

# **Licensing Act 2003 Sub-Committee**

**Wednesday, 12 November 2008**

**Present:** Councillor Iris Smith (Chair) and Councillors David Dickinson and John Walker

**Also in attendance:** Councillor Hasina Khan at the commencement of the meeting

## **08.LAS.11 DECLARATIONS OF ANY INTERESTS**

None of the Sub-Committee declared an interest in the principal agenda item under consideration.

## **08.LAS.12 APPLICATION FOR A REVIEW OF A LICENCE IN RESPECT OF THE SWAN WITH TWO NECKS, HOLLINSHEAD STREET, CHORLEY PR7 1EP MADE UNDER SECTION 52 OF THE LICENSING ACT 2003.**

The Corporate Director of Governance submitted a report on an application for a review of a licence in respect of the premises known as The Swan with Two Necks, Hollinshead Street, Chorley.

The report indicated information relating to the current premises licence setting out its details.

The report set out the background and the history regarding the licence for the premises and indicated that on 25 September 2008 an application for a review of the premises was received from a Responsible Authority, Lancashire Constabulary and the report outlined the grounds for the review.

The report also set out the two representations from interested parties as well as referring to 132 relevant representations received in support of the The Swan with Two Necks.

One representation was also received from Environmental Health acting as a Responsible Authority in relation to the prevention of public nuisance licensing objective.

Set out below is a brief outline of the grounds for review.

“The premises has come to the attention of the police in respect of the number of incidents and crimes recorded at the premises, in addition to complaints regarding the provision of entertainment.

There are also concerns that activities being provided are in breach of the conditions on the licence, and that other conditions are not being complied with.

The Police and Local Authority have engaged with the management of the premises and have offered support and advice which has not been acted upon and therefore problems and breaches still persist.

It is the Police view that many of the incidents can be attributed to the ineffective and lax management practices of the Designated Premises Supervisor and other persons with responsibility for managing the premises.

The incidents and complaints undermine the Prevention of Crime and Disorder and the Prevention of Public Nuisance licensing objectives.

To this end the Police, through this review, have recommended amendments to the Premises Licence with regards the hours of operation, the provision of licensable activities and the imposition of further conditions.

The Police feel that these measures are reasonable and proportionate to ensure the Licensing Objectives are no longer undermined and a reduction in crime and disorder incidents is achieved.

The recommendations are contained within the body of the review at Appendix C1-4 of The Swan with Two Necks. Review and – Recommendations and reasons pages 1-4.

A copy of the full application for review for member's information is attached to this report as in Appendix C

Exhibit Ref AJB 11 contains CCTV footage which is held and available to view through the Licensing Section.

In June 2008 the Licensing Manager's attention was drawn to the number of incidents relating to crime and disorder and noise nuisance at the premises. In order to assist with the issues raised a partnership approach was adopted with the Police Licensing Sergeant Antony Bushell, the Licensing Department and the designated premises supervisor of the Swan with Two Necks, Mrs Denise Hogan, to resolve the issues. The purpose of the meeting held at the premises on 10 June 2008 was to examine those concerns raised and to establish control measures within the powers of the existing management that would reduce the number of incidents and calls for services to the Police. At the same time the premises licence conditions were examined for compliance. The minutes from that meeting are contained within the application for review and attached at appendix C reference AJB 7 & 8 and of a further meeting on 29 August 2008 reference AJB 13 is also documented. The conclusions from those meetings were clearly communicated to the designated premises supervisor in the minutes of the meeting and verbally at that time, giving clear recommendations and actions necessary to improve the situation. Areas of concern regarding non compliance of the premises licence conditions were also highlighted and appropriate guidance and advice was freely given to all present at the meeting to enable the premises to achieve compliance with the licence conditions.

At the above meetings, issues regarding the unlawful provision of regulated entertainment by the Swan with Two Necks was not discussed, as this was a contentious issue and was dealt with by separate correspondence.

At the present time the Council is prosecuting the premises licence holder Mr Chris Tattersall, the designated premises supervisor Mrs Denise Hogan and Swan Hospitality Ltd under Section 136 of the Licensing Act 2003, for providing regulated entertainment without the permissions of the premises licence. This case is listed for hearing on the 5 November 2008 at Chorley Magistrates Court.

The Committee's attention is drawn to the fact that the Premises licence holder and the Designated Premises Supervisor of The Swan with Two Necks have been summoned for the above offences, however, it is a matter for the Courts to determine this matter".

Mr Robinson of Kevills Solicitors, the legal representative for the Premises Licence Holder requested that the hearing be adjourned. The reasons given for request were the length of the police objection and a professional difficulty due to one of the interested parties being a client of Mr Robinson. Mr Robinson said that the hearing should be adjourned to enable more time for the Premises Licence Holder to prepare and for alternative legal representation to be arranged in connection with the professional difficulty. Mr Robinson also stated that there was an issue of sub judice because prosecutions brought by the Council in relation to the premises have yet to be concluded, Members of the Sub-Committee then withdrew to obtain legal advice. When the Sub-Committee resumed the Chair announced that the hearing would not be adjourned. In explaining the decision the Chair referred to Para 11.24 of the statutory Guidance issued by the Secretary of State under S.182 of the Licensing Act 2003. This makes it clear that a review need not be delayed if there are pending criminal proceedings. The Chair also stated that the Council had complied with all statutory time limits regarding the hearing. The Chair also pointed out that Mr Robinson had not raised his concern about the professional difficulty in advance of the hearing. Mr Robinson then withdrew from the meeting having advised that the Premises Licence Holder would take no further part in the hearing but would merely observe. The Sub-Committee heard verbal representation from the Police as well as from Environmental Health, from interested parties opposing the application and an interested party supporting the police application for a review.

The Sub-Committee raised a number of issues with those representatives present. Lancashire Police were represented by Mr Martin Walsh, Counsel for the Police.

The Sub-Committee heard representations from the Council's Environmental health in support of the application for a review which related to the complaints that had been received on noise from the establishment. Conditions had already been put on the licence in the original application and previous review and was disappointed that these had not complied with. These breaches of conditions reiterated the representation from the Police in that despite offering support and advice to the management these had not been acted upon and problems and breaches still persist.

At this point in the proceedings the Sub-Committee viewed an extract from a YouTube recording presented by the Environment Health Officer relating to entertainment which was said to have taken place outside the Swan with Two Necks on Saturday, 2 August 2008 outside the permitted hours of entertainment and that this was not an isolated incident.

The Sub-Committee heard recommendations from interested parties in support of The Swan with Two Necks.

Those representations in support of The Swan with Two Necks pointing out that the Designated Premises Supervisor, Mrs Denise Hogan, was a good manager and as far as they were concerned and ran the establishment well. They considered that those representations submitted by Applejax were driven by commercial interests.

Those interested parties who made representations against the application questioned the Police and the Environmental Health Officers relating to entertainment which was said to have taken place outside the Swan on 2 August 2008.

Counsel for the Police summed up the application for a review. Mr Michael Clerk summed up on behalf of the interested parties who opposed the review.

The Sub-Committee carefully considered all the representations in response to the application and arrived at the following decision unanimously in respect of (ii) and (iii) below and by a majority of 2-1 in respect of (i) below.

**DECISION** The Sub-Committee have considered the guidance issued under Section 182 of the Licensing Act 2003 together with the Council's Licensing Policy, in particular those paragraphs referred to in the report.

The Sub-Committee has considered the Human Rights Act implications and in particular Article 8 and Article 1 of the First Protocol. These are not absolute rights but qualified ones and in reaching this decision the Sub-Committee has considered the proportionality principle.

The Sub-Committee considers that every holder of a premises licence and Designated Premises Supervisor is responsible for minimising the impact of licensable activities at their premises. It is also aware of the importance of the licensed trade to the local economy as well as in social and cultural terms.

The Sub-Committee has to achieve a balanced approach to these difficult issues.

The Sub-Committee has carefully considered the representation made by the police. The Sub-Committee are satisfied that there have been repeated incidents at the premises especially at weekends and later in the evenings, which undermine the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance. The Sub-Committee considers that the incidents can be linked to the poor management of the premises by the Designated Premises Supervisor (DPS).

The Sub-Committee has carefully considered the representations from the Environmental Health Authority. The Sub-Committee consider from the evidence presented that there has been nuisance connected with the provision of regulated entertainment at the premises.

The Sub-Committee considered the representations from the interested parties who supported the application for a review. The Sub-Committee noted that those representations referred to crime and disorder connected with the premises.

The Sub-Committee has carefully considered the representations from those interested parties who opposed the application for a review. The Sub-Committee acknowledge that the premises is a popular venue for many local residents. However the Sub-Committee note that the contribution of the premises itself to Chorley was not an issue for the review. The Sub-Committee considered that in making its decision it must seek to promote the licensing objectives. The Sub-Committee considers that repeated incidents of crime and disorder and nuisance originating from a premises cannot be ignored even if the premises is popular amongst regular patrons.

Having carefully considered the representations from the police, the Environmental Health Authority and the other interested parties the Sub-Committee considered that the Designated Premises Supervisor had failed to effectively manage the premises leading to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance being undermined.

The Sub-Committee also consider that the large number of patrons in the premises very late at night is a factor in the incidents of crime and disorder and nuisance connected with the premises. The Sub-Committee also consider that the lack of a link radio in the possession of door staff and the absence of checks on occupancy prevent more effective management of the premises and incidents of crime and disorder. The Sub-Committee therefore consider it appropriate in furtherance of the licensing objectives to alter the times during which the licensable activities may be carried out and to impose those conditions proposed by the police as set out below.

The Sub-Committee resolved:

(i) not to remove Mrs Hogan as Designated Premises Supervisor but to request that the Licensing Section issue a written warning to the Premises Licence holder Swan Hospitality Limited and Mrs Hogan emphasising how seriously the Sub-Committee considered the lack of effective management at the premises by the DPS. The letter should emphasise the need for full compliance with all conditions now imposed on the premises licence and warn that Mrs Hogan may be removed as DPS should there be any review in the future of the premises licence.

(ii) To impose the following conditions on the licence.

That smoking will not be permitted in any internal licensed area at any time.

That a minimum of 3 door staff to be on duty from 7pm on Friday, Saturday and Sunday up to an occupancy of 200 with a proviso that an additional door supervisor is on duty for every 50 customers over an occupancy of 200.

That use of a system for measuring the occupancy of the premises at any given time should be in operation whenever door supervisors are employed at the premises.

That the occupancy of the premises should be noted every hour. This should be recorded in documentary form and be available for inspection by any officer of any Responsible Authority.

That the premises will have and operate a town centre link radio, this will be in possession of a door supervisor at all times when they are employed at the premises. At all other times it should be in possession of a member of bar staff employed at the premises.

(iii) To alter the times during which the licensable activities may be carried out as follows:

That the following licensable activities be strictly adhered to:

Exhibition of films Indoors – (B)  
12.00 to 23.00 Monday to Saturday

Indoor Sporting Event – (C)  
12.00 to 23.00 Monday to Sunday

Performance of Live Music (Indoor)(E)  
08.00 to 23.00 Monday to Sunday

Non Standard Timing  
Non amplified live music will be permitted outside the premises on Sundays and Bank Holidays between 14.00 – 17.00.

Playing of recorded music (Indoors) (F)  
08.00 to 23.00 Sunday to Thursday  
08.00 to 00.30 Friday and Saturday

Performance of Dance (Indoors) (G)  
08.00 to 23.00 Monday to Sunday

Provision of facilities for making music (Indoors) (J)  
08.00 to 23.00 Sunday to Thursday  
08.00 to 00.30 Friday and Saturday

Provision of Facilities for Dancing (Indoors) (J)

08.00 to 23.00 Sunday to Thursday

08.00 to 00.30 Friday and Saturday

Provision of facilities for entertainment of a similar description to that falling within I or J (Indoors) (K)

08.00 to 23.00 Sunday to Thursday

08.00 to 00.30 Friday and Saturday

Late Night Refreshment (Indoors) (L)

23.00 to 00.00 Monday to Sunday

The sale by retail of alcohol for consumption On and Off the premises (M)

08.00 to 23.30 Sunday to Thursday

08.00 to 00.30 Friday and Saturday

The opening hours of the premises

08.00 to 00.00 Sunday to Thursday

08.00 to 01.00 Friday and Saturday

The Sub-Committee consider that the above measures are reasonable and proportionate to promote the licensing objectives.

Chair