

LICENSING SUB-COMMITTEE A

A meeting of the Licensing Sub-Committee A was held on 23 January 2019.

PRESENT: Councillors J A Walker (Chair), R Arundale and D Rooney

PRESENT AS OBSERVERS: J Cain - Local Democracy Reporter

ALSO IN ATTENDANCE: On behalf of the applicant:-
Sergeant P Higgins; PC J Arbuckle; PC J Johnson and PC L Haggert - Cleveland Police.
J Hedgley - Head of Public Protection.
S Lawrence and N Williams - Licensing department.

On behalf of the Premises Licence Holder:-
D Hetherington - Premises Licence Holder and Designated Premises Supervisor
D Hunter - Manager
J Elsom - Premises Manager

OFFICERS: C Cunningham, J Dixon and T Hodgkinson

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made by Members at this point in the meeting.

18/6 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE - THE SPRINGFIELD HOTEL, 113 BOROUGH ROAD, MIDDLESBROUGH, TS1 3AX.**

A report of the Director of Culture and Communities had been circulated outlining an application to review the Premises Licence in respect of The Springfield Hotel, 113 Borough Road, Middlesbrough, TS1 3AX. The application was made by Cleveland Police on the grounds of grounds of public safety, the prevention of crime and disorder and the protection of children from harm.

Summary of Current Licensable Activities and Hours

Sale of alcohol (on & off sales), Live Music, Recorded Music, Performances of Dance - Monday to Thursday: 11am to 11pm; Friday and Saturday: 11am to 1am; and Sunday: 12 noon to 10.30pm.

Non-standard timings:-

A further additional hour in the morning following every:-

- Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend.
- Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.
- Christmas Eve and Boxing Day.
- New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or if there are no permitted hours on the following day, midnight on 31 December).

A copy of the current premises licence was attached at Appendix 1.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

It was confirmed that a copy of the review application, in accordance with the requirements of Section 51 of the Licensing Act 2003, was served on the Premises Licence Holder, Mr D Hetherington, and all the Responsible Authorities. All parties confirmed that copies of the report and accompanying documents had also been received in accordance with the Licensing Act (Hearings) Regulations 2005.

Details of the Application

The Licensing Manager presented the report outlining the application for review in respect of The Springfield Hotel, 113 Borough Road, Middlesbrough, Ref PRO375, made by Cleveland Police on the grounds of public safety, the prevention of crime and disorder and the protection of children from harm.

Cleveland Police stated that in the last 12 months there had been repeated breaches of premises licence conditions; licensable activities undertaken outside of permitted hours; reports of underage sales; smoking and serious public safety concerns relating to fire safety. A copy of the application for review, together with supporting documentation from Cleveland Police, was attached at Appendix 2.

During the 28 day consultation period in respect of the application to review, several responses were received as follows:-

- Cleveland Fire Brigade submitted a representation in support of the review on 19 December 2018 - attached at Appendix 3.
- Licensing Authority in its role as a Responsible Authority, submitted a representation on 20 December 2018 - attached at Appendix 4.
- Middlesbrough Council's Public Health submitted a representation on 21 December 2018 - attached at Appendix 5.
- Middlesbrough Council's Environmental Health submitted a representation on 24 December 2018 - attached at Appendix 6.
- An anonymous representation on behalf of 15 local residents was received on 5 December 2018 - attached at Appendix 7.

By way of background, the Committee was advised that the premises operated as a public house with a number of bed and breakfast type rooms above. The premises were situated in Middlesbrough town centre, surrounded by both commercial and residential properties.

The premises had operated with the benefit of a Premises Licence since December 2005 and prior to that had held a Justices On Licence.

The current Premises Licence Holder, Derek Hetherington, first held the Premises Licence on 29 November 2013 until it was transferred to Jaslyn Foxtton on 22 August 2017. On 27 April 2018 the Premises Licence was again transferred to Derek Hetherington who had also been the Designated Premises Supervisor since that date.

The submitted report also referred to the relevant sections of the Council's Licensing Policy and relevant sections of the Government Guidance to the Licensing Act 2003.

Applicant in Attendance

It was confirmed that Sergeant Higgins would present the case on behalf of the applicant.

Sergeant Higgins presented the case for the application to review the Premises Licence in respect of The Springfield public house. The application was supported by the Fire Brigade, Environmental Health, Public Health and Licensing, all of whom had concerns regarding the premises.

Sergeant Higgins had provided a chronology of events in relation to The Springfield, dating from 25 November 2013 to 17 December 2018, for ease of reference. Police bodycam footage was also shown to the Committee of people drinking inside the premises when it had

been ordered to close and no-one to be allowed in the premises.

Sergeant Higgins presented a detailed case in support of the application to review and also called up the following witnesses who confirmed the content of their respective statements and responded to questions from all relevant parties:-

- PC J Arbuckle; PC J Johnson - Cleveland Police.
- L Haggerth - Cleveland Fire Brigade
- J Hedgley - Head of Public Protection.
- S Lawrence; N Williams - Licensing Department.

Respondents

Mr D Hetherington, Premises Licence Holder and Designated Premises Supervisor, and Mr D Hunter, Premises Manager, were in attendance at the meeting.

Mr Hunter presented the case in response to the application to review, providing mitigation and explanations in relation to the licence breaches.

DECISION

ORDERED that the Premises Licence in respect of The Springfield Hotel, 113 Borough Road, Middlesbrough, TS1 3AX, be revoked, as follows:-

1. The Committee considered an application to review the Premises Licence in relation to The Springfield Hotel, 113 Borough Road, Middlesbrough TS1 3AX ("the Premises") at a hearing on 23 January 2019. The Premises Licence Holder ("PLH") and the Designated Premises Supervisor ("DPS") was Derek Hetherington.
2. The Committee noted, under Section 52(3) of the Licensing Act 2003 ("the Act"), it must, having regard to the application and any relevant representations, take such of the following steps as it considered appropriate for the promotion of the licensing objectives:-
Do nothing; issue a warning; remove, add or change the conditions on the Licence; exclude a licensable activity from the Licence; remove the Designated Premises Supervisor; suspend the Licence or revoke the Licence.
3. The Committee carefully considered the review on its own merits. It considered: the application for review; the report and appendices; representations of the applicant, Responsible Authorities, the PLH and Mr Hunter. It also considered relevant parts of the Government Guidance issued under Section 182 of the Act ("the Guidance"), the Council's Statement of Licensing Policy ("the Policy") and the licensing objectives set out in the Act, namely, the promotion of:-

prevention of crime and disorder
public safety
prevention of public nuisance; and
protection of children from harm.

Decision

4. The Committee decided it was appropriate to revoke the Premises Licence in order to promote the prevention of crime and disorder, public safety, the prevention public nuisance and the protection of children from harm.

Reasons

5. There had been numerous wide-ranging problems that had occurred at the premises since 2017 including: serious failings in management, serious breaches of fire safety requirements, unlawful smoking at the premise, operating outside of the permitted hours, breaches of licensing conditions, inappropriate management behaviour, risks to children under the age of 18, selling alcohol to vulnerable people and allegations of fighting, violence and drug taking.

6. Above the premises were flats run by Mr Hunter for potentially 14 occupants and the

Committee was informed the occupants tended to be vulnerable with various issues.

7. The Committee considered that the cause of the problems were those who made themselves out to be in control, namely Mr Hunter and Mr Hetherington the PLH and DPS.

8. The Committee considered that suspending the licence or adding further conditions or any other measure less than revocation would not be appropriate and would be inadequate because the premises had been managed and run irresponsibly for a long period. Those in control could not comply with the rules governing licensed premises, conditions on the licence or uphold the licensing objectives.

Serious Failings in Management

9. According to the information and the representations heard at Committee, Mr D Hunter had control of the premises since 2015, to date, even though he had never been the PLH or DPS. Mr Hetherington had control or some form of ownership since 2013.

10. From November 2013 until August 2017 Mr Hetherington was the PLH and DPS. Then Ms J Foxton became the PLH and DPS from 22 August 2017 until 27 April 2018.

11. Mr Hunter confirmed he remained in control when Ms Foxton was the PLH and DPS and had paid her to carry out those roles. Mr Hetherington also confirmed he still had ownership and control of the premises even when Ms Foxton became the Licence holder. It appeared to the Committee Ms Foxton was a front or just a name on the Licence.

12. From 27 April 2018 Mr Hetherington again became the PLH and DPS. Both Mr Hetherington and Mr Hunter confirmed that Mr Hunter ran the Premises during this period.

13. Problems and criminal activity had occurred at the premises both when Mr Hunter was present and was not present on the premises, showing a total lack of control over the licensing objectives.

14. Even though Mr Hunter had been in control of the premises for a number of years he confirmed he did not know the legal requirements to run a licensed premises, the conditions on the licence or the licensing objectives. Mr Hunter confirmed he had never been trained in relation to these matters and also had difficulty in reading and understanding the conditions. Even the PLH and DPS was not aware of all the conditions on the Licence and confirmed he had not trained Mr Hunter who he asked to run the premises.

15. The PLH and DPS confirmed he had not been involved in the management of the premises or day to day control and had left Mr Hunter to run the premises without intervention despite the numerous problems that were occurring at the premises.

16. It was wholly unclear as to who had the authority in the business for the premises to be compliant with fire safety requirements or to make changes to ensure that the objectives could be complied with. Mr Hunter claimed he had a lease that was about to expire for the pub premises from Mr Hetherington's company. Mr Hetherington was unclear but believed he had a lease of the pub premises from the freehold owner. After further enquiries, both Mr Hunter and Mr Hetherington believed they both were given leases for the premises from the freehold owner and both stated they paid the rent directly to the freehold owner.

17. There was no formal management or professional structure in place whatsoever to ensure the premises operated in compliance with the Licence and the objectives.

18. The premises was in an area which was subject to a cumulative impact policy because of the high number of premises that sell alcohol that have a negative cumulative impact on the serious problems in the area of anti-social behaviour, crime and disorder and alcohol harms. The ward is the fourth most deprived in Middlesbrough. It is ranked the highest out of all wards for the number of people in treatment for alcohol misuse. There had been 1,764 alcohol related attendances to James Cook hospital in a year and in 2017/18, nine alcohol related deaths had been reported from Central Ward.

19. The Committee noted that a cumulative impact policy could not be used to review a licence. However, it considered that it was essential that Licensed Premises in this area were operated responsibly and did not add to or cause further alcohol harms, anti-social behaviour, nuisance or crime and disorder. The Committee considered that the premises had actually added to the problems in the area resulting from irresponsible trading.

Serious Breaches of Fire Safety

20. There had been various serious issues with fire safety since 2017. The Committee was informed that if there had been a fire it would most likely have resulted in death.

21. On 10 January, 6, 9, 10 and 14 March 2018 the fire doors in the premises were blocked and bolted shut. The Committee considered this was a serious risk to public safety and was also informed by the Fire Officer that it could amount to a criminal offence. Despite receiving advice and warnings that fire doors should not be blocked, no safety improvements were made. The Committee considered it wholly irresponsible and unreasonable that the reason they remained blocked or bolted was to prevent theft.

22. The Committee was concerned that on 14 March 2018 it was discovered one of the fire door's signage had been removed. Although it noted fire doors could be removed a formal assessment into the risks of removing the fire door was not carried out which was a fire safety requirement. The Committee considered Mr Hunter had removed the signage to avoid ensuring the fire door is unobstructed. The other door remained blocked or bolted.

23. Despite previous warnings about fire safety, during a joint visit on 9 November 2018, numerous serious risks were found and the fire officer requested that the premises be closed. The Committee was informed because of the failings and the problems at the premises, the residents in the flats above were in mortal danger from fire.

24. There was insufficient emergency lighting, there were holes in the ceiling which would expose the occupied flats above to the risk of fire, the door in the premises leading to the flats above was damaged and not a fire door and means of escape were blocked. The fire alarm system had been turned off at the mains. The Committee did not accept Mr Hunter's explanation that it was a tenant who had turned it off that night. When it was turned on at the mains the fire alarm was set off with error messages. The Committee considered the alarm was turned off at the mains to stop the alarm sounding rather than arranging for the system to be fixed. Also Mr Hunter's version of events changed from what he had told the police officer during the inspection, namely, that he used an alarm company recently. Also during a visit in the previous year on 30 November 2017, the alarm system had no power. If there was a fire there was no means of alerting residents or customers.

25. Flammable liquids were stored in the mains electrical distribution cupboard. The Committee noted Mr Hunter denied this, however, the Committee considered there was no reason for the fire officer to lie about that element when there were so many serious risks in the premises. The photograph Mr Hunter relied on was of the main fuse box not the cupboard and the photograph was not taken by the fire officer.

26. Despite being informed of how serious the risk was and that no one apart from an alarm engineer was allowed at the premises until the system and improvements had been made and confirmed as safe by the fire authority, Mr Hunter continued to trade the following day. The Committee did not accept Mr Hunter's representations that the people drinking in the premises were all there to clean or carry out works to the premises. In considering the history of the problems at the premises, the video footage and representations of the police officer, the committee considered that members of the public were in the Premises and were being served alcohol.

27. In any event the Committee noted Mr Hunter was clearly informed that no one could be in the premises. It did not consider that the straightforward direction could be misunderstood to such an extent to allow people in the premises in various areas, drinking and playing pool. The Committee considered Mr Hunter ignored the requirement not to allow any person in the

premises and the serious risk to public safety.

28. The Committee was also seriously concerned that customers were smoking in the premises with such risks present. Mr Hunter said to the police officer words similar to "you never saw that did you" before telling the customer to go outside. Allowing smoking in the premises was also a criminal offence

Other Incidents on 9 November 2018

29. The Committee was seriously concerned that during the visit on 9 November 2018, a resident who appeared to be very drunk was able to purchase two cans of Stella lager without any checks being carried out. The resident explained to an officer that he was undergoing treatment for alcohol abuse. The Committee did not accept Mr Hunter's explanation that the resident was not drunk and believed the officer's observations. It was accepted that the resident was a vulnerable person with an alcohol problem yet alcohol was still sold to him without any checks taking place. Selling alcohol to an intoxicated person was a criminal offence.

30. The Committee was seriously concerned that during the joint visit, a customer had taken drugs into the toilets and Mr Hunter had hit the customer, flushed the drugs down the toilet and ejected the customer. Mr Hunter believed that this was the correct action to take otherwise he believed he would be arrested for possession of the drug. The Committee considered this was a clear breach of conditions. It considered no responsible retailer would flush away drugs when the police were present or assault customers. Mr Hunter told the Committee it was self-defence however he did not say this to the officer at the time. Mr Hunter told the officer that he had "wacked" the customer. In any event such behaviour was wholly inappropriate. There had been numerous complaints, although anonymous, that there were issues with drug taking at the premises, although this was denied by Mr Hunter.

Smoking on the Premises

31. The Committee considered, on balance, there was a pattern since 2017 of permitting smoking in the premises which was a criminal offence. Permitting smoking in smoke free premises was also a public safety risk to customers not only of fire but the risks of smoking in an enclosed area.

32. On 30 November 2017 cigarette ends and ash were found in the kitchen in the premises and a warning was issued. On 2 February 2018 cigarette ends were discarded on the floor in the bar and lounge, in the male toilets and the kitchen, empty cigarette packets were found behind seating in the bar and lounge. On 25 February 2018 an enforcement officer witnessed customers on the premises after the permitted hours smoking. Mr Hunter was convicted in December 2018 in Teesside Magistrates for the offence of failing to prevent people smoking in the premises on 25 February 2018. On 6 March 2018 discarded cigarettes and/or cigarette ash was found in the bar, male toilets, cellar and kitchen. On 10 November 2018, as stated above, a police officer saw a woman smoking on the premises when Mr Hunter was present.

33. The Committee did not accept Mr Hunter's denials that smoking only takes place outside. There was a clear pattern of smoking being permitted on the premises and also a criminal conviction which the Committee cannot go behind. This aggravated the risks caused by breaching fire safety requirements.

Operating Outside of the Permitted Hours

34. The Committee considered that the premises had been trading unlawfully, or customers had been in the premises unlawfully after the time when the premises should be closed under the terms of the Licence.

35. A Licensing Officer confirmed on 25 February 2018 he saw, through the window, customers drinking alcohol at 1.25am and customers were still in the premises drinking when he left the area at 1.35am. Customers were also smoking in the premises. Whilst he was at the premises two males who appeared intoxicated left the premises, one telling a police officer

he was a regular customer. One of the males told the officer that Mr Hunter was not on the premises. The premises were only permitted to sell alcohol on a Friday and Saturday night until 1.00am with a drinking up time until 1.30am.

36. Mr Hunter did not accept this and denied he knew anything about it. Although the CCTV was not sufficient to cover the area, the Committee was satisfied with the Officer's observations. In support of this breach there had been four other complaints, although anonymised about "stoppy backs" and other problems at the premises. There was a complaint about operating out of hours at 00.29am on Thursday 11 January 2018, the permitted hours on a weeknight was up to 11.00pm. On 30 January 2018 the Licensing team received a complaint that the pub was operating outside of the hours throughout the night. On 14 May 2018 the licensing team received a further complaint that people were in the premises until 3 and 4 in the morning. A complaint was received as a result of the review that the premises was open all hours and the complainant had seen people leave at six and seven in the morning. The Committee therefore considered that the premises had operated outside of the permitted hours as proven by the officer on 25 February 2018 and had a reputation of operating outside of its hours through the anonymous complaints.

Breach of Conditions

37. Licensing Conditions had been breached. It was essential that licensing conditions were complied with in order to uphold the licensing objectives. Failure to comply with conditions was a criminal offence.

38. On 30 November 2017 there was no incident book available and Mr Hunter was unable to produce Parts A or B of the Premises Licence.

39. On 10 January 2018 there was no CCTV system installed in the premises nor was it present on 30 November 2017. The Committee noted, following an incident on 13 November 2017, the police had seized the hard drive of the CCTV. The police then damaged the hard drive. The Committee was informed the police had returned the damaged hard drive on 15 December 2017 and advised Mr Hunter to purchase a new CCTV system and recharge the police. Mr Hunter claimed that the police informed him they would replace the CCTV. On balance, the Committee considered that a responsible retailer should have installed a new system after it was returned on 15 December 2017 or at least chase up the position. Not to have CCTV for such a long period was irresponsible and in breach of the condition. It was noted that CCTV was in place on the visit on 19 January 2018, however, the police officer's view was the camera coverage retrieved from 25 February 2018 was insufficient. On 14 and 28 March 2018 no one present at the premises could operate the CCTV system.

40. On 28 March 2018 the refusals register was not completed and was used as an incident book, this was not kept up to date - the last entry being in 2016.

41. On 14 July 2018 a girl aged 16 was outside the premises at 10.00pm the girl had told officers she had been in the premises. This was a breach of condition that prevented children entering the premises after 8.00pm. Neither Mr Hunter nor Mr Hetherington knew the exact time for this condition.

42. The premises had also operated after 9.00pm when it opened until 1.30am without the required minimum of two registered door supervisors.

43. It was of serious concern that the licence had to be suspended because the licence fee was late. The licence was suspended from 7 December 2017 until it was reinstated on 18 December 2017 and it was presumed the premises had continued to operate. The Licence fee was also paid late in 2018.

Other Reported Incidents/Complaints

44. There had been numerous reports to the police and anonymous complaints since 2017. The reports and complaints all dealt with similar problems - operating outside of permitted hours, fighting, violence, drunkenness, drug taking, underage sales and disturbance.

45. The Committee noted that Mr Hunter claimed complaints were made by people with a grudge whom he had barred, however, the Committee considered it very unusual for so many reports and complaints to have been made on similar grounds by what appeared to be different, unconnected people, who appeared too frightened to come forward.

46. Although Mr Hunter denied any underage sales taking place and claimed he did not allow children on the premises after a certain time, the Committee considered there was a risk to young people. A girl of 16 was allowed entry to the Premises on 14 July 2018 and was outside the premises with older men. A boy of 17 claimed he was in the premise when he was assaulted and was intoxicated. A boy of 14 reported missing was found to have been in the flat above the premises on 20 September 2018.

47. Each officer from the different responsible authorities had informed the Committee that Mr Hunter can act aggressively when confronted with problems at the premises. Mr Hunter denied this and told the Committee that when he asked the officers they said he was not aggressive with them. However, the Committee did consider that Mr Hunter had been aggressive to the fire officer during the visit on 9 November 2018 and according to the information provided had a tendency to lose his temper when faced with problems. Officers were required to attend in pairs and not alone at the premises as it was recorded as a risky Premises.

Conclusion

48. The Committee did not consider it would be adequate or appropriate to simply prevent Mr Hunter being part of the business. Mr Hetherington the PLH and DPS wholly failed to uphold the licensing objectives and comply with the rules, regulations and conditions in order to run a licensed premises. He accepted he was not fully aware of the conditions on the licence, had failed to carry out any training or have any systems or checks in place whatsoever. Mr Hetherington accepted that he was aware of the problems at the premises, yet failed to intervene or take any action to ensure the premises were safe and operated lawfully. The PLH risked people's lives by failing to rectify fire safety breaches. He failed to uphold the objectives and had actually added to the problems in the area. The problems occurred when Mr Hetherington was the PLH and DPS or had some control. It was noted Mr Hetherington was a Premises Licence holder for another Premises. However, there had been breaches on that licence and it was suspended for a period for non-payment of the licensing fee. In any event the Committee considered Mr Hetherington was wholly unsuitable to be a Premises Licence Holder or DPS for the Springfield Hotel in Central Ward.

49. Looking at the operation of this Premises on the whole, it was clear, the promotion of the prevention of crime and disorder and public nuisance, the protection of children from harm and public safety had been undermined. The objectives were being undermined in an area that already suffered from serious alcohol harms in children and adults, crime disorder and nuisance. The Premises Licence at the Springfield Hotel had added to the problems and was one of the causes of the problems in the area.

50. The Committee, after examining all of the relevant information, considered the appropriate action was to revoke the Premises Licence.

51. The Committee considered the decision was in accordance with the Policy and Guidance.

The parties were reminded of the Right of Appeal to the Magistrates Court within 21 days of the date of the written decision being received.