

LICENSING SUB COMMITTEE B

Tuesday, 9 February 2021

PRESENT: Councillor H.I. Jones (Chair)

Councillors:

A.S.J. McPherson and E.G. Thomas

Also present as observers:- Councillors S. Phillips and J.E. Williams

Present as a representative of a Responsible Authority:-

D. Bizby – Dyfed Powys Police Authority

E. Jones – Licensing Lead – Carmarthenshire County Council

R. Edmunds – Consumer and Business Affairs Manager – Carmarthenshire County Council

V. Jones – Trading Standards Officer – Carmarthenshire County Council

The following Officers were in attendance:

J. Corner, Technical Officer

M.S. Davies, Democratic Services Officer

R. Edgecombe, Legal Services Manager

A. Eynon, Principal Translator

R. Lloyd, Democratic Services Officer

A. Rees, Licensing Officer

K. Thomas, Democratic Services Officer

Virtual Meeting - 10.00 - 11.45 am

1. DECLARATIONS OF PERSONAL INTEREST.

There were no declarations of personal interest.

2. APPLICATION FOR THE REVIEW OF A PREMISES LICENCE SANTA CLARA, ST CLEARS, CARMARTHEN, CARMARTHENSHIRE SA33 4EE

The Legal Services Manager briefed all present on the procedure for the meeting which had been convened to consider an application received from the Licensing Lead for Carmarthenshire County Council for the Review of a premises licence in respect of Santa Clara, St Clears, Carmarthenshire, following a visit to the premises by Police and a Council Trading Standards Officer on the 8th October 2020 where a lack of management and control at the premises had been identified.

The Sub Committee noted the following documentation was attached to the report:-

Appendix A – A copy of the review application together with supporting documents;

Appendix B – Dyfed Powys Police representations;

Appendix C - Trading Standards representations

Appendix D – Other representations.

The Sub Committee also viewed body camera footage of the visit undertaken to the premises by the Police and a Trading Standards Officer on the 8th October 2020 and its attention drawn to previously circulated still photographs from the camera footage together with an additional statement from Anwen Davies

The Licensing Lead referred to his written representations, as detailed within Appendix A to the report, and outlined to the Sub Committee the events which had led to the submission of the review application, being the second submitted in respect of the premises. The first review had been considered by the Council's Licensing Sub Committee on the 18th August 2020 where a number of additional conditions had been imposed for the operation of the premises and on the Designated Premises Supervisor. He outlined the failings noted during the visit on the 8th October, as well as the breach of the existing licence conditions, which demonstrated the premises were still not being adequately managed by either the Designated Premises Supervisor or the licence holders, or that either of those persons took their responsibilities seriously. As it was considered any additional licence conditions, or removal of the DPS, were unlikely to have any effect on the operation of the premises, the Licensing Authority was of the opinion revocation of the licence was an appropriate and proportionate response to the lack of proper management and control at the premises.

All parties present were afforded the opportunity of questioning the Licensing Lead on his submission.

The Police Authority representative referred to his written representations, as detailed within Appendix B to the report, and outlined to the Sub Committee the recent history of the premises' operation together with the events witnessed on the 8th October by a police officer and trading standards officer, as viewed on the webcam footage. As this was the second review application regarding serious management failures at the premises within six months, the Police considered it to be correct and proportionate to revoke the premises licence due to the lack of proper management and control displayed

All parties present were afforded the opportunity of questioning the Police Authority representative on his submission.

The Trading Standards representative referred to his written representations, as detailed in Appendix C to the report, regarding the operation of the Santa Clara Public House and supported the above representations seeking the revocation of the premises licence as an appropriate and proportionate response to the lack of proper management and control displayed at the premises.

All parties present were afforded the opportunity of questioning the Trading Standards representative on his submission.

Councillor Tyssul Evans, having made a representation to the review application expressed his support for the licence revocation and expressed his disappointment at the way the premises was being managed and concern at the potential impact the operation could have on public health during the current pandemic.

All parties present were afforded the opportunity of questioning Councillor Evans on his submission.

Mr Reynolds, the licence holder for the Santa Clara Public House, in response to the representations received, advised the Sub-Committee that whilst he owned the premises, responsibility for its day to day management, and the two incidents in question, which had led to the two review applications lay solely with Mr Pearce, the Designated Premises Supervisor. He had visited the premises on the evening of the 8th October and noticed that appropriate social distancing and wearing of face masks were taking place and he had advised Mr Pearce of his responsibility in that regard when the evening became busier due to a football match being screened on the television that evening.

He outlined the role the public house played within the community and to the numerous organisations, clubs and charities it had supported during the 52 years in his family's ownership. Subsequent to the incident in October, four follow up visits by the Police and Licensing Officers had not revealed any further issues at the premises. He had installed c.c.t.v. as required by the Police at a cost of £3k (which he could monitor on his mobile phone) and was prepared to accept any further requirements they, or the licensing authority may have on its operation. He requested the Sub Committee to have regard to the premises' previous faultless operation over the 52 years in his family's ownership and to not revoke the licence

All parties present were afforded the opportunity of questioning Mr Reynolds the licensing holder.

The Sub Committee thereupon

UNANIMOUSLY RESOLVED to retire into private session in order to receive legal advice pursuant to Paragraph 16 of Schedule 12 to the Local Government Act.

The Sub Committee had regard to the relevant paragraphs of the Licensing Authority's Statement of Licensing Policy and of guidance issued by the DCMS and Home Office, and those referred to by the responsible authorities. In particular, the Sub Committee had regard to paragraphs 11.21, 11.22 and 11.28 in the statutory guidance relating to the review of premises licences.

FURTHER RESOLVED that having regard to all the evidence before it, the Sub Committee found that the Premises Licence for the Santa Clara Public House should be revoked.

REASONS

In coming to its decision, the Sub-Committee made the following findings of fact;

1. On the 18th August 2020 the Premises Licence of the Santa Clara was reviewed because of criminal offences that had been committed by the Designated Premises Supervisor (DPS) Richard Pearce, contrary to the Coronavirus Regulations then in force.
2. This review resulted in additional conditions being added to the premises licence with the agreement of the premises licence holder Mr Reynolds. Those were intended to improve the management of the premises by Mr Pearce and Mr Reynolds to promote the crime prevention objective.

3. On the 8th October 2020 Officers visited the premises and noted that the following criminal offences were being committed.
 - (a) The premises were open in breach of licence conditions imposed on the 18th August (Section 136 Licensing Act 2003)
 - (b) Breaches of Regulations 12B, and 14 of the Coronavirus Regulations in force at that time relating to social distancing and the wearing of face masks
4. Mr Pearce (DPS) was present at the time and was himself committing these offences as well as aiding and abetting others to do so by not exercising his authority as DPS to require compliance by his customers.
5. When challenged by officers Mr Pearce stated that it was 'hard to control all the COVID stuff when the football is on'
6. In August 2020 the premises was used to operate an illegal unlicensed lottery
7. Mr Reynolds was not present at the premises on either the 18th August or 8th October when officers attended
8. Mr Pearce is the tenant of the premises and DPS. However, there is no written lease or tenancy agreement in force.
9. There is no previous history of crime or disorder at the premises.

The Sub Committee attached weight to the views of the responsible authorities and in particular notes that the Licensing Authority, Police and Trading Standards were of the view that it is appropriate and proportionate to revoke the Premises Licence in order to promote the crime prevention objective

The Sub Committee recognised that its decision must be based upon real evidence, and that concerns and fears about what might happen, where unsupported by such evidence, were not matters which they can properly take into account.

Based upon the evidence placed before it the Sub Committee had determined that the management of the premises by Mr Pearce was directly undermining the licensing objective of preventing crime and disorder as the result of the commission of criminal offences under the Licensing Act 2003 and the Coronavirus Regulations by both Mr Pearce and his customers. The Sub Committee further determined that the failure of Mr Reynolds as Premises Licence holder to ensure the proper running of the premises also undermines that objective and had contributed to the commission of those offences.

The Sub Committee had no faith that Mr Pearce will properly fulfil his role as DPS and run the premises in accordance with the law. It was also of the view that Mr Reynolds was unlikely to be able to ensure that the premises, for which he was responsible as premises licence holder, was run properly and in accordance with the law.

The Sub Committee had considered the following alternatives to revocation of the licence and believed that they will not be sufficient to promote the crime prevention objective for the following reasons

1. Adding further conditions to the licence – no evidence had been presented to the Sub Committee that any particular additional licence conditions would be an appropriate course of action to promote the crime prevention objective

2. Removing Mr Pearce as DPS – This would require a new DPS to be appointed. However, Mr Pearce would still be in day-to-day control of the premises and there is no requirement that a DPS actually be present at a premises when it is open. The Sub Committee feels that this would not therefore be effective unless the new DPS was in actual day to day control of the premises
3. Suspend the licence – The premises are currently closed due to the Coronavirus pandemic. The Sub Committee considers therefore that a suspension of the premises licence would do nothing to promote the crime prevention objective

The Sub Committee therefore considers that the only options open to it are to do nothing or to revoke the premises licence. The Sub Committee believed that to do nothing would amount to a failure on its part to promote the licensing objective of preventing crime and disorder. As such it would not be an appropriate response to what has occurred

The Sub Committee recognised that revocation of the premises licence was a significant step and was not one that it takes lightly. However, given the evidence presented to it regarding the criminal offences that have been committed at the premises, all of which are directly connected with the poor management of the premises by the DPS and premises licence holder, the Sub Committee feels that revocation is something that it must seriously consider.

Considering the findings outlined above that the alternative courses of action would not promote the licensing objective of preventing crime and disorder, the Sub Committee was satisfied that in this instance revocation of the premises licence was an appropriate step to promote the licensing objective of preventing crime and disorder and a proportionate response to the issues that have been identified during the course of the hearing.

CHAIR

DATE