

## NORTHERN AREA LICENSING SUB COMMITTEE

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### MINUTES OF THE NORTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 5 JANUARY 2012 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER IN RESPECT OF AN REVIEW OF LICENCE - THE BOROUGH ARMS

#### **Present:**

Cllr Desna Allen, Cllr Liz Bryant and Cllr Rod Eaton

#### **Also Present:**

Anna Thurman, Democratic Services Officer  
Paul Taylor, Senior Solicitor  
Jo Lloyd, Public Protection Officer  
Jacqui Gallimore, Licensing Officer Wiltshire Police  
Sgt Alvis, Wiltshire Police  
Ms Penfold, Applicant  
Mr Mills, Resident  
Mrs Riggs, Licence Holder Borough Arms  
Lee Newman, Designated Premises Supervisor  
Cllr Simon Killane, Divisional Member  
Mr Rutter, Local Residents Association  
Mrs Sykes, Local Resident

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#### 1. **Election of Chairman**

Nominations for a Chairman of the Licensing Sub Committee were sought and it was

#### **Resolved:**

**To elect Councillor Desna Allen as Chairman for this meeting only.**

#### 2. **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 1 – 8 of the Agenda refers).

### 3. **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

### 4. **Declarations of Interest**

There were no interests declared.

### 5. **Licensing Application**

#### **Application by Ms L Penfold for a Review of a Premises Licence; Borough Arms, 7 Oxford Street, Malmesbury, Wiltshire, SN16 9AX.**

The Licensing Officer introduced the purpose and scope of the application, the premises to which it related and the key issues for consideration. The background history of the premises is outlined within the report (page 9 and 10 of the agenda refer). The review of the licence has been requested on the grounds that the premises have been conducted in such a manner as to prejudice the licensing objectives. The grounds stated were:

- Prevention of Crime and Disorder: The patrons of the premises behave in an antisocial manner in the street outside the premises.
- Public Safety: Patrons of the premises stand in the street and present a danger to the traffic.
- Prevention of Public Nuisance: Noise levels from the premises and patrons are very high.

Several of the parties who had made representation have suggested actions the Licence holder could take to address their concerns, these included:

- Hours of opening are restricted to closure at 11pm on all nights of the week.
- Licensee formally warned that disturbances of any kind will result in immediate withdrawal of the licence.
- Restriction on opening hours.
- Revocation of the Licence.
- Licensee to engage constructively with local police to address issues mentioned in representations.

In accordance with the procedure detailed in the agenda, the Applicant, Ms Penfold, the Responsible Authority, Wiltshire Police represented by Ms Gallimore and Sgt Alvis and the Interested Parties, Mrs Sykes, resident representing a number of local residents, Mr Rutter, representing the Residents Association, Mr Cox, Mayor of Malmesbury, Divisional member Cllr Simon Killane were given the opportunity to address the Sub Committee.

Key points raised by the Applicant, Ms Penfold were:

- Malmesbury is a very small town, Oxford Street has very few residents but has two pubs with opening hours that allow them to open later than other premises in the town – attracting drinkers from other pubs who have shut earlier. As a result, in the small hours of Saturday and Sunday morning the street is often full of people on the pavements and in the road; these people are always drinking, shouting and swearing. Fights occasionally break out and damage has been caused to neighbouring properties. This can sometimes occur until 2.00am and beyond.
- Cars will sometimes pick up people from pub and the drivers will stop outside and sound their horn irrespective of the lateness of the hour. People spill out onto the street, which makes it dangerous for drivers. Often visitors to our house are intimidated when leaving at a late hour.
- It is not unusual on a Saturday and Sunday morning to find beer glasses in the street along with broken glass and rubbish. There has also been evidence of vomit and blood.

There were no questions for Ms Penfold.

Ms Gallimore representing Wiltshire Police (Responsible Authority) key points were:

- This is a challenging position for Wiltshire Police and that she would concentrate on issues relating to the Borough Arms only. She went on to explain that Section 182 Guidance is at times at odds with the role of the Neighbourhood Policing Teams (NPT) role. Licensing legislation confines the police to deal with evidence surrounding the crime and disorder licensing objective, however the NPT role includes that of problem solving around Anti Social Behaviour (ASB) issues and proposals.
- She explained the use of Command and Control logs that would support her oral evidence. These are known as STORM logs detailing a unique reference number, time, location, identity and activity that is ongoing. For the purposes of this hearing the logs are split into two categories, those which relate specifically to the Borough Arms and those in the vicinity of Oxford Street. STORM logs of note were;
  - **11/11/11 21:06hrs** – Manager of the pub is smashing up the pub...he is very intoxicated. Words of advice given. No complaint made. No further action.
  - **5/11/11 01:28hrs** – A number of people are outside the pub, in the street, causing a lot of noise and keeping residents awake. When police arrive the people have dispersed.
  - **29/10/11 01:20hrs** – A large group of people are outside the pub causing a disturbance. Quiet upon arrival, persons leaving the area.
  - **29/8/11 00:32hrs** – Caller says she has been punched, she believes that she was knocked out.
  - **6/8/11 00:40hrs** – Large group about 30 persons outside the pub, very noisy in the street. Officers keeping an eye on the crowd. 01:26hrs crowd dispersing.

- **14/5/11 02:01hrs** – Caller reporting that the pub opposite her house still has music blaring out and the doors and windows are open. There is a large group of youths outside smashing bottles etc. 03:01hrs crowd dispersing. No offences but contact will be made with licensees.
- **26/1/11 22:37hrs** – Caller being threatened by male. Caller intoxicated and has been ejected from the premises.

Ms Gallimore asked Sgt Alvis NPT Sergeant for Malmesbury, to expand on his written statement. Sgt Alvis explained that ;

- He had been a Police Officer for 24 years of which 17 were involved in policing Malmesbury.
- Oxford Street is a narrow, single laned, one way street enclosed either side by terraced buildings.
- He described his working relationship with the premises as good.
- He explained the that Mr Newman had withdrawn from Pubwatch scheme after an altercation with another Landlord and was subsequently banned from Pubwatch, but when the ban was finished had not engaged with Pubwatch again.
- Issues surrounding the premises happened after 22:00hrs on a Friday and Saturday.
- There was no control of entry into and out of the premises. Also there were issues surrounding the smoking and drinking that takes place outside of the premises.

The Chairman asked for confirmation whether alcohol was permitted to be taken from the premises in open containers. It was confirmed that no alcohol should be permitted to be taken from the premises in unsealed or open containers and this was a condition of the licence.

- The road was often congested outside the premises, where friends came to pick other friends up and also taxis dropping and picking up customers from the premises. Often the crowds can become intimidating to motorists as often the crowd is intoxicated.
- It is difficult to differentiate incidents that take place between the two licensed premises as they are in close proximity.

The Chairman asked Sgt Alvis what his expectations were for customers leaving the premises. He explained that the DPS should be managing the entry and exit of customers from the premises. No one should be taking drinks outside and the DPS should be monitoring those who are smoking outside, allowing a certain number at a time.

Sgt Alvis explained that a lot of incidents go un-reported. Many people don't want to give evidence as this is a small town and there may be repercussions.

Cllr Bryant sought clarity on when incidents took place, Sgt Alvis confirmed that incidents took place on Friday and Saturday.

Cllr Killane asked whether there was any information regarding the brick that had recently been thrown through Ms Penfold's window. Sgt Alvis explained that Ms Penfold was the only reported victim of crime that night and he believed had been singled out.

Cllr Eaton asked whether there were now door staff, as in the evidence supplied Mr Newman stated that the premises could not support the employment of door staff. The costs of the door staff were shared with the premises next door. Ms Penfold explained how pleased she had been to see the use of door staff and for 3 to 4 weeks there seemed to have been an improvement but now it seemed to have reverted back to how it had previously been. Cllr Killane asked why Mr Newman did not attend Pubwatch. He explained that the meetings took place in the afternoon and as his premises was opened all day this was often difficult for him. It was agreed that Mrs Riggs would attend the Pubwatch meetings in future.

The Chairman asked for the Interested Parties to make their statements.

Cllr Killane stated that it was not for the Police to 'baby sit' these premises at the expense of the taxpayer. Residents from the town feel strongly about this issue. The community has come together to address this. He expressed his sincere regret that the Applicants had had to endure this prolonged upset.

Mrs Sykes explained that she was representing a number of residents who had made written representations. She praised the professional behaviour of the Local Authority and Police in their conduct. She explained that a Review that took place against the neighbouring premises in 2008 has had little effect, the situation has not changed. The residents endure a constant barrage of Anti Social Behaviour, noise and crowds of up to 40 people in the Street. Residents take detours to get home rather than walk past the premises. There is vomit, urinating and obscene language. She explained that the residents have had enough and ask that the licence for the Borough Arms is revoked.

Mr Mills informed the panel that when he and his wife bought their house they were aware that there were public houses opposite. However every weekend is a street party. He feels extremely threatened. Clientele are never very anxious to disperse.

Mr Rutter, representing the residents association explained that the young people frequenting the establishment are rowdy and boisterous. This is an ongoing problem – 3 years ago the issues did subside for a while but it is now as bad as it was. He did not believe that closing the premises early would solve the issues.

Mr Cox explained that he had known Mr Newman for 20 years, but he did not believe in excessive rowdy behaviour, ASB and the acts of vandalism that have been associated with the premises of Oxford Street.

The Chairman asked for questions to the interested parties.

Cllr Killane asked how many other pubs opened until 01:00hrs? He was informed that the Kings Arms opened to this hour but it was a hotel.

Mr Newman (DPS Borough Arms) explained that both premises shut at 01:00hrs. Since EPS security have been employed issues have improved considerably. Smoking from our premises should take place within the smoking area. There are signs within the pub to advise of this area. He explained that on Friday and Saturday night there are a number of staff on duty which enable him to work the floor area. He believed that his premises was moving in the right direction. He confirmed that there were signs requesting that patrons did not take their glasses outside if they are caught doing this then they are not allowed back in the premises and a note is made. He is operating the 'Challenge 21' scheme and is considering operating the 'Challenge 25' scheme. He pointed out that he had called the police when ASB was taking place and clears the street of glass etc.

He explained that the door staff had done an excellent job and that the cost was split with the Guildhall.

Cllr Bryant asked whether he worked closely with the Guildhall to address the issues that are being experienced. Mr Newman explained that the only link was the door staff.

Cllr Eaton asked whether the use of the door staff was a permanent commitment, this was confirmed.

Mrs Penfold explained that she did have high hopes for EPS, but is worried that staff shared between the two premises is ineffective. The trouble occurs outside the premises. She questioned the effective management of the premises and questioned how issues could be solved when both premises did not communicate with each other.

Mrs Sykes asked what would be different this time as opposed to in 2008. She explained that she had letters from the Local Authority. Ms Gallimore explained for clarity that problem solving action had been put in place in 2008 prior to the review. She clarified that Guildhall had been taken to review in 2008.

Mr Newman explained that the door staff had been a great help. All his staff had personal licences and were properly trained.

Paul Taylor (Solicitor) asked Mr Newman to confirm the hours when the door staff were in operation. Mr Newman informed the panel that door staff were on duty from 21:00hrs – 02:00hrs Friday and Saturday nights.

Mr Rutter asked how crowds were dispersed from the premises. It was explained that crowds were directed to turn left to the Market area.

The Chairman asked the Interested Parties, Relevant Authority, The Applicant, and the Premises License Holder to sum up.

Points made were;

- Generally accepted that a lot of work has been undertaken internally, but there are issues outside and it is difficult to appreciate how things can change when there is a lack of communication between the premises.
- EPS cannot be the conduit for communication between the two premises.
- These are the only two pubs causing issues in the town.
- The problems are confined to the immediate area surrounding the premises and drunkenness can be attributed to the premises. Police activity is disproportionate to any other premises in the town except for the premises under review on 6 Jan 2012.
- Noting the lateness of the incidents a reduction in the opening hours may help to mitigate the Anti Social Behaviour.
- Door staff may alleviate the issues but the Police cannot condone the use of shared door staff.
- The use of door staff does not seem to alleviate the issues significantly.

The Sub-Committee members retired at 12:15hrs to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 14:30hrs

Following the deliberations of the Sub Committee Members, the Solicitor for the Council reported that no material legal advice had been given in closed session, other than to draw members' attention to the Council's policy on the cumulative impact of licensed premises and the related provisions in the statutory guidance.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

**Decision:**

The Northern Area Licensing Sub Committee has resolved to amend the Premises Licence for the Borough Arms, Malmesbury as follows:

The Provision of Licensable Activity:

**Film**

Friday to Saturday 10.00hrs to 00.00 hrs

**Indoor Sporting Events**

Friday to Saturday 10.00hrs to 00.00 hrs

**Live Music**

Friday to Saturday 10.00hrs to 00.00 hrs

**Recorded Music**

Friday to Saturday 10.00hrs to 00.00 hrs

**Provision of Late Night Refreshment**

Friday to Saturday 23.00hrs to 00.30 hrs

**Supply of Alcohol – for consumption on the premises**

Friday to Saturday 10.00hrs to 00.00 hrs

The opening hours of the premises

Friday to Saturday 10.00 hrs to 00.30 hrs

All remaining hours as the detailed in the existing licence.

And subject to the following additional conditions:

- 1) There shall be a minimum of two SIA registered door staff dedicated to the premises on duty Friday and Saturday nights from 21.30 – 01.00hrs.
- 2) The licence holder or designated representative shall attend Pubwatch on a regular basis.

**Reasons**

The Sub-Committee accepted the evidence from the Applicant, police and other Interested Parties that there was a significant problem of noise nuisance and anti-social behaviour outside, and associated with, the premises on Friday and Saturday nights. The Sub Committee considered that the provision of door staff and the reduction in hours for the sale of alcohol on those



evenings would reduce these problems and were necessary to meet the licensing objectives.

In reaching its decision the Sub Committee has considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

The Sub Committee have also considered the written evidence presented in the agenda and the supporting evidence provided orally.

### **Right to Appeal**

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. This decision does not come into effect until the appeal period has elapsed or, if an appeal is made, until that appeal has been finally disposed of.

6. **Licensing Sub-Committee Report**
7. **Appendix 1 - Current Premises Licence**
8. **Appendix 2 - Application for Review by Ms L Penfold**
9. **Appendix 3 - Copies of Relevant Representations**
10. **Appendix 4 - Location Plan of the Premises and the Surrounding Area**
11. **Appendix 5 - List of other Licensed Premises in Malmesbury**

(Duration of meeting: 10.30 am - 3.40 pm)

The Officer who has produced these minutes is Anna Thurman 01225 718379 or [anna.thurman@wiltshire.gov.uk](mailto:anna.thurman@wiltshire.gov.uk), of Democratic Services, direct line , e-mail

Press enquiries to Communications, direct line (01225) 713114/713115