

# Cheltenham Borough Council

## Licensing Sub Committee – 21 March 2011

### Licensing Act 2003: Determination of an Application for Review of a Premises Licence & a Club Premises Certificate

#### Hillview Social Club Hillview Community Centre Hulbert Crescent Up Hatherley Cheltenham (Ref. 11/00134/PRMR & 11/00139/CLUBR)

### Report of the Senior Licensing Officer

#### 1. Introduction

- 1.1 Under Section 51 of the Licensing Act 2003 (“the Act”) an interested party or responsible authority may apply to the Licensing Authority for the review of a premises licence or of a club premises certificate. Any application for a review of a premises licence or club premises certificate must relate specifically to the particular premises in question and also to one or all of the Act’s licensing objectives.
- 1.2 In this case an application to review the Premises Licence & Club Premises Certificate in respect of the Hillview Social Club was made by Gloucestershire Constabulary on the 25<sup>th</sup> of January 2011 following the death of a club member Mr Nigel Russell on the 17<sup>th</sup> of April 2010 as a result of excessive drinking at the premises.
- 1.3 A copy of the application form is attached **Appendix A**. The supporting documents submitted by Gloucestershire Constabulary are attached at **Appendix B**.
- 1.4 Gloucestershire Constabulary have indicated that their application for review relates to the prevention of crime and disorder, public safety, and the prevention of public nuisance.
- 1.5 On Saturday 17<sup>th</sup> April 2010 a public dance event was held at the premises which resulted in the Bar remaining open for an extra hour under a Temporary Events Notice. On this evening, 51 year-old regular member Mr Nigel Russell attended the Club and consumed an assortment of alcohol, including high-alcohol spirits. Some of the alcohol was served directly and some by participation in a drinking-game with four other members.

Mr Russell drank to the point of being so intoxicated that he collapsed in the Bar. He was carried outside and then carried home but, sadly, never regained consciousness and died in hospital the following day.

In the absence of positive action by the Committee/Club, the Constabulary suggests that such a tragedy could be repeated in the future.

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Given that the Club has struggled to operate in a cohesive and settled manner for a considerable period and given their involvement in the untimely death of a member, the Constabulary believes that it would be appropriate for a Licensing Committee to have the opportunity to revoke or suspend either one or both of the two Licences, or curtail the Licensable Hours, and/or impose robust conditions that will ensure it operates to a high standard in the future.

## 1.6 Implications

### 1.6.1 Financial

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### 1.6.2 Legal

A Responsible Authority or Interested Party can call for the review of a Premises Licence and/or Club Premises Certificate at any time because of a matter arising at the premises in connection with the licensing objectives. Under the Act the Licensing Authority has a wide range of powers that it may exercise if it considers them necessary for the promotion of the licensing objectives.

The Committee when determining the application should seek to establish the cause/s of the concerns which the representations relate to and direct any action, if it is determined necessary to take action, towards those concerns. The Committee should only take that action that is necessary and proportionate.

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## 2. Information

### 2.1 The Hillview Social Club is currently permitted the following licensable activities under its Premises Licence:

Sale/Supply of Alcohol	Friday to Saturday	10:00 - 01:00 On
Sale/Supply of Alcohol	Sunday to Thursday	10:00 - 00:00 On
Performance of Dance	Monday to Saturday	09:00 - 00:00 Indoors
Performance of Dance	Sunday	09:30 - 00:00 Indoors
Indoor Sporting Events	Monday to Thursday	09:00 - 00:00
Indoor Sporting Events	Friday to Saturday	09:00 - 01:00
Indoor Sporting Events	Sunday	09:30 - 00:00
Performance of Live Music	Monday to Saturday	09:00 - 00:00 Indoors
Performance of Live Music	Sunday	09:30 - 00:00 Indoors
Other/Similar Entertainment	Monday to Saturday	09:00 - 00:00 Indoors
Other/Similar Entertainment	Sunday	09:30 - 00:00 Indoors
Prov'n of Facilities for Dancing	Monday to Saturday	09:00 - 00:00 Indoors
Prov'n of Facilities for Making Music	Sunday	09:30 - 00:00 Indoors
Prov'n of Facilities for Making Music	Monday to Saturday	09:00 - 00:00 Indoors
Performance of Recorded Music	Everyday	09:00 - 00:00 Indoors

### 2.2 The following conditions are attached to the current Premises Licence:

- (i) Windows and doors (except when in actual use) shall remain closed after 23:00 hrs if there is any musical entertainment taking place (except low-level background music).
- (ii) Contact telephone numbers for Taxi/Private Hire services shall be displayed and a telephone provided for ordering such services.

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- (iii) A closed-door policy (with no admission to new customers) will be operated from 23.30hrs on New Year's Eve to closing time on New Years Day morning.
- (iv) A closed-door policy (with no admission to new customers) will be operated from 23.30 hrs on New Year's Eve to closing time on New Years Day morning.
- (v) The CCTV system shall be maintained in good working order, shall record at all times that the premises are open, and recordings shall be kept for 28 days (14 days for digital systems) and be provided to officers of the council and the police on request.
- (vi) There shall be no discounting of alcoholic drinks after 1800 hours on Friday and Saturday night until the start of trading the following day. (For the purposes of this condition a discounted drink is one sold at a price below the tariff in place for that drink for a minimum period of one week before the relevant Friday or Saturday night).
- (vii) Non-alcoholic/Low-alcohol drinks shall be available and promoted, especially to 'designated drivers' of groups.
- (viii) On any evening when the premises are open after midnight, that between the end of supply of Alcohol and closing time (or until all customers have dispersed from the immediate vicinity) The Designated Premises Supervisor (or a person acting on behalf of the DPS will be positioned outside the premises to monitor the dispersal of customers.
- (ix) The Challenge 21 (or equivalent scheme) shall be adopted, so that any customer attempting to purchase alcoholic liquor who appears to be under the age of 21 shall be asked for an accredited photographic proof of their age (e.g. passport, photo driving licence, PASS-approved Card) and that a sale shall not be made unless this evidence is produced.
- (x) No noise nuisance will be caused to neighbouring residents.
- (xi) Reasonable steps shall be taken to bring to the notice of customers a request that they respect the needs of the local residents and leave the premises and locality in a quiet and orderly fashion.

2.3 The Hillview Social Club is currently permitted the following licensable activities under **Club Premises Certificate**:

Sale/Supply of Alcohol	Friday to Saturday	10:00 - 01:00 On
Sale/Supply of Alcohol	Sunday to Thursday	10:00 - 00:00 On
Performance of Dance	Monday to Saturday	09:00 - 00:00 Indoors
Performance of Dance	Sunday	09:30 - 00:00 Indoors
Indoor Sporting Events	Monday to Saturday	09:00 - 00:00
Indoor Sporting Events	Sunday	09:30 - 00:00
Performance of Live Music	Monday to Saturday	09:00 - 00:00 Indoors
Performance of Live Music	Sunday	09:30 - 00:00 Indoors
Performance of Recorded Music	Everyday	09:00 - 00:00 Indoors
Other/Similar Entertainment	Monday to Saturday	09:00 - 00:00 Indoors
Other/Similar Entertainment	Sunday	09:30 - 00:00 Indoors
Prov'n of Facilities for Dancing	Monday to Saturday	09:00 - 00:00 Indoors
Prov'n of Facilities for Dancing	Sunday	09:30 - 00:00 Indoors
Performance of a Play	Monday to Saturday	09:00 - 00:00 Indoors
Performance of a Play	Sunday	09:30 - 00:00 Indoors

2.4 The following conditions are attached to the current **Club Premises Certificate**:

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- (i) All windows in areas where any live or recorded entertainment (other than incidental background music) occurs shall be kept shut during these activities.
- (ii) All external doors in areas where any live or recorded entertainment occurs shall be kept shut during these activities except momentarily for access and egress or in an emergency.
- (iii) The club's Management Committee shall ensure effective overall management of live or recorded entertainment, such as by monitoring noise levels outside the premises, to ensure that noise from such activities is effectively inaudible inside neighbouring premises after 23:00hrs.
- (iv) The CCTV system shall be maintained in good working order, shall record at all times that the premises are open, and recordings shall be kept for 28 days (14 days for digital systems) and be provided to officers of the council and the police on request.
- (v) A closed door policy shall be operated with no re-admission on Friday and Saturdays from 23:00 hours until closing time except that persons who are already in the premises maybe permitted to leave to smoke and then re-enter.
- (vi) No more than 5 persons shall be allowed outside at anyone time and this will be monitored at all times by the secretary or some person nominated by her.

2.5 Copies of both the current Premises Licence and the Club Premises Certificate are attached at **Appendix C**.

**3. Consultation**

3.1 When an application for review of a licence is made, it is the responsibility of the applicant to also distribute the application to all the 7 responsible authorities. There is also a requirement for a blue notice to be displayed at the premises to with the application relates for the duration of the statutory 28 days consultation period to give interested parties who live in the vicinity of the premises opportunity to make representation.

At the end of the 28 days consultation period, a committee must be held to determine the application.

**3.2 Responsible Authorities**

- Gloucestershire Constabulary** – Applicant
- Environmental Health** - No Representations Received
- Gloucestershire Fire & Rescue Service** - No Representations Received
- Health and Safety Enforcement** - No Representations Received
- Child Protection** - No Representations Received
- Planning Authority** - No Representations Received
- Trading Standards** - No Representations Received

**3.3 Consultation - Interested Parties**

Representations have been received from the following Interested Parties:

Mr Stuart Fowler (chairman of Up Hatherley Parish Council on behalf of the Parish Council) & Councillor Roger Whyborn (in the capacity of a ward councillor).

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- 3.4 Copies of the representations made by interested parties are attached at **Appendix D**.
- 3.5 Councillor Whyborn also enclosed a letter sent to Norman Adlam (Chairman of the Hillview Community Association) dated the 13<sup>th</sup> of May 2009 in which he highlights a number of concerns relevant to his representation. This letter is also attached at **Appendix D**.
- 3.6 A copy of the licence agreement referred to in Cllr Whyborn's representation is attached at **Appendix E**.

## 5. Local Policy Considerations

- 5.1 The 2003 Act introduces a unified system of regulation which through two new types of licenses: the premises licence and the personal licence (club premises certificates for qualifying clubs). The Borough Council, as the licensing authority, is responsible for licensing all outlets in the borough that sell or supply alcohol or carry out any other 'licensable activities'; public entertainment, theatre, cinema, or late night refreshment.
- 5.2 The new system is underpinned by four objectives: i) the prevention of crime and disorder; ii) public safety; iii) the prevention of public nuisance; and, iv) the protection of children from harm. The licensing authority must promote these objectives in carrying out its functions.
- 5.3 The Councils adopted licensing policy statement (Council 30/03/09) includes the following:
- i) **Each objective is of equal importance** and the licensing authority has developed policies relating to each objective. The objectives are the only matters to be taken account in determining applications and applying conditions. **(Page 5)**
  - ii) This policy also does not override the right of any person to make representations on an application or seek a review of a licence or certificate, where provision has been made for them to do so in the Licensing Act 2003. **(Page 8)**
  - iii) The policy of the Licensing Authority will be to:
    - Promote the licensing objectives;
    - ensure that the premises are appropriate for their proposed use;
    - ensure the premises layout and condition is acceptable for the proposed use; and
    - ensure that the premises are being managed responsibly. **(Page 7)**
  - iv) In brief "relevant representations" is the expression used in the Act for comments including objections on applications. For a representation to be relevant it must:
    - relate to the effect of the grant of the licence on the promotion of the licensing objectives (prevention of crime and disorder, prevention of public nuisance, public safety or protection of children from harm);
    - be made by an interested party or responsible authority;
    - not be 'frivolous or vexatious' or, in the case of a review, 'repetitious' if made by an interested party; or
    - if it concerns the Designated Premises Supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection. **(Page 9)**

## 6. National Guidance

Guidance has been issued under Section 182 of The Licensing Act 2003 and licensing authority must 'have regard to' the guidance issued by the Secretary of State.

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## General

- 6.1 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken. **(Para. 1.2)**
- 6.2 Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times. **(Para. 1.3)**
- 6.3 But the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;
  - the encouragement of more family friendly premises where younger children can be free to go with the family;
  - the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities; and
  - the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring. **(Para. 1.4)**
- 6.4 In the context of crime and disorder and public safety, the preservation of order on premises may give rise to genuine concerns about the competency of the management team charged with the maintenance of order. This may occur, for example, on premises where there are very large numbers of people and alcohol is supplied for consumption, or in premises where there are public order problems. **(Para. 2.12)**
- 6.5 The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder, including the prevention of disorder. However, conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. A condition of this kind could only be justified as necessary in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety. **(Para. 2.13)**
- 6.6 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act ensure, for example, that the prevention of disorder is in sharp focus for all such managers, licence holders and clubs. **(Para. 2.14)**
- 6.7 Communications between the managers of the premises and the police can also be crucial in preventing crime and disorder. **(Para. 2.15)**
- 6.8 However, while this may be necessary and effective in certain parts of licensing authority areas, it may be less effective or even unnecessary in others. Police views on such matters should be given considerable weight and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed. **(Para. 2.16)**

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## Reviews

- 6.9 At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. **(Para. 11.2)**
- 6.10 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house. **(Para. 11.7)**
- 6.11 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives. **(Para. 11.16)**
- 6.12 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach. **(Para. 11.17)**
- 6.13 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
  - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
  - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
  - to suspend the licence for a period not exceeding three months;
  - to revoke the licence. **(Para. 11.18)**
- 6.15 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response. **(Para. 11.19)**
- 6.16 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives. **(Para. 11.21)**

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- 6.17 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives. **(Para. 11.22)**

## 7. Licensing Comments

- 7.1 Hillview Social Club currently holds a premises licence and a club premises certificate. The club premises certificate authorises the supply of alcohol to members of the club and any bone fide guests of such members. Since the club premises certificate only authorises the supply of alcohol to members and guests of the club, the club requires a premises licence to enable it to host events that are open to the public at large and where licensable activities are to take place i.e. the sale by retail of alcohol, the provision of regulated entertainment, or the provision of late night refreshment.

The sale of alcohol under a premises licence must be authorised by a Designated Premises Supervisor ("DPS" hereafter) who holds a personal licence. The Act does not require a DPS to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the premises licence.

The arrangement under the Act is different where alcohol is supplied to members of a club or bone fide guests of such members under a club premises certificate. In such a case, the supply of alcohol is authorised by the club's management committee and there is no requirement for a DPS. The management committee will carry the same responsibility as a DPS in that they are responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the club premises certificate.

Members will note from the attached plan at **Appendix F** that the bar at the Hillview Social Club serve both the hall, where the premises licence has effect, and the club area, where the club premises certificate has effect, and therefore different management and supervision arrangements will apply depending on who the alcohol is supplied to and under which authority the supply is made.

- 7.4 The Committee must take such action as is necessary to promote the licensing objectives which are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. For the **Premises Licence**, this includes:
- (i) Taking no action;
  - (ii) Modifying the conditions attached to the licence on a permanent or temporary (up to 3 months) basis;
  - (iii) Excluding a licensable activity from the scope of the licence;
  - (iv) Removing the Designated Premises Supervisor
  - (v) Suspending the licence for a period not exceeding three months; or,
  - (vi) Revoking the licence;

and for the **Club Premises Certificate**:

- (i) to modify the conditions of the certificate;
- (ii) to exclude a qualifying club activity from the scope of the certificate;
- (iii) to suspend the certificate for a period not exceeding three months;

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(iv) to withdraw the certificate.

- 7.6 The current DPS is Sally Curry who has been the nominated DPS since the 14<sup>th</sup> of May 2010. Ms Curry replaced Louise Hingley who was the DPS at the time the incident involving Mr Russell took place.
- 7.7 With regards to the comments made by Mr Fowler on behalf of Up Hatherley Parish Council, Members are to note that the comments relating to the late filing of audited accounts and annual reports with the Charity Commission is not a relevant consideration under the Licensing Act by virtue of the fact that it does not relate to any of the licensing objectives.
- 7.8 Members are further to note that since this application must be determined on its individual merits, Mr Fowlers comments relating to other premises in the vicinity of the premises is not a relevant consideration.
- 7.9 The representation made by Councillor Whyborn provides Members with information on the management arrangements between the association and the club. It highlights the intrinsic difficulties created by this relationship especially in relation to the role the supply of alcohol plays in funding the association. Members must decided what weight to add to the comments made by Councillor Whyborn and seek to address the issues raised accordingly with the view of promoting the licensing objectives.
- 7.10 A plan of the location of the premises is attached **Appendix F**.
- 7.11 The plan of the premises is submitted with the application is attached at **Appendix G**.

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**Background Papers**

Service Records

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