

## **LICENSING SUB-COMMITTEE**

Thursday 3 December 2009

### **Present:**

Councillors Branston, R Smith and Sterry

### **Also Present:**

Principal Licensing Officer, Licensing Solicitor and Member Services Officer (HB)

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### **APPOINTMENT OF CHAIR**

Councillor Sterry was appointed Chair for the meeting.

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### **DECLARATION OF INTERESTS**

No declarations of interest were made by Members.

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### **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED** that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of the following item on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part I, Schedule 12A of the Act.

### **TOWN POLICE CLAUSES ACT 1847 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

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### **APPLICATION FOR THE RENEWAL OF A PRIVATE HIRE VEHICLE LICENCE FOR A VEHICLE OVER EIGHT YEARS OLD (MR T.G.)**

The Principal Licensing Officer presented an application from Mr G to renew a Private Hire Vehicle Licence in relation to a vehicle that was over eight years old. The vehicle had first been registered in May 2001 and its licence was due to expire on the 12 November 2009. On the licence renewal date the vehicle would be eight years, six months old. Mr G wished to renew the licence for a further 12 months. On 30 October 2009 the Licensing Sub Committee had granted an interim Hackney Carriage licence to Mr G until a subsequent meeting of this Sub Committee when he would be able to present the vehicle for inspection

Mr G was in attendance and stated that he used the car principally for transporting children to school. The car had recently passed the MOT. Members inspected the vehicle.

The Sub Committee retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer.

**RESOLVED** that the application for the renewal of a Hackney Carriage Licence for a vehicle which is over eight years old be approved for a period of 12 months, subject to the receipt of an independent mechanical report.

(Report circulated to Members)

The meeting closed at 9.40

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106

### APPOINTMENT OF CHAIR

Councillor Sterry was appointed Chair for the meeting.

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### DECLARATION OF INTERESTS

No declarations of interest were made by Members.

### LICENSING ACT 2003

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### APPLICATION FOR A GRANT OF A TEMPORARY EVENTS NOTICE - HOLE IN THE WALL, LITTLE CASTLE STREET, EXETER

Members were advised that the application for a Temporary Events Notice had been withdrawn.

(Report circulated)

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### REVIEW OF PREMISES LICENCE - THE FLYING HORSE PUBLIC HOUSE, WONFORD

Representing the Devon and Cornwall Constabulary:

Ms Lesley Carlo : Licensing Officer  
Sergeant Neil Harvey

In attendance for the respondent were:

Mr Matthew Phipps : TLT Solicitors  
Mr Hugh O'Rourke : Punch Taverns Business Relationship Manager  
Mrs Anne Spence : DPS The Flying Horse  
Mr Andy Martin : DPS Manager

Also in attendance:

Councillor Choules

The Chair introduced the Sub-Committee Members and Officers.

The Licensing Solicitor reported that an application had been received from the Devon and Cornwall Constabulary seeking a review of the premises licence for the Flying Horse, Wonford (the premises) under Section 51 of the Licensing Act 2003, as they believed that the licensing objectives relating to crime and disorder,

prevention of public nuisance and the protection of children from harm were being undermined at the premises.

Lesley Carlo stated that there had been three areas of concern the management of the premises, drugs and noise disturbance but since the application for a review had been submitted there had been a big improvement.

### Management of Premises

Mrs Spence was formally the Designated Premises Supervisor (DPS) here and at four other premises but is now DPS for the Flying Horse only. The issues arising from Ms Spence needing to be in four places at once had been resolved. The premises was now managed by Mr Martin and there have been no complaints since the request for the review was sought on 22 September. It had been the running of the premises under the previous manager that had led the police to seek a review. This manager was unsuitable with police intelligence linking him to criminal activities and but now he had gone. Mr Martin was suitable.

### Drugs

A drugs warrant was executed in August 2009 and a large amount of Class A drugs (tested to be cocaine) with a street value of £35,000 was found in a car in the car park. An individual who had been drinking in the premises was arrested. This caused the police concern at the attitude of the management regarding the use of drugs. Mrs Spence had subsequently assumed the managerial role and put in place procedures to address the drug problem including the extension of CCTV to cover the car park area and a new operating policy

A second warrant had been executed in September 2009 that concentrated on individuals living in accommodation above the premises. No drugs were found but there had been one arrest for suspected money laundering offences after a sum of money was found, The individual concerned has since moved out of the premises.

### Noise

The problems of noise linked to the premise remained a concern which the police believed contravened the licensing objective of prevention of public nuisance. The police had undertaken a survey of local residents. A further survey had been conducted in Dryden Road. Some of the older residents had requested anonymity because of fear of reprisals. The survey showed that the noise from smokers congregating on the pavement in the front of the premises was of particular concern. There were smoking areas to both the front and rear of the pub but problems were primarily associated with the front as the smokers sometimes brought their drinks with them to this area. Cllr Robson referred to a low but steady stream of complaints about noise and fighting emanating from the pub on Friday and Saturday nights, particularly in the summer months. Cllr Choules would also refer to these issues.

The police had agreed with the management that an operating policy would be introduced.

Mr Phipps interjected that he had not intended to produce this as it was necessary only that the Sub-Committee knew it was agreed in principle.

Lesley Carlo stated that the police seek the inclusion of a number of conditions on the premises licence including a reduction in opening hours. At present, the sale of alcohol is permitted until 2300hrs Monday to Wednesday, until midnight on Thursday, until 0100hrs on Friday and Saturday nights and until 2330 on Sunday

nights. Live and recorded music is permitted at varying times. In addition, extensions are permitted until 0200hrs hours on Fridays and Saturdays over the Easter weekend, with live music Thursday to Saturday until midnight. The licence also allows opening until 0100hrs on Christmas Eve and throughout the night on New Years' Eve. The police questioned whether those extensions should be available if public nuisance was such as alleged.

### Questions

**Cllr Mrs Smith: Is it correct that Mrs Spence did not reply to a letter from the police, dated January 2009?**

Lesley Carlo: Following a meeting between Mrs Spence, myself and Sergeant Harvey regarding noise, Mrs Spence agreed not to permit entry after 2300 hrs and to close by midnight. There had been no response to a letter seeking confirmation of this but Ms Spence had complied voluntarily by operating with reduced hours for a period of time. The concern was at the lack of attempt to formalise this with a variation application

**Cllr Branston: Does the licence cover the upstairs accommodation?**

It was confirmed that it did not because licensable activities did not take place upstairs. Mr Phipps: As no drugs were found on the premises during the August inspection, the area of the premises covered by the licence is not relevant.

**Has there been a more recent survey of local residents as the evidence presented relates to March and April 2009?**

There is none.

**At what point are the police concerned regarding possibilities of intimidation?**

Sergeant Harvey: It is understandable if residents do not wish to be identified.

Mr Ley: The survey submitted as part of the application could not be verified as it lacked full details. Precise addresses had subsequently been provided but without the names of the occupiers.

Lesley Carlo: Only the house numbers had been provided as the names had not been made available.

**Cllr Sterry: Have there been any further incidents since 2 September, the date of the last complaint received by the Police?**

Lesley Carlo: Nothing since then, apart from a log relating to a local resident cutting the CCTV wire.

Licensing Solicitor: For clarification advised that the logs of PCs Trevett and Lugg dated 9 and 10 February 2009 respectively refer to incidents that occurred in 2008.

Cllr Choules on behalf of an anonymous Interested Party ("the IP") stated that the problems set out in the papers took place prior to the new manager taking over. Cllr Choules had visited the IP on a couple of occasions and her logs of incidents were included in the papers. These include references to noise and disturbance on Friday, Saturday and Sunday evenings sometimes beyond midnight. The IP had phoned Lesley Carlo who had been very sympathetic and agreed to look into the problem. Many local residents are elderly and there has been a request that the pub remain open no later than 2300hrs. 'Street Meets' rather than PACT meeting have been held in the Wonford area which are well attended with complaints at most meetings about the premises. Because the problems are ongoing there has been a loss of confidence in the police, Council and local councillors as nothing has been done. The residents are very frustrated and no longer believe what they are being told. These complaints go back to the time when Peter Kelly was the Police Licensing Officer. There have been no complaints since the current manager took over.

Cllr Choules stated that on his drive home from work he had witnessed customers

drinking on the pavement outside the front entrance on a number of occasions and there has also been a heavy police presence which residents find intimidating and/or frightening. Some of the elderly residents dreaded the weekends.

### Questions

**Cllr Smith: Are there sheltered accommodation units adjacent?**

Cllr Choules: Yes bungalows at Malvern Gardens which have wardens.

**Cllr Branston: Is there any justification for concerns about maintaining anonymity. Have there been any reprisals?**

Cllr Choules: No. It is easy to have hysteria.

**Cllr Branston: Would employing door staff to control access help?**

Cllr Choules: There is a police presence. You can not stop people enjoying themselves. I am a registered door supervisor and while door staff are of great value in City Centre helping one another I do not believe that their presence would be beneficial at premises in estates some of which are too isolated and, in some cases, volatile. If problems were to be experienced by door staff, the police would not be able to respond in time. The Licensing Solicitor advised here that Cllr Choules could be considered to have some expertise on matters of door security because of his work and that is why the questioning had taken the route it had. There were no objections to this line of questioning.

**Cllr Sterry: Have there been any problems since Mr Martin took over other than smokers with glasses on the front pavement?**

Cllr Choules: None at all.

**Lesley Carlo: Can you expand on the noise problems being experienced by residents?**

Cllr Choules: Some residents are unable to sleep with the windows open in the summer because of the noise and have to resort to wearing ear muffs or music headphones.

### Mr Phipps

After the initial service of the application for a review there was a 28 day consultation period prior to the setting of the hearing for 30 October. The hearing was adjourned for some 5-6 weeks because the initial hearing date was not convenient or appropriate for the police. During this eight week period the circumstances the Respondent Premises Licence Holder had unusually had the opportunity to look at the way it could respond. Usually one can only point to a week or two improvement but today Mr Phipp actually had a significant period of time upon which to address the Sub-Committee. There was the arrival of Mr Martin and the departure of two individuals. This had not been developed inappropriately by the police. Ms Spence's partner had been a malign influence on the operation of the premises but was no longer there and would not return for at least twelve months. The second individual who had been managing the premises had led the police to seek a review as he was not a suitable individual to be managing this or any other premises. Mrs Spence has been cooperative at all times and called the police when there are any problems. When the application was lodged she was the DPS of four premises but is now only the DPS of the Flying Horse. It is the intention for the current manager, Mr Martin, who has also held a taxi licence for 20 years, to become the DPS and there is unlikely to be any objections to his application.

With regard to drugs, a significant volume of drugs were found in a car in the car park during the August warrant. On execution of the second warrant nothing was found at all. Some money was found but it is not illegal to have cash and that has nothing to do with the licensing elements before the Sub-Committee. It may have been part of the licensed premises or not but the point is, nothing was found.

With regard to the survey, it is difficult to understand why those who have no problems with the running of the premises have had their anonymity preserved. We do not challenge the complaints in respect of noise and management of the premises before Mr Martin took over. However, the Sub Committee should have and pay regard to the comments of Cllr Choules that there have been no incidents since Mr Martin has taken over and the police confirm that there have been no incidents since 9 September. Mr Martin can be described as a traditional, old fashioned landlord and is well disposed to resolving issues himself.

The police have been provided with an operating schedule for the premises which the management is prepared to adhere to and train on. This includes a policy in respect of drugs and covers issues such as the keeping of an incident book, the display of notices, contact details to be made available at all times. The detail of any policy needs to be kept fluid.

Any attempt to change or amend the hours would be resisted by the Respondent. The purpose of the review was not to punish or impose sanctions but to identify causes of concern and address them with necessary and proportionate measures.

The operation of premises and any problems always comes down to the management and there have been no problems since Mr Martin took over. Since then, the outside area has been supervised, glasses collected, windows and doors closed etc. Mr Martin has effectively had two months to prove he can operate the premises effectively and has shown that he can do so. It would be unfair to curtail the opening to midnight on New Years Eve when 99% of premises lawfully remain open beyond this time. It is a commercial reality that pubs remain open until about 0100 or 0200 hrs.

#### Questions to Mr Phipps

**Cllr Mrs Smith: There have been problems for a long time with the Flying Horse and it is the responsibility of the premises licence holder to ensure that the management is competent.**

Mr O'Rourke: Prior to 2009, no complaints had been received. They only started earlier this year when Mr Curry was the manager.

Mr Phipps: Punch Taverns do not employ the management direct. They own the freehold and premises are leased to the respective landlords. It is for the individuals on site to ensure the operation of the premises.

**Cllr Mrs Smith: How will the drugs control policy be implemented?**

Mrs Spence: There is only a limited amount of action that can be taken, for example, individuals can not be searched. There are regular toilet checks and the surfaces in the toilets are sprayed with WD40. Two staff are on duty in the bar and two in the lounge and there are round the clock checks for empty glasses and checks for any glasses left outside. Any person suspected of using drugs is asked to leave and the police called and advised of their names. The individuals are banned for three months initially, six months if caught a second time and then banned permanently if they transgress again. Ms Spence had originally employed Hayley Gawthorpe as the manager but her partner took over and the regime of checks started to slip. On taking over after Ms Gawthorpe's partner had gone, Ms Spence re-introduced these practices.

The bar is shut at midnight with a limited number of people remaining in the lounge until it is closed at 0100 hrs. The exit to the smoker's area to the rear is by the bar only so those remaining in the lounge are requested to use the front of the premises. Around this time, some individuals who have been drinking in other pubs and in the City Centre call in to the Flying Horse.

With regard to the drugs find, the individual arrested was not known to Ms Spence and had never been to the premises in the preceding three and a half years to her knowledge

**Cllr Mrs Smith : Are you happy that drugs have never been passed in the premises?**

Ms Spence : Everything in her power had been done to prevent such incidents.

Lesley Carlo : The individual arrested in the August raid had left his car in the car park and remained in the premises to meet another individual.

Sergeant Harvey : It had been luck that the presence of the car with drugs had occurred on the day of the warrant.

**Cllr Branston : It is a bizarre arrangement that Punch Taverns have an arms length responsibility once the lease is assigned.**

Mr O'Rourke : Most large chains operate as property landlords and provide a support package. Mr O'Rourke acts as business relations officer and has 53 other premises and discuss issues with Mrs Spence on a regular basis.

**Cllr Branston : Were you aware of any anti social behaviour ?**

Mr O' Rourke : Under licensing law the police and licensing authority should deal with the DPS. Up until this year there had been no contact from the licensing authority or police. Mr O'Rourke had met regularly with Mrs Spence and was made aware of day to day operational issues. Mr O'Rourke was informed of the meetings between Mrs Spence and Lesley Carlo.

Mr Phipps : Punch Taverns do not abdicate responsibility for the running of their premises and seek to ensure compliance with the legislation. They require licencees to comply with the operation of the licence.

**Cllr Branston : There is a conflict of information in respect of drugs being found on the premises.**

Mr Phipps : Drugs were found on the premises on the same day as the arrest in relation to the drugs in the car but no drugs were found on the premises during the 18 September raid.

Mrs Spence : The drugs found in August were those belonging to a young lad temporarily living in the flat above the Flying Horse. The manager at the time had taken him in as a lodger. There are currently two Polish lodgers in the accommodation.

**Cllr Branston : Please clarify the two separate references to your children living at the Flying Horse.**

Ms Spence : I did live in the premises for a while with my children but now live in Silverton.

Lesley Carlo : The papers do not state that the children live on the premises but refer to the fact that they have been present on occasions.

**Cllr Mrs Smith : The evidence provided by PC Paula Trevett states that Mrs Spence had confirmed that there was a drugs problem in the premises.**

Lesley Carlo : Mrs Spence did not make an official statement to the police. The papers refer to a conversation with the officer when she had referred to drug misuse in the area generally rather than specifically in the pub.

**Cllr Sterry : Reference is made to two other premises in connection with Mrs Spence.**

Mr O' Rourke : Mrs Spence is now only DPS at the Flying Horse.

Mrs Spence : My mother is DPS at the Taunton premises and I am no longer DPS at the Half Moon.

#### Police Right of Reply

Lesley Carlo : Does the door behind the bar have direct access to the flat above?

Ms Spence : MrMartin has access to the flat but the door is bolted when the premises is shut. It is the fire exit from the bar. There is no direct access from the

flat to the premises.

Lesley Carlo : How many staff are employed ?

Mr Martin : Three staff are engaged and Mr Martin “floats” around to keep a check on the premises including the toilets.

Lesley Carlo : After midnight the access to the rear smoking area is closed and lights switched off. Smokers then use the front pavement area. It is requested therefore that the opening hours be reduced so that this use is stopped as it impacts adversely on a residential street.

Mr Phipps : This suggestion is not supported. It is a decision for the Sub Committee.

Mrs Spence : We do not allow customers to take glasses out on to the pavement.

Mr Martin : I live in the house next door to the premises. Since I have taken over the management the karaoke on Sunday has been stopped.

Sergeant Harvey : The police are encouraged by the improvements and the proposals in respect of an operating policy. However, there remains the concern that this will not last. The police believe that the premises opening hours are inappropriate in this particular area. The Sub-Committee should look at the conditions so that the same conversations are not had in the New Year.

Mr Phipps was concerned that there was no right of reply to the police right of reply. The Licensing Solicitor advised of the adopted procedure and that the Sub-Committee were aware that they could only take steps that were necessary and proportionate. It would be a different matter if Mr Phipps had been inadvertently denied the opportunity to make any closing remarks because of confusion over the stage of procedure reached. Mr Phipps was invited to return to the Sub-Committee together with the other parties to make any closing remarks that he felt he had been denied the opportunity to make but declined to do so on the basis that he felt that this would be more prejudicial to his client’s case than not so doing

The Sub Committee retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer.

**DETERMINED** that having had regard to:

- all of the relevant representations made by parties;
- the evidence provided in relation to the premises and the evidence at the hearing from all the parties;
- the Council’s Licensing Policy Statement;
- the official guidance;
- any relevant legislation including the European Convention on Human Rights;

the Sub Committee finds that it is necessary to take the following steps to promote the licensing objectives of prevention of crime and disorder and prevention of public nuisance

- modify the conditions of the licence by adding the following four agreed conditions;
  - a an operating policy will be written and implemented at this premises. A copy of this policy will be forwarded to the Police Licensing Officer and the Licensing Authority;
  - b an incident book will be kept and all instances of public disorder will be recorded;
  - c notices shall be displayed within each of the two public bar areas and the smoking area reminding all staff and residents to keep noise to a minimum because of disturbance this causes to neighbouring residents. The notice shall also state that noisy or anti social

behaviour will not be tolerated and will lead to refusal of entry into the premises; and

- d a person shall be designated in writing by the DPS to deal with any issues regarding nuisance or disturbance. This designated person shall be available for contact, via a specified telephone or mobile phone number, at any time whilst any licensable activity is provided. A written or electronic record shall be kept of the time, details of the complaint, the details of the designated person investigating the complaint and outcome of the complaint. This record will be kept in a legible form for a period of not less than 12 (twelve) months and made available on request to the Police Licensing Officer of Licensing Authority.

The Sub Committee also recommended that the DPS continues to refuse admittance after 2300hrs; and to ensure that no glasses are taken outside.

If issues are not resolved by addition of these conditions, the police should seek a timely review.

(The meeting commenced at 10.05 am and closed at 12.50 pm)

Chair