

NORTHERN AREA LICENSING SUB COMMITTEE

DRAFT MINUTES OF THE NORTHERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 6 JANUARY 2012 AT COUNCIL CHAMBER - COUNCIL OFFICES, MONKTON PARK, CHIPPENHAM, SN15 1ER IN RESPECT OF AN REVIEW OF LICENSE - GUILDHALL BAR

Present:

Cllr Trevor Carbin, Cllr Nina Phillips and Cllr Ernie Clark

Also Present:

Paul Taylor, Wiltshire Council Senior Solicitor
Linda Holland, Public Protection Officer
Marie Gondlach, Democratic Services Officer
Ms Penfold, Applicant
Mr T Mills, Resident
Sgt Alvis, Wiltshire Police
Sgt Cooke, Wiltshire Police
Inspector C Martin, Wiltshire Police
Ms Gallimore, Licensing Officer Wiltshire Police
Mr and Mrs Sykes, Residents and representing the Local Residents Association
Mr M Rutter
Mr M Snell, Malmesbury Old Corporation
Mr Lawford, Designated Premises Supervisor
Mr C Pike, Licence Holder

11. **Election of Chairman**

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

Resolved:

To elect Councillor Trevor Carbin as Chairman for this meeting only.

12. **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 – 7 of the Agenda refers).

13. **Chairman's Announcements**

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

14. **Declarations of Interest**

There were no interests declared.

15. **Licensing Application**

Application by Ms L Penfold for a Review of a Premises Licence; the Guildhall Bar, 9 Oxford Street, Malmesbury, Wiltshire.

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 of the history of the premises was outlined within the report (page 9 to 12 of the agenda refer). The review of the licence had been requested on the grounds that the premises had 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 stand and drink on the street, fight, break windows and behave in a threatening manner
- Public Safety: the patrons of the premises stand in the street and present a danger to late night traffic.
- Prevention of Public Nuisance: the noise levels from the premises and its patrons are very high.

Several of the parties who had made representation had also 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.
- Withdrawal of the Licence.
- Restriction on opening hours.
- Revocation of the Licence.
- Engage constructively with local police to address issues mentioned in representations.

The Licensing Officer concluded by drawing the Committee's attention to the Secretary of State 182 Guidance, paragraph 11.22, which was also outlined in the report (page 9 of the agenda refers).

In accordance with the procedure detailed in the agenda, the Applicant (Ms Penfold), the Responsible Authorities (Wiltshire Police represented by Ms Gallimore, Sergeant (Sgt) Alvis, Sgt Cook and Inspector Martin) and the Interested Parties (Mr Sykes, Mrs Sykes and Councillor Simon Killane, Unitary Councillor for Malmesbury) were given the opportunity to address the Sub Committee.

Key points raised by the Applicant, Ms Penfold, were:

- The disparity between the size and “lifestyle” in Malmesbury and what was happening in Oxford Street every weekend;
- The fact that the two premises in Oxford Street had later opening times than other premises in Malmesbury therefore attracting patrons “to finish their night” when the other premises closed;
- The effort Ms Penfold had been happy to make to mitigate the impact of living near a public house (such as secondary double glazing); however she had not expected and could not do anything to address issues linked with the neighbouring premises such as violence in the streets, broken glasses, smashed windows, vomiting, urinating, shouting, swearing, cars beeping their horns and playing loud music when collecting patrons. There were restrictions, linked with the conservation area status, to what Ms Penfold could do to protect her property, for example she could not put bars on the windows but was now forced to consider installing a CCTV system;
- The door staff only seemed to have been effective for two weeks and now appeared to be “too friendly”. There also were not enough of them to deal with the situation;
- The recent escalation in problems such as smashed windows and threatening crowds of masked people;
- The fact that a review of this premises licence had taken place previously in 2008 and led to a suspension of the premises licence, yet the situation seemed to be the same, if not worse, four years later.

Councillor Clark sought clarification as to the source of the noise and Ms Penfold confirmed that the noise came from the street (fighting, shouting, cars beeping their horns and playing loud music) as well as the premises (patrons constantly entering and exiting the premises therefore often leaving the door open, which meant that the loud music being played in the premises would carry down the street).

Councillor Phillips enquired about the size of the street and it was confirmed that it was only wide enough for two vehicles to cross if one of them was stationary.

Ms Gallimore representing Wiltshire Police (Responsible Authority) explained that this had been a difficult situation as at the initial stages the level of crime and disorder associated with the premises would not have been enough for

Wiltshire Police to apply for a review; however having carefully considered the situation Wiltshire Police had decided to support the review application.

She explained that there were two sides to the police evidence one side dealt with the management of the premises, the other with corroborating noise and nuisance with the premises. She also explained that she would be referring to information contained in the Command and Control logs, also known as STORM logs which detailed reported incidents (time, location, activity, identity, etc) which had been circulated prior to the meeting.

She introduced Sgt Alvis, Sgt Cook and Inspector Martin and explained that thanks to their respective areas of work they would be able to provide more details on different aspects of the review.

Ms Gallimore then raised the following key points:

- STORM logs incidents occurring between 1 January 2011 and the end of October 2011 which were directly attributed to the Guildhall Bar, Ms Gallimore drew the Committee's attention to the following:
 - 22 October 2011 at 00.23 hours – youths sitting on a local resident's wall with their drinks and acting in an intimidating manner;
 - 09 September 2011 at 20.41 hours – drunk male intoxicated to such an extent that there were concerns for his own safety;
 - 05 August 2011 at 23.29 hours – female driver made a 999 call after her car was kicked;
 - 23 June 2011 at 11.46 hours but reporting an incident which occurred at 21.10 hours the previous night – caller reporting a 4 – 5 inches blade being pulled out of a rucksack during an altercation;
 - 4 June 2011 at 00.06 hours – very intoxicated caller reports that the landlord has been assaulted and later retaliated, the caller's level of intoxication made it difficult to establish the facts;
 - 22 May 2011 at 00.49 hours – distressing log, the young lady concerned is very highly intoxicated and there are concerns about the possibility that a sexual assault took place;
 - 23 March 2011 at 23.56 – fighting inside the bar reported as well as very loud music and background noises;
 - 20 March 2011 at 01.33 hours – an ambulance had to be requested as a male had swallowed his cigarette, then cancelled;
 - 19 February 2011 at 23.02 hours – a caller reports underage drinking and drug taking
- The second set of STORM logs were about incidents in Oxford Street:
 - 18 November 2011 at 23.52 hours – officer emergency and two units despatched, large number of people in the street – to the extent that the Chief Officer was informed;
 - 19 November 2011 – routine licence control and 20 people cleared from the front of the premises;

- 16 October 2011 at 01.34 hours – persons shouting and arguing;
- 29 August 2011 at 00.23 hours – 20 youths causing a disturbance – Police unable to attend;
- 07 August 2011 at 23.00 hours – music blaring from neighbouring premises as doors left open and male sitting on windowsill appearing to be texting;
- 07 August 2011 at 02.53 hours – male collapsed and ambulance called by sober friend;
- 22 July 2011 at 22.28 hours – male detained for criminal damages;
- 27 December 2011 at 01.14 hours – male smashing windows.

Each of these logs demonstrated that anti social behaviour and disorder occurred after 11.00 pm.

- As the evidence presented also included statements from Sgt Alvis and Sgt Cooke Ms Gallimore invited them to expand on their statements:
 - Sgt Alvis explained that he had been a police officer for 24 years, 17 of which in Malmesbury and the last 3 years as part of the Neighbourhood Policing Team. He stressed the narrowness of Oxford Street which was the main way into town and the short stay car park. Sgt Alvis expressed his concerns that, despite Mr Pike having been removed as designated premises supervisor (DPS) following the review in 2008, the current DPS, Mr Lawford, always referred him to Mr Pike when wishing to discuss the premises. Violent crime had reached alarming levels in 2008. There had been a reduction in cases of grievous bodily harm and common assault following the licence review in 2008, but there had been a gradual increase over the last couple of years. A lot of intelligence had been received regarding drug use and selling linked with the Guildhall, following a passive drugs dog operation in all licensed premises in Malmesbury in October 2011 the Guildhall Bar had been the only premises where drugs were found (there had been three “hits”, one a young person of 16 found with cannabis). The layout of the Guildhall Bar meant that most smokers would gather at the front of the premises, which often led to high level of noise as well as nuisance caused to vehicles using Oxford Street by people standing in the street. There was no control of entrance or exit points on the premises, which meant that despite the Public Order for Malmesbury forbidding this, there were often alcoholic drinks brought out on the street. Sgt Alvis spoke about the incidents detailed in his statement and stressed that the Guildhall Bar was the main concern in Oxford Street, although the neighbouring licensed premises was not entirely blameless. Sgt Alvis was also very concerned about co-operation from the Guildhall in resolving issues, especially as Mr Pike had been prone to display public outburst of displeasure with the Police. Sgt Alvis was of the opinion that some people were scared

to come forward and report incidents regarding the Guildhall, as this was a small town and there could be repercussions.

- Sgt Cooke summarised his statement and explained how shocked he had been and still was by Mr Pike's behaviour and his attitude towards the Police.
- There had been numerous occurrences of difficulties with the Guildhall Bar, to such an extent that a meeting had been organised in March 2010 between the Police, the Police Licensing Officer and members of staff from the Guildhall Bar. Difficulties in accessing CCTV footage had now improved.
- The Police had applied for the review in 2008 due to very grave concerns, particularly regarding the safety of young people.

Ms Penfold sought and received confirmation from Sgt Alvis that he had advised her that she may wish to be careful following her application for the review and that on 1 January 2012 when a brick had been thrown through the window of her house there had been no other incidents of the sort reported in the vicinity. Sgt Alvis pointed out that the brick had been picked up away from the property then the culprit had walked back to throw it through Ms Penfold's window.

Councillor Killane asked for the difference in the level of instances and incidents between 2008 and the current situation. Ms Gallimore explained that it was not possible to offer a like-for-like comparison as there were different methods of reporting in place. However it seemed clear that Mr Lawson did not have effective control of the premises and that there was no difference in Mr Pike's demeanour and attitude between 2008 and the present time.

Councillor Philips asked for clarification of the cost following the number of police intervention required for the Guildhall Bar. Ms Gallimore explained that she could not give a figure for the cost but that time spent responding to incidents at the Guildhall Bar was not spent elsewhere.

Key points raised by the Interested Parties were:

- Councillor Killane, Unitary Councillor for Malmesbury, explained that the situation was not typical for Malmesbury and had been going on for too long. He felt that the relationship between the neighbouring landlords was an issue and therefore the sharing of door staff would not be viable. He felt strongly that the Police should not spend such amount of time mitigating the negative effects of businesses on the neighbouring properties and residents whilst these businesses generated a profit; the landlords should take some responsibilities.
- Mrs Sykes, representing a number of local residents, praised the professional attitude of the Police and the Licensing Authority but was horrified at the amount of time and work both had spent with regards to the Guildhall Bar. She explained that nothing had improved since 2008, that

there were problems every Friday and Saturday nights, that crowds could be as large as 40 people and that the trouble could go on until as late as 2.00am. She stated that this had led to Oxford Street becoming a “no go zone” for Malmesbury residents. Mrs Sykes explained that local residents had had enough and asked that the licence for the Guildhall Bar be revoked.

- Mr Sykes, representing the Resident Association, explained that the problems dated back earlier than 2008. He also pointed out that the problems and incidents reported to the Police were not an accurate picture of the amount of nuisance local residents had to deal with as people only reported the worst problems and incidents. Mr Sykes also asked for the licence to be revoked.

The parties were given the opportunity to ask questions of the Interested Parties.

In response to a question from Councillor Carbin, Councillor Killane explained that he had been a Malmesbury Town Councillor for three years and a Unitary Councillor since 2009. The problems had worsened in the last year.

Councillor Phillips asked what the situation was the rest of the week and was informed by Mr and Mrs Sykes and Ms Penfold that there was not really a problem during the week; however the problems at weekends obliterated any benefits from the week (such as sleeping).

Mr Pike, Premises Licence Holder, addressed the committee and raised the following key points:

- He had had issues with his CCTV system in the past which was the reason why there had sometimes been delays in providing footage to the Police. This had now been resolved by Mr Pike’s buying a brand new system and Mr Pike reiterated his offer to the Police to provide his CCTV footage of the smashing of Ms Penfold’s window. He also pointed out that CCTV footage he had provided in the past had helped, specifically for the incident with Amanda’s Kitchen and the incident referred to in Sgt Cooke’s statement;
- He had never shied away from his responsibilities and had been proactive in addressing issues, for example he had met with Sgt Alvis to discuss options to address issues linked with smoking outside the premises. He was also very co-operative with the Police at the Pubwatch meetings;
- He had never intimidated anyone and was surprised at statements made today referring to reluctance from people to come forward for fear of reprisals from the Pike family;
- His staff had always worked hard to prevent underage drinking and would also refuse to serve anyone who would appear too intoxicated;
- The allegation regarding the selling of drugs on the premises was malicious as the person making the allegation had been excluded from

the premises and not allowed back in. Also, the balcony in the premises was no longer used as staff could not see what was happening there;

- He had always cooperated with Sgt Alvis and implemented actions on his recommendation such as not letting people exit through the back door to avoid noise and nuisance in Market Lane, improvements to the CCTV system;
- Appropriate logs were kept and had been checked recently by the Licensing Office;
- He had considered installing bollards at the front of the premises to avoid crowd gathering but there were issues around insurance as well as limitations due to the conservation area status;
- The boarded up shops in Oxford Street were not a consequence of activities at the Guildhall Bar. Owners had told Mr Pike that they had been boarded up to avoid people trespassing or urinating in the doorways;
- Mr Pike concluded by saying that he had always made every effort to address problems when they arose and would speak to the company providing door staff if they had not been perceived as effective as they should be, Mr Lawford concurred and added that he was also prepared to do more if required and was always happy to cooperate.

Following questions from Councillor Philips the following was clarified by Mr Pike and Mr Lawford:

- Confirmation that Mr Lawford understood and appreciated that it was his responsibility to ensure patrons were not causing a nuisance when just leaving or in the immediate vicinity of the premises;
- There were four members of staff employed by the Guildhall Bar;
- Banning through Pubwatch would work if all pubs in Malmesbury were members of Pubwatch;

Following questions from Councillor Carbin the following was clarified by Mr Pike and Mr Lawford:

- There were two CCTV cameras in the premises and one outside which covered around 60-70 yards of Oxford Street;
- Under 18 / over 16 were only admitted before 9.30pm then were asked to leave;
- Mr Pike was the Landlord and Mr Lawford was the DPS, therefore Mr Pike made the final decisions;
- Mr Lawford detailed his routine on Fridays and Saturdays: open at 12.00 noon, stay until 7.00pm, have a couple of hours off; come back and work behind the bar until closing time, lock up at the end of the night. Mr Pike would often be on the premises, mixing with the customers;
- The Guildhall Bar was usually very quiet until 8.00pm, then started getting busier around 10.00-10.30pm with people coming in from other pubs; it would get to its busiest between 11.00pm and midnight when other pubs started closing and patrons would come to the Guildhall Bar or Borough Arms;

- Mr Lawford felt that the working relationship with the Borough Arms was good, whereas Mr Pike felt that it was not a great working relationship and could be improved through Pubwatch which no-one from the Borough Arms attended;
- All glasses used in the Guildhall Bar could be identified as they were marked;
- Shutters on the windows and a solid oak door were used to prevent noise from the music played in the premises be heard outside, the noise level inside the premises were monitored and Mr Lawford also monitored noise level outside the premises.

Mr Paul Taylor (Solicitor) asked for confirmation of the hours the door staff were in operation, it was confirmed that they had started in October-November 2011 and worked from 9.00pm to 2.00am on Fridays and Saturdays.

In answering questions from Ms Penfold (Applicant) Mr Pike acknowledged that he could not control the use of Market Lane as a “beer garden” but that to alleviate the situation he did not allow patrons to use the back door of the premises which led straight to Market Lane. He also confirmed that there were currently two people barred in Malmesbury. Mr Pike disagreed with the size of the crowds referred to by Ms Penfold, in his opinion they had never reached numbers as high as 40.

Ms Gallimore, representing Wiltshire Police, sought and obtained confirmation from Mr Lawford that he understood the responsibilities of a DPS, that the records were kept up to date and had been recently checked by the Licensing Officer, and that he felt he could easily approach Mr Pike when required.

However it was also confirmed by Mr Lawford that one of the conditions of the 2008 licence review had not been complied with as not all members of staff serving alcohol had undertaken the BII Social Responsibility Course, neither Mr Lawford nor Mr Pike provided reasons for this.

For sake of clarity Ms Gallimore reiterated that the review application had been made by Ms Penfold not Wiltshire Police has stated in Mr Pike’s letter.

When asked by Ms Gallimore Mr Pike explained that the records of the extended stop and search were kept by the door staff but could be provided to the Police if required and that nothing had been found so far.

Sgt Alvis highlighted the fact that Mr Lawford always referred issues to Mr Pike and would not deal directly with the Police as the DPS, Mr Lawford explained that he was sometimes too busy to deal with the Police and had on occasion felt intimidated.

Mr Paul Taylor (Solicitor) asked the Police if they could identify issues should the neighbouring premises (Guildhall Bar and Borough Arms) not have the same operating hours. Ms Gallimore explained that there were many other issues to address and could not answer at that time.

The Chairman asked the Interested Parties, Relevant Authority (Ms Gallimore), the Applicant and the Premises Licence Holder to sum up.

Ms Gallimore highlighted that sufficient evidence of intoxication at the Guildhall Bar had been provided and that extreme intoxication, at best, resulted in noise and nuisance and, at worst, in serious offences. She pointed out that punitive measures put in place in 2008 had not worked and that the Police had no confidence in Mr Lawson's control and supervision of the premises and no confidence in Mr Pike as Licence Holder. The Police felt that only revocation of the licence would ensure that the Licencing Objectives were respected.

Councillor Killane expressed his wish for Police resources to not be monopolised by issues with the premises and his concerns regarding the effectiveness of the management of the premises.

Mr and Mrs Sykes hoped that their concerns had been heard earlier in the meeting and reiterated that actions put in place in 2008 had failed and asked the committee to consider revoking the licence.

Ms Penfold also expressed concerns over the effectiveness of the 2008 licence review and pointed out that the Guildhall had been offered many chances to improve the situation.

Mr Pike stressed that broken windows and other offences should not be attributed to the Guildhall Bar and reminded the Police that he had some CCTV footage they may wish to view in a bid to catch the culprit. He also stated that he had himself suffered from a nuisance neighbour, of which he had CCTV evidence, and that he had received no help to deal with the issue.

The Sub Committee retired at 1.00pm to consider the application and were accompanied by the Solicitor for Wiltshire Council and the Democratic Services Officer.

The Hearing reconvened at 3.30pm.

Following the deliberations of the Sub Committee Members, the Solicitor for the Council made a statement that no material legal advice had been given in closed session other than to remind members of the Committee of the options available to them and the criteria in the statutory guidance. He had also reminded them of the need to address their considerations to the specific premises under review.

He informed all present that the Licensing Officer had been asked to provide advice to the Committee with regards to available training.

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

Resolved:

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

The Provision of Licensable Activities:

Films

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Indoor Sporting Events

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Live Music

Sunday to Saturday 20.00 hrs to 23.00 hrs

Recorded Music

Sunday to Saturday 20.00 hrs to 23.00 hrs

Performances of Dance

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Anything of a similar description to that falling within Live Music, Recorded Music, Performances of Dance

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Provide Facilities for Dancing

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

Supply of Alcohol – for consumption both on and off the premises

Monday to Saturday 11.00 hrs to 23.00 hrs
Sunday 12.00 hrs to 23.00 hrs

The opening hours of the premises

Monday to Saturday 11.00 hrs to 23.30 hrs
Sunday 12.00 hrs to 23.30 hrs

And subject to the following additional conditions:

- 1) All staff serving alcohol on the premises shall have undertaken the BII Social Responsibility Course. For the avoidance of doubt this applies to

- existing staff and any new staff as and when appointed. (This is to replace the existing condition regarding training as a clarification)
- 2) No alcohol will be permitted to be taken from the premises in unsealed or open containers and notices to this effect to be prominently displayed.
 - 3) Notices are to be prominently displayed at all exits from the premises requesting that patrons respect the needs of people living in the area and to leave the area quietly.
 - 4) All windows are to be kept closed and all doors to be kept closed except for access and exit whenever regulated entertainment is taking place.

The premises licence is to be suspended for a period of up to three calendar months to enable the premises to carry out required staff training. If the licence holder can satisfy the Police and Licensing Officer that the training requirements as set out in 1 above have been successfully met, then permission may be granted in writing by the Licensing Officer for the premises to open prior to the end of the three month period.

Mr Michael Lawford is to be removed as Designated Premises Supervisor and a new Designated Premises Supervisor be appointed.

Reasons

The Sub-Committee accepted 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 reduction in hours would reduce these problems and was necessary to meet the licensing objectives. The Sub Committee considered that the additional conditions above would address the issue of noise and anti social behaviour.

Having heard evidence that the management of the premises is inadequate, the removal of the Designated Premises Supervisor and temporary suspension of the premises licence until such time as the required training had been undertaken were considered necessary to address these issues.

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. After thorough consideration of the request from the Police and local residents to revoke the premises license, the Sub Committee felt that on balance the decision reached was proportionate to meet the licensing requirements.

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.

(Duration of meeting: 10.30 am - 3.40 pm)

The Officer who has produced these minutes is Marie Gondlach (Democratic Services Officer), direct line 01225 713597 or email marie.gondlach@wiltshire.gov.uk, of Democratic Services, direct line , e-mail

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