally, removal of the supervisor had already been undertaken so no purpose would be served by suspension of the license.

In response to questions from Members of the Sub-Committee, the Licence holder together with their representative made the following points:

- 6 weeks was preferable for the training but they would prefer this condition to be reconsidered as stated previously;
- The current tenants were still living on the premises but were not trading. The current DPS would be removed. Trading would cease until a replacement could be found, but it was difficult to say when this would be at the moment;
- CCTV was in place;
- Mr Pearson had attended the premises management meeting after the failed test purchase and identified the need for training and documentation, which was put in place immediately, but they then failed a further test purchase.
- The DPS was fully responsible for making sure staff were fully aware before they started to work behind the bar, but it might be a while before formal training by an outside agency was in place. They would recommend someone attained that level but training was based in Camberley and it would be difficult getting people there within 6 weeks when they were a student for example. Management would however be trained to the required standard.
- The drunken female referred only to two dates, that night of 15th January and New Years Eve. There was no record of her being in the pub therefore she was not asked to leave. There was no indication of a group of people leaving the pub at that time on

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the CCTV. Therefore they deduced she was not telling the truth about being in the premises on that evening.

In response to a question from Councillor Jeff Beck, Inspector Whitaker confirmed there was no record of the female in question entering the premises apart from the written statements of the two Police Community Support Officers.

Ros Haynes referred the Sub-Committee to page 9 regarding the previous request for a review and the item relating to training regarding underage sales. This was from 2005. Training seemed to be a reoccurring issue in this premise and she questioned the licence holder about how he would track its effectiveness and ensure it worked. Ian Pearson stated that training should become part of their regular management. He would be on site every 2 months and check records every 4 months. In other establishments they had suggested the need for holding a training evening where staff were asked to challenge every other member of the public so that they get used to challenging people, which was part of the problem. Sarah LeFevre stated that condition 5 was not something they would normally do but they would check that the training had been given.

Alan Lovegrove, asked the Sub-Committee whether or not item number 4 of the existing conditions regarding illegal substance confiscation could be withdrawn as it was not relevant to the Licensing Act 2003. Inspector Whittaker stated that door staff played a vital role for this but if it was not permitted there was no reason to have the condition. Alan Lovegrove stated it would not be enforceable.

Inspector Whittaker questioned whether or not the training provided by Punch was accredited and by whom? As this case was looking to improve the professionalism of the bar staff, the Police did not mind who carried out the training as long as it was accredited. Ian Pearson stated that a responsible DPS carried out the training and they did not personally deliver the training. Inspector Whittaker also queried how they knew they had the right young woman, regarding the incident on 15<sup>th</sup> January, as her name did not appear on the statements. Ian Pearson stated that on having reviewed the CCTV footage they could not find any link with the pub and a group of people at that time. Inspector Whittaker stated that they could not be certain they were talking about the same girl.

In response to a question from Councillor Beck, Ian Pearson stated that as Business Relations Manager he looked after between 40-50 sites and was responsible for recruiting good quality pub operators to operate responsibly and legally. When operators were first in business he would be involved every two to four weeks then would then reduce contact to between six and eight week intervals .

Councillor Gwen Mason stated she was concerned and thought that training was the main issue. When any young person entered a pub they should be asked for identification. It was possible this failure had happened on numerous occasions. Ian Pearson stated that he supported and agreed with what Councillor Mason was saying, but they were not employed by Punch Taverns. However they needed to make sure that any applicant would be very aware of the history of the site and work with them to put robust training in place. However they could not make sure every member of staff every evening was suitably prepared, but he would do this each time he visited.

In response to a question from Councillor Andrew Rowles, Ian Pearson confirmed that the fixed penalty fines were paid by the perpetrator. On one occasion this was the father of the DPS.

**RESOLVED that** the Premise Licence be amended with immediate effect.

The conditions attached to the Premises Licence after a hearing which took place in August 2005, and appearing as numbered conditions 1, 2 and 6 on the current licence to be removed and the Licence varied to include the following conditions:

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1. All incidents which impacted on any of the four licensing objective to be recorded in a register kept at the premises for this purpose. The names of the persons recording the information and those members of staff who dealt with the incident shall also be recorded. Where known, any offender's names shall also be recorded. The register to be made available to responsible authorities on request.
2.
  - (a) All bar staff with the exception of Personal Licence Holders, shall be trained in the requirements of the Licensing Act 2003 in relation to age restricted sales of alcohol before being authorised to sell alcohol.
  - (b) At all times that the premises are open to the public there shall be at least one member of staff on the premises who shall be accredited to B11 level 1 Award in Responsible Alcohol Retailing (ARAR) or any other similarly recognised nationally approved accreditation curriculum, within six weeks for existing and subsequent new employees.
  - (c) Records of training, refresher training and proof of the date of the commencement of employment (e.g. signed contract) shall be retained and to be made available to officers of West Berkshire District Council and Police on request.
3. The premises shall at all times operate a Challenge 25 policy to prevent any customers who attempt to purchase alcohol and who appear to the staff member to be under the age of 25 years without first having proved identification. Only a valid British Drivers Licence showing a photograph of the person, a valid passport or proof of age card showing the "Pass" hologram is to be accepted as identification.
4. The Premises Licence Holder shall ensure all staff authorised to sell alcohol receive regular refresher training on the law relating to underage sales at least every four months in relation to the Four Licensing Objectives contained within the Licensing Act 2003. The Premise Licence Holder shall review such training every four months following completion of the same. Written proof of training shall be recorded and maintained whilst the member of staff remains in employment and will be retained for inspection by the Council and Police.
5. Notices advertising the Challenge 25 and documentation required for checking proof of age policies shall be displayed in prominent positions on the premises.
6.
  - (a) Door staff shall be employed on Friday and Saturday nights and on Christmas Eve and New Years Eve from 20:00hrs till closing time the following morning when the last customer has left the premises. Door staff shall additionally be employed at the premises when considered necessary by the DPS.
  - (b) The Premise Licence holder shall keep and maintain a register of door supervisors. The register will show the following details:
    - (i) The name, home address and registration number of all door supervisors working at the premises.
    - (ii) SIA registration number
    - (iii) Date and time that the door supervisor commenced duty, countersigned by the Designated Premises Supervisor or Duty Manager.
    - (iv) Any occurrence of incident of interest must be recorded giving names of the door safe supervisors involved.

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- (v) Date and time the door safe supervisor finished work, countersigned by the Designated Premises Supervisor or Duty Manager.
  - (c) The door supervisor register to be kept at the Licensed premises and be available for inspection by an officer from Thames Valley Police or an authorised officer from West Berkshire Council and shall be retained for a period of six months from the date of the event.
  - (d) The Premises licence holder shall ensure that all Door Supervisors whilst employed at the premises shall wear 'High Visibility' arm bands to incorporate displaying their SIA badges.
7. The Premises Licence holder shall participate, as far as is practicable, in the "Local" Town Radio Scheme when the premises are opened for licensable activities.
- REASON: Prevention of Crime and the Protection of Children from Harm.
8. Malgorzata Majszak (personal licence number 018644-West Berkshire Council) shall be removed forthwith as the Designated Premises Supervisor for the premises known as the Bricklayers Arms, Premises licence number 013871.
- REASON: Prevention of Crime and the Protection of Children from Harm.
9. Premises licence 013871 for the Bricklayers Arms shall be suspended immediately for a period of one month.

REASON: Prevention of Crime and the Protection of Children from Harm.

In reaching its decision the Licensing Authority attached little weight to the evidence concerning the incident on the 15<sup>th</sup> January 2011.

The Licensing Authority considered the sale of alcohol to underage persons to be a very serious issue and noted that two test purchase exercises within two months resulted in successive sales to underage persons. Furthermore the Licensing Authority had regard to the fact that following the first sale of alcohol on the 27<sup>th</sup> November 2010 the Premises Licence Holder attended the Licensed Premises Management meeting with representatives of the Police, Licensing Authority and Trading Standards. At the end of this meeting on 16<sup>th</sup> December 2010 the Licence holder was advised that a further test purchase exercise would be undertaken. Despite this warning a further test purchase exercise on 29<sup>th</sup> January 2011 resulted in a further sale of alcohol to an underage person.

The Licensing Authority considered whether the variation of conditions and the removal of the DPS would be sufficient to remedy the problems at the premises. The Licensing Authority was not satisfied that those measures would be sufficient in this case. The Licensing Authority in reaching its decision had regard to part 12 of the guidance issued under section 182 of the Licensing Act 2003. In particular it noted that the Secretary of State at paragraph 11.26 considered that certain criminal activity should be treated particularly seriously which included the purchase and consumption of alcohol by minors. In accordance with the guidance the Licensing Authority considered whether the revocation of the Licence should be imposed. However the Licensing Authority considered that the steps taken by the Premises Licence Holder to terminate the tenancy at will and their consent to the conditions suggested by the Police as detailed above was such that in this case a suspension of one month in addition to the variation to conditions and the removal of the DPS was appropriate.

Subject to the relevant statutory provisions this decision took effect immediately.

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*(The meeting commenced at 2.00 pm and closed at 5.15 pm)*

**CHAIRMAN** .....

**Date of Signature** .....