

# **Cheltenham Borough Council**

## **Licensing Sub Committee – 14 July 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 On the 21<sup>st</sup> of March 2011 a sub-committee heard an application by Gloucestershire Constabulary for review of both the premises licence and club premises certificate in respect of the Hillview Social Club.
- 1.2 At that hearing, the sub-committee having considered all the evidence did not feel that enough of the issues which led to the tragic incident on 17 April 2010 were addressed. As a result, it decided to remove the sale of alcohol from the premises licence and the club premises certificate.

The sub-committee felt that the decision would allow sufficient time for the Social Club to put in place procedures to ensure there are no repeat similar incidents and also to promote the licensing objectives. The sub-committee suggested a number of possible procedures that could be implemented in order to promote the licensing objectives at the club such as;

- (a) a review of the committee structure and implementation of any necessary changes in its composition,
- (b) the training of staff,
- (c) better record keeping, and
- (d) the DPS be the bar manager and be employed full time.

Finally, the sub-committee decided that once negotiations with the Police are completed to the satisfaction of the Police, the social club committee can reapply for the licences.

- 1.3 Hillview Social Club lodged an appeal of the sub-committee's decision. The pre-trial determination hearing was held on the 3<sup>rd</sup> of June 2011 at Gloucester Magistrates' Court. The Hillview Social Club has put in place a number of measures to address the concerns that were raised by the Sub-Committee.
- 1.4 In light of the additional steps that have been undertaken by the Club the police have indicated that they have no objection to the Club being licensed for the sale of alcohol.
- 1.5 At this hearing, the Magistrates' Court agreed to adjourn the appeal on the basis that the case would be remitted back to the Council for further consideration.

1.6 The application is therefore brought before the committee for reconsideration. The Hillview Social Club and the Constabulary have submitted additional documents and information for consideration by the sub-committee.

1.7 The Social Club has submitted the following documents which are attached at **Appendix A**;

- (a) A covering letter;
- (b) List of measures implemented;
- (c) An updated Hillview Community Association constitution; and
- (d) An updated Hillview Social Club constitution.

1.8 PC Andy Cook submitted the following information on behalf of the Constabulary;

With regard to the Hillview Social Club, the Constabulary welcomes the Court's directive to refer the case back to the Licensing Authority for re-consideration of the case.

The Constabulary takes the view that the Committee took appropriate action when it revoked Alcohol from the Club's Licences at the previous Review Hearing. However, the re-structured Committee (now also chaired by a new Chairperson) has since made significant changes to their proposed manner of operating including:

1. Agreement to Alcohol Hours terminating at Midnight
2. Sensible changes to the Club Constitution
3. Clearer lines of responsibility (which are particularly welcome)
4. More responsible practices
5. The installation of a new and much improved CCTV system

The Club has now adopted all the recommendations made by the Constabulary (within the Review application) and is clearly keen to try and prevent a repeat of the tragic incident (which led to the Review) occurring at the premises in the future. In the circumstances, the Constabulary would be happy for Alcohol to be reinstated with Hours reduced to Midnight and with the Conditions agreed.

For the sake of clarity, the Constabulary wishes to see the following Conditions placed on any renewed licence (some new conditions and some carried over from existing licence):

1. 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 14 days and be provided to officers of the Council and the Police on request.
2. All Bar staff shall undertake the National Certificate for Personal Licence Holders within 3 months of commencing that activity.
3. The Bar shall not operate unless at least one person serving has passed the NCPLH course.
4. Whenever the Bar is operated by more than one person, a 'lead person/supervisor' shall be identified.
5. Staff shall take proactive steps to discourage drinking games, and notices shall be displayed in the Bar area to the effect that such games are not permitted. Action shall be taken against Members/Customers who ignore these notices e.g. Warnings, Suspension of Membership, Revocation of Membership.

6. A member of the Committee shall be present throughout any event where a Temporary Event Notice is used and throughout any event where the Public are admitted.
7. 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.
8. 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.
9. 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.
10. 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).
11. Contact telephone numbers for taxi/private hire services shall be displayed and a telephone provided for ordering such services.

## **1.9 Implications**

### **1.9.1 Financial**

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### **1.9.2 Legal**

The Magistrates' Court has adjourned the appeal pending the matter being remitted back to the Council for further consideration. The committee is not bound by its previous decision and it must consider determine whether or not the licensing objectives are now met.

If the committee does not re-instate the sale of alcohol on to the premises licence and the club premises certificate the Club can continue with its appeal through the Magistrates' Court.

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## **2. Background**

- 2.1 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.
- 2.2 On that day 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.

2.3 A copy of the initial application form is attached **Appendix B**.

### 3. Information

3.1 The Hillview Social Club currently holds a Premises Licence and a Club Premises Certificate.

3.2 Following the Review the following licensable activities are permitted under the **Premises Licence**:

|                                       |                    |                       |
|---------------------------------------|--------------------|-----------------------|
| 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 |

3.3 The following conditions were attached to the current **Premises Licence** and were not altered as a consequence of the review:

- (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.
- (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 Year's 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.

3.4 Following the Review the following licensable activities are permitted under the **Club Premises Certificate**:

|                               |                    |                       |
|-------------------------------|--------------------|-----------------------|
| 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 |

3.5 The following conditions were attached to the current Club Premises Certificate and were not altered as a consequence of the review:

- (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.

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

#### **4. Local Policy Considerations**

4.1 The 2003 Act introduces a unified system of regulation 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.

4.2 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.

4.3 The Council's adopted licensing policy statement (Council 30/03/09) includes the following:

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)

4.4 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)

4.5 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)

4.6 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)

## **5. National Guidance**

5.1 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.

### **General**

5.2 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)

5.3 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)

5.4 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)

- 5.5 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)
- 5.6 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)
- 5.7 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)
- 5.8 Communications between the managers of the premises and the police can also be crucial in preventing crime and disorder. (Para. 2.15)
- 5.9 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)

## **Reviews**

- 5.10 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)
- 5.11 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)
- 5.12 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)
- 5.13 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)

5.14 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)

5.15 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)

5.16 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)

5.17 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)

## **6. Licensing Comments**

6.1 The hearing has been remitted back to the committee for reconsideration in light of new information submitted by the club detailing the measures that it has implemented to address the concerns raised by the committee and Gloucestershire Constabulary.

6.2 The Council is required to discharge its licensing function under the 2003 Act with the view of promoting the licensing objectives. The committee must therefore be satisfied that the

measures implemented by the Club are sufficient to promote the licensing objectives, these being;

- (a) the prevention of crime and disorder,
- (b) public safety,
- (c) the prevention of public nuisance, and
- (d) the protection of children from harm.

6.3 If the committee is satisfied that the operation of the club, particularly in reference to the sale and supply of alcohol, will not adversely affect the licensing objectives, it can consider the reinstatement the sale/supply of alcohol on the licences.

6.4 However, if the committee is not satisfied of this fact, it must take such steps as it considers necessary to promote the licensing objectives. For the **Premises Licence**, these steps could include;

- (a) Not reinstating the sale of alcohol or excluding other licensable activities from the scope of the licence; or
- (b) Re-instating the licence subject to modified conditions attached to the licence on a permanent or temporary (up to 3 months) basis;

and for the **Club Premises Certificate**:

- (a) Not reinstating the sale of alcohol or excluding other licensable activities from the scope of the club premises certificates; or
- (b) Re-instating the club premises certificate subject to modified conditions attached to the licence on a permanent or temporary (up to 3 months) basis;

6.5 A plan of the location of the premises is attached **Appendix D**.

6.6 The plan of the premises is submitted with the application is attached at **Appendix E**.

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**Background Papers**

Service Records

Sub-Committee Minutes and Report - 21 March 2011

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