

GATESHEAD COUNCIL

LICENSING AUTHORITY

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : The Schooner Public House
Address : South Shore Road Gateshead NE8 3AF
Licensee : The Schooner Gateshead Ltd
Date of Hearing : 9 October 2020
Type of Hearing : Review of premises licence

The Sub Committee has decided as follows:

To modify the licence by adding the following conditions at Appendix 3 –

1. The Licensee, that is the person in whose name the Premises Licence is issued, shall ensure that at all times when the premises are open for any licensable activity, there are sufficient, competent staff on duty at the premises for the purpose of fulfilling the terms and conditions of the Licence.
2. A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. Such a system shall:
 - (a) Ensure coverage of all entrances and exits to the Licensed Premises internally and externally
 - (b) The till area
 - (c) Ensure coverage of such other areas as may be required by the Licensing Authority and Northumbria Police including all outdoor drinking areas including any beer garden or neighbouring space used by the premises
 - (d) Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained (on tape or otherwise) for a

period of 28 days, and shall be supplied to the Licensing Authority or a Police Officer on request; and

(e) Be in operation at all times the premises are in use.

3. There shall be no external amplified live or recorded music other than in accordance with a noise management plan to be agreed in advance with Environmental Health prepared by a competent acoustic consultant.

4. During indoor performances of live music and all other regulated entertainment, all windows and doors must remain closed except for access and egress.

5. An operations policy shall be implemented and adhered to in respect of the management of the outside area to include patrons, staffing, monitoring and general management of the area on a daily basis, including that staff shall be readily identifiable by uniform or otherwise.

6. Clear and legible notices shall be displayed at exits and other circulatory areas including the beer garden requesting patrons to have regard to the needs of local residents.

Reasons

The application to review the premises licence was brought by the Environmental Health Authority. Relevant representations were also made by Northumbria Police and the Director of Public Health.

The Sub Committee had regard to the Licensing Officer's report, the supplementary documentation provided by the parties in advance of the hearing, and the verbal representations made at the hearing by –

- Mr Sorrell (Environmental Health Authority - Applicant)
- Ms Bainbridge (Environmental Health Authority)
- Ms Sharp (Public Health)
- Insp. Wheeler (Northumbria Police)
- Ms Dalby
- Professor Macintyre; and
- The Licensee (represented by Messrs Moore and Smith; legally represented by Mr Holland of Trinity Chambers and supported by Mr Manwell (health and safety consultant))

In considering the application, the Sub-Committee heard from Mr Sorrell as follows –

- At the start of the national lockdown in March, pubs were required to close for on-sales but could continue to sell alcohol for consumption off the premises. Pubs were requested only to sell alcohol in closed containers.
- When the restrictions on on-sales was lifted, there continued to be restrictions on the performance of live music, which has only been permitted to take place indoors since August and subject to compliance with covid-secure measures.
- More recently, a 10pm curfew has been imposed on premises in the Borough.
- The Council's Business Compliance team have provided advice to businesses throughout the pandemic.
- Complaints were received in respect of the Schooner as soon as the national lockdown commenced; and advice was provided.
- On 21 April 2020 officers visited the premises and provided further advice regarding the physical measures in place at the premises and in relation to social media posts.
- A further visit was made on 21 June 2020, at which time tables and chairs in the beer garden were seen to be in use; and officers were concerned that plastic glasses were being provided to customers. A Prohibition Notice was served preventing further use of the beer garden.
- Further advice was given following complaints about live music, and it was noted that the risk assessment for the premises did not include reference to the arrangements in place for live music. No information was set out in respect of outside live performances in the risk assessment; resulting in advice being given which was then incorporated into the risk assessment by the Licensee.
- On 27 July 2020 it was found that there was an outdoor performance of live music with people congregating on the highway and with no social distancing measures in place. The Licensee's social media site encouraged people to bring their own chairs to the performance. Two further Prohibition Notices were served, the first in respect of people standing on highway and the second in respect of the lack of social distancing measures. It was noted that a tarmacked area of land opposite the premises was also being used by the premises. At the time of submitting the review it was unclear whether the land was adopted highway, however it has since been clarified that it is.
- The Prohibition Notice in respect of use of the highway is subject to an appeal before the Employment Tribunal, which has been adjourned pending outcome of this hearing.

- There have been more complaints relating to covid-restriction breached about these premises than any other premises in the Borough.
- Failures to comply with the relevant regulations have been identified on each occasion that officers have visited the premises since March.
- Concern was expressed regarding a lack of effective management at the premises, leading to an increased risk to both staff and public.
- Finally, concern was expressed regarding the Licensee having unilaterally taken over a piece of land that does not belong to it and has not sought any permission to use it.

The Sub-Committee heard from Inspector Wheeler as follows -

- The serious concerns expressed by the Environmental Health Authority are supported by Northumbria Police.
- Until recently, the premises have been well-run with very few incidents (only 6 between March 2018 and March 2020, none of which raised concern regarding activity at the premises).
- One noise complaint was received by Northumbria Police in 2017, however it did not result in any action being taken.
- Since March 2020 Northumbria Police have received a number of complaints regarding a lack of compliance with the relevant covid-related restrictions.

The Sub-Committee heard from Ms Sharp as follows –

- Social distancing is a vital measure to control the spread of coronavirus. The evidence presented to the Sub-Committee suggests there has been a lack of social distancing measures in place at the premises; and for that reason the Director of Public Health is in support of the review application.

The Sub-Committee heard from Ms Bainbridge as follows –

- There have been 12 recent complaints of noise from live bands and DJs disturbing residents, with the time of disturbance ranging from early through to late evening. The complaints indicate that the noise from such entertainment is audible indoors with door and windows shut.

- The Licensee was advised to seek advice from an acoustic engineer, however this has not resulted in any application to vary the licence.
- Ms Bainbridge has attended St Peter's Basin whilst there was a performance of regulated entertainment at the premises, and found the singing, drums and crowd noise to be clearly audible.
- There have also been complaints made in previous years.

In response to questions raised by Mr Holland –

- Mr Sorrell noted that he broadly accepted what is set out in Mr Manvell's report, and that the situation has moved on from when the review was initially brought
- Mr Sorrell noted however that he disagrees with Mr Manvell's interpretation of the photographs appended to Mr Manvell's report labelled GM3 and GM4; stating that he did not believe they showed adequate social distancing in place
- Mr Sorrell accepted that following the service of a Prohibition Notice on 29 July 2020, it was complied with quickly and was withdrawn on 31 July 2020
- Mr Sorrell accepted that following 31 July 2020 there had been no further complaints or issues identified through inspection regarding social distancing
- Mr Sorrell stated that he believed drinks had been supplied in open containers / glasses covered with cling film
- Mr Sorrell noted that he was not identifying any particular Highways Act offences that it was alleged had been committed by the Licensee / customers of the premises; and accepted that there are legal mechanisms by which a person can obtain authorisation to use part of the highway
- Inspector Wheeler stated that the information received by Northumbria Police on 1 July 2020 alleging that the premises were open and trading as an on-licensed premises before the restrictions were lifted was not followed up; and
- Ms Bainbridge stated that she did not believe it would be possible to implement a noise management plan that would be sufficient to prevent disturbance to residents.

Speaking in support of the Licensee, Mr Holland stated –

- The premises are a traditional Victorian public house, overlooking the river Tyne, with a conservatory and beer garden and with a stage at the end of the beer garden
- The Licensee took over the premises in 2019, and the trading style has not altered (other than in respect of the lockdown restrictions)
- There has been a long history of use of the highway with picnic benches for customer seating, kegs used to delineate the customer area, etc. Until this review has been brought, this has not caused any issues
- The Prohibition Notice in respect of use of the highway is being complied with whilst being appealed; such litigation being necessary rather than aggressive as the Licensee is unable to engage with the Highways team whilst the Prohibition Notice is in place
- The review records show a welter of complaints in the early stages of lockdown, however they do not amount to evidence of offences committed. The pandemic has led to an increase in the number of complaints, but in some cases complainants have not perhaps fully understood the rules from time to time
- None of the matters referred to in the representations up to 19 April 2020 appear to be founded on a breach of the relevant regulations
- The concerns that were raised on 19 April 2020 were addressed, showing cooperation with the regulatory authorities
- When an unannounced visit was made on 23 April 2020, the only matter that caused concern was that a barrier blocking access to the beer garden had not been replaced after it had been removed for work to be done earlier in the day. It was then put back in place, which demonstrates that the Licensee is a compliant operator that responds immediately to concerns
- When officers attended on 21 June 2020 and saw tables and chairs laid out, this was as an exercise to establish possible layouts for future use. It is accepted that a breach occurred when some customers then went and sat at a table, however it is a technical breach as the customers did so without permission. The service of a Prohibition Notice was a high-level response to the first incident of concern in two months; the previous incident having been the failure to replace a barrier as above
- The Licensee was not previously aware of the allegation that the premises had been open for on-licensed activity before the restrictions were lifted

- The premises reopened for on-sales on 4 July 2020, having had due regard to the relevant guidance and completed a risk assessment. Expert advice was sought in this respect, albeit on an informal basis. It is incorrect to say there was no risk assessment prior to the commencement of live music performances. It is accepted that there was no noise management plan, however it was not anticipated that there would be a need for one
- It is accepted that disturbance to residents has been caused, and the Licensee unreservedly apologises for this
- There will be no further outdoor concerts unless and until the Environmental Health Authority is satisfied with the arrangements that will be in place; and a condition has been proposed to this effect
- The first outdoor performances took place on 11 and 12 July 2020. It is accepted that complaints were made regarding noise and social distancing; however the Licensee took steps to address the issues straightaway
- Further issues arose on 25 and 26 July 2020, particularly around a performance by a band called 'The Kill' on the Saturday. It had been anticipated that the performance would be popular and additional staff had been taken on for the event, however the Licensee had not recognised the inadequate chain of command for the deployment of those staff. It is accepted that the risk assessment was insufficient and had not been sufficiently actioned in terms of visible staff on the ground
- The events that weekend resulted in two Prohibition Notices being served, one being in relation to covid-compliance and the other in relation to highways issues (which is appropriately dealt with under separate regulatory mechanisms). In relation to the covid-compliance issues, they were resolved very quickly. An updated risk assessment was sent to Mr Sorrell on 30 July 2020 and the Notice was withdrawn on 31 July 2020
- Outdoor performances then took place each weekend for the next four weeks. It is accepted that this resulted in complaints about noise, however there were no further social-distancing issues identified. The Licensee then voluntarily ceased outdoor performances after the weekend of 22 and 23 August 2020; and
- It is recognised that a further complaint about social-distancing within the beer garden was made after this date, and that the current CCTV arrangement does not adequately cover this area.

Mr Manwell stated -

- He was cognisant of his obligation to give full information to the Sub-Committee; and was not satisfied with arrangements for social-distancing at the early outdoor performances, which is set out in his report
- On 25 September 2020 Mr Manwell made an unannounced anonymous visit to the premises to gain a true picture of how it was being run. Mr Manwell was impressed with the internal measures for covid-compliance
- Mr Manwell had a lengthy discussion with Mr Moore, and established that he needed to learn more about risk management but stated that he has since done so
- With regard to the performance on 26 July 2020, Mr Manwell was surprised that there was not a more thorough risk assessment undertaken as it was foreseeable that there would be a large crowd in attendance. Mr Manwell stated that the Licensee had not anticipated any issues with vehicles at the event as there had not been any such issues at previous events; however it was accepted that the risk had not been eliminated
- The verge by the highway is no longer being used by customers, with signs in place to this effect. The Prohibition Notice is being appealed, and there are ongoing discussions to attempt to resolve the position
- There is a difference of opinion between Mr Manwell and Mr Sorrell regarding the interpretation of the photographs within the materials before the Sub-Committee and whether they show adequate social-distancing compliance. It was accepted that the event lacked sufficient planning, and there was some naivety on the part of the Licensee regarding event-specific risk assessments; and
- Mr Manwell would have expected there to be a physical presence of stewarding staff; and whilst staff were present they were not distinguishable from patrons. Stewarding of the road would also have been appropriate.

Mr Moore stated -

- He is a current director of the Licensee, albeit this is not yet apparent from Companies House records
- When the Licensee took over the premises, it was decided that Mr Moore would be appointed as general manager. It is intended that Mr Moore will be appointed as the Designated Premises Supervisor as he is able to devote 100% of his time to the business

- Personal licence and health and safety training has been provided, and has been valuable. There is now a greater understanding of what is required
- Off-sales drinks were initially being supplied in cinema-style cardboard containers with plastic lids, but this was found to be sub-optimal and so the premises moved to use of plastic bottles. There was however a brief period where plastic glasses were provided to customers; although this has now ceased; and
- There is no intention to recommence outdoor music performances unless and until a way forward can be agreed.

At this stage in the hearing, Ms Dalby ceased her attendance.

Professor Macintyre stated as follows –

- He was making representation independently and not as a witness for the Licensee
- He was not acquainted with the individuals running the premises until they took it over
- He has been a customer at the premises for a number of years
- The Licensee has shown significant regard for customer and staff safety
- Whilst patrons attending live music performances congregate on the road outside the premises, he is not aware of any issues with traffic
- The road outside the premises is not a through-road, as it leads to a car park at the bottom of the hill
- Noise issues attributed to the premises have been on occasions when there was no outdoor music performance
- There are premises on the over side of the river that also generate noise; and
- The premises are an asset to the Borough, giving opportunities to musicians to make a living.

When questioned, Mr Moore stated that the current Designated Premises Supervisor (Mr Smith) attends the premises every day usually for between 6 and 7 hours; and is also the DPS of the Three Tuns also in Gateshead.

Mr Moore also accepted that for a period of time drinks were served as off-sales in glasses with cling film covers; and that this was not appropriate.

In summing up –

- Mr Sorrell stated that the Environmental Health Authority had received a large number of complaints; that regulation breaches had been identified which put staff and members of the public at risk; that numerous offers of assistance and advice have been made; and that he remained concerned about the running of the premises
- Inspector Wheeler stated that he was concerned by the lack of engagement from the individuals running the premises; that there had been no serious issues with the premises until recently; that flouting of the rules is not acceptable; and where advice is given but people do not engage they should expect action to be taken
- Ms Sharp emphasised the importance of maintaining social distancing
- Ms Bainbridge stated that she was not confident that noise from banks could be satisfactorily mitigated, and that it was clear that public nuisance had been caused
- Mr Holland referred the Sub-Committee to paragraphs 11.16 – 11.23 of the Home Office’s statutory guidance issued under section 182 of the Licensing Act 2003; and noted that having initiated the review, the Environmental Health Authority had not made any recommendation as to the steps it believed the Sub-Committee should take. Mr Holland noted that Northumbria Police and the Director of Public Health were also silent in this respect; and that whilst Ms Bainbridge had proposed a way forward no one was suggesting that revocation of the licence would be a proportionate step. Mr Holland said that the Licensee is using its best endeavours to comply with the relevant guidance. Mr Holland referred the Sub-Committee to paragraph 11.20 of the Home Office guidance, noting that remedial action should be tailored to the causes of concern and should be no more than is proportionate to address the concerns that triggered the review. Mr Holland referred to the Sub-Committee’s power to suspend the licence; and stated that such a step is often justified on the basis that time is needed for retraining and to put the Licensee’s house in order. Mr Holland noted that significant training, risk assessment and management restructuring had already taken place. Mr Holland noted that the financial impact on the Licensee is a relevant consideration; and referred to the expense that the Licensee had incurred in engaging professional advice and representation. Mr Holland stated that suspension of the licence would in effect be a further financial penalty. Mr Holland referred to the Sub-Committee’s power to remove the Designated Premises Supervisor; and noted that the ‘pancake management structure’ had led to issues which were being addressed by

having a single person with whom ‘the buck stops’. Mr Holland stated that it is intended that Mr Smith will remain the DPS of the Three Tuns and that Mr Moore will apply to be installed as the DPS of the Schooner once he receives a copy of his DBS certificate which will enable him to proceed with the application (the certificate having already been sought). Mr Holland noted that a decision to remove Mr Smith as DPS would not be opposed; but would not take effect for a period of 21 days pending during which time it is anticipated he will have been voluntarily replaced in any event. Mr Holland referred to the potential to impose conditions on the licence; and suggested that the condition proposed by the Licensee regarding a noise management plan was preferable to the conditions proposed by Mr Bainbridge. Mr Holland stated that the Licensee believes that outdoor music can be provided without causing disturbance; and is asking for the opportunity to satisfy the Environmental Health Authority in that respect. Mr Holland noted the reference to a lack of adequate CCTV provision, and that it was open to the Sub-Committee to impose conditions in this respect. Mr Holland stated that the Licensee has approached the review application constructively; and has made concessions where it is right to do so but has also stood its ground where things that have been said are wrong. Mr Holland said that a root and branch review has been undertaken and changes made, and that the Licensee is requesting that the opportunity is given to follow through changes through.

- Professor Macintyre said that there were differing opinions on whether the premises had caused nuisance; and that as a long-standing customer he is of the opinion that the premises are well run and that the Licensee has been diligent in trying to adapt to difficult conditions.

The Sub-Committee received legal advice in open session so that all parties were aware of the advice given.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to the Act, the Home Office Guidance, the Licensing Authority’s own Statement of Licensing Policy and the individual facts.

The Sub-Committee were reminded of their duty under the Act is to carry out the Licensing Authority’s functions with a view to promoting the Licensing Objectives; and that the Home Office Guidance states that they should do so with regard to the overall interests of the local community.

The Sub-Committee noted that paragraph 6.2 of Gateshead Council’s Statement of Licensing Policy states that –

“The Licensing Authority considers:

- the effective and responsible management of premises
- instruction, training and supervision of staff; and

- the adoption of best practice

to be amongst the most important control measures for the achievement of all the licensing objectives”.

The Sub-Committee were reminded of the Judgment in the case of R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates’ Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated, “Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.”

The Sub-Committee were reminded of the Judgment in the case of R (on application of Daniel Thwaites plc) v Wirral Magistrates’ Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said:

“[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act’s approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

The Sub-Committee were reminded of the Judgment of Mr Justice Jay in the case of East Lindsey District Council v Hanif (t/a Zara’s) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve –

- consideration of the antecedent facts; and
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The Sub-Committee found that they were seriously concerned by the lack of adequate management arrangements that had been in place; but were mindful of the steps that the Licensee had taken to address its deficiencies in terms of clear lines of responsibility and risk management. The Sub-Committee considered the removal of the Designated Premises Supervisor from his position; but accepted the Licensee’s representations that this was already in train. The Sub-Committee considered in light of its concerns as above, it was appropriate and proportionate to impose

conditions on the licence setting out clear expectations in terms of staffing, management and operations for the promotion of the Licensing Objectives. In particular, the Sub-Committee considered it appropriate to impose conditions setting out requirements with regard to –

- (a) Staffing
- (b) CCTV
- (c) The provision of regulated entertainment both indoors and outdoors
- (d) A requirement for an operations policy; and
- (e) A requirement for notices reminding customers of the needs of local residents.

Rights of appeal

Each of the parties to the hearing have a right to appeal the Sub-Committee's decision pursuant to section 181 and Schedule 5 of the Licensing Act 2003, such appeal to be made to the Gateshead Magistrates' Court and within 21 days of the date of service of this notice of decision.

In reaching these decisions the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 22 October 2020