

## **TRAFFORD COUNCIL**

### **LICENSING SUB - COMMITTEE – 23<sup>rd</sup> FEBRUARY 2017**

#### **REPORT OF THE HEAD OF REGULATORY SERVICES**

APPLICATION FOR REVIEW OF THE PREMISES LICENCE HELD FOR HALE COUNTRY CLUB, 47 CLAY LANE, HALE, CHESHIRE

#### **PURPOSE**

To advise the sub-committee of an application requesting a review of the premises licence held for Hale Country Club. Officers have assessed the grounds given for the review and are of the opinion that the application is vexatious. However, the final decision as to whether an application for review is valid is not delegated to officers and, therefore, must be considered by the sub-committee.

#### **RECOMMENDATIONS**

That the sub-committee consider the application and the submissions of all parties and either:

- decide that a review is necessary and instruct officers to process the application; or
- decide that the application is vexatious and reject the application.

#### **IAIN VEITCH**

Head of Regulatory Services

#### Further Information From:

Name: Joanne Boyle  
Ext: 4129

#### **Appendices**

- A Copy of the Application for review
- B Copy of the premises licence for Hale Country Club
- C Copy of the response on behalf of Hale Country Club
- D Response from GMP on 20/12/16
- E Email from David Roberts 26/1/17 re role of Lee Davies

## 1. BACKGROUND

- 1.1 The Home Office Guidance issued under section 182 of the Licensing Act 2003 states:
- 1.2 (11.2) At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or club premises certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 1.3 The four licensing objectives are:
  - The prevention of crime and disorder;
  - Public safety;
  - The prevention of public nuisance;
  - The protection of children from harm.
- 1.4 (11.11) If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' associations, local business or trade association) before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious.
- 1.5 (9.5) It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification.
- 1.6 (9.6) Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 1.7 (9.7) Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.
- 1.8 (9.8) Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 1.9 (9.9) It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making

that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.

## **2. APPLICATION FOR REVIEW**

2.1 On the 21<sup>st</sup> December 2016 the Licensing Section received an application from Mr Daniel Norstrom, for review of a premises licence under section 51 of the Licensing Act 2003. (See Appendix A)

2.2 The premises referred to in the application are:

PL00067 Hale Country Club, 47 Clay Lane, Hale, Cheshire, WA15 7AF (See Appendix B)

2.3 The premises licence holder is: Hale Country Club Limited.

2.4 The application gives the grounds for review as: the prevention of crime and disorder; and public safety. In the main body of the application the applicant gives their account of the circumstances (Appendix A). This is prefaced by the following summary

2.5 *'This application is made as a result of Mr Daniel Norstrom an ex-member of this establishment being physically assaulted by a security guard on the premises who was not identifiable and who, although apparently licensed, was not displaying his Security Industry Authority (SIA) licence (blue badge) in accordance with the requirements of Section 9 of Private Security Industry Act 2001. It is further contended that the actions of this security guard clearly put the safety of the general public including other club members at risk.'*

## **3. RESPONSE ON BEHALF OF HALE COUNTRY CLUB**

3.1 On the 20<sup>th</sup> December 2016 Hale Country Club were informed about the application for review and were forwarded a copy of the application itself.

3.2 On the 6<sup>th</sup> January 2017 an email was received by Joanne Boyle from David Roberts of Eversheds solicitors with their response to the application (Appendix C). The Summary at the end of their response reads as follows –

*"In the circumstances the Licensing Authority should reject the application for a Review of the Premises Licence on the following grounds:-*

- 1. Following the incident on the 2<sup>nd</sup> November 2016 the police reviewed the CCTV and had no concerns in respect of how the matter was dealt with by the Club.*
- 2. If the police had concerns in relation to the operation of the premises under the Crime and Disorder or Public Safety objectives they could have initiated their own enforcement proceedings against the Club which they have not done nor have they indicated at any time they were likely to do so.*

3. *The Front of House Officers and security management employed at the Club are all appropriately licensed by the SIA. Front of House Officers are all identifiable from other members of staff by their own distinct uniform. They have since been further reminded of the requirements to display their SIA licences.*
4. *The application is frivolous. The premises are well run and are operated in accordance with the Premises licence and the Club ensures that it upholds each of the licensing objectives. Furthermore no evidence has been submitted by the Applicant to the contrary.*
5. *The Applicant is using the Licensing Act 2003 and the Review process in a vexatious attempt to cause disruption to the Club in response to having his membership terminated. To proceed with the Review cannot be in the public interest.*
6. *If the Applicant has any dispute with our client arising out of the termination of his membership then it is a contractual dispute and should therefore be addressed to the appropriate tribunal, it is not a matter for consideration of the Licensing Committee.”*

#### **4. FURTHER ENQUIRIES – ALLEGED ASSAULTS**

- 4.1 Clearly the applicant and the respondent have given accounts of the relevant incidents which differ in several respects.

What their accounts have in common is that they both refer to an earlier incident on the evening of the 31<sup>st</sup> October 2016 where Mr Norstrom swiped his own card to gain admittance, rather than have it swiped by a member of staff. Both accounts also confirm that soon after entering the Club on the 2<sup>nd</sup> November 2016 Mr Norstrom was overheard by a member of staff discussing this earlier incident with a friend. Thereafter is where the accounts differ one from the other, particularly in respect of the altercation that followed.

- 4.2 Following the receipt of the application and on several occasions since then, officers from the Licensing team have been in contact with Greater Manchester Police. This has been firstly in order to obtain an account of their involvement in investigating the events of the 2<sup>nd</sup> November 2016 and secondly to seek their view, as a Responsible Authority under the Licensing Act 2003, as to the validity of the application to review the licence.
- 4.3 On the 19<sup>th</sup> December 2016 Sergeant 9828 Rachel Nutsey from the Safer Trafford Integrated Partnership Team emailed the Licensing team (Appendix D). In this email she provided data in relation to incidents involving police at this location during 2016 and went on to give detail in relation to their involvement in investigating the events of the 2<sup>nd</sup> November 2016.
- 4.4 The first police log (FWIN 1923 2/11/16) was in relation to a report to them on the 2<sup>nd</sup> November 2016 by Lee Davies, the member of staff at the Club. Mr Davies made an allegation of assault against him by three members at the

Club, one of which was Mr Norstrom. The police conducted enquiries at the club, during which Lee Davies and Mark Gorton, Security Manager at the Club, confirmed that they did not wish to pursue the complaint further and that it would be dealt with in house. It was confirmed that Mr Norstrom would have his membership suspended pending enquiries by the Club management. As a result of this Mr Norstrom was not formally interviewed by the police.

- 4.5 The second police log (FWIN1069 7/11/16) is in relation to a counter allegation by Mr Norstrom of assault on him by Lee Davies. The officer investigating reviewed the CCTV footage of the incident and states that it is clear that Mr Norstrom was asked to leave several times before Mr Davies actually attempts to push him out. He also states that the footage shows Mr Davies being assaulted by friends of Mr Norstrom at this time. Mr Norstrom was subsequently spoken to by GMP who state that he accepted that he should have left the club when asked as he was being lawfully ejected. The police log goes on to state that as the damage sustained to Mr Norstrom's phone was accidental no crime was submitted for this aspect. The police filed the allegation of assault as no further action against any party involved.
- 4.6 On the 2<sup>nd</sup> February 2017 Joanne Boyle met with PC 19281 Neil Parkin, Divisional Licensing Officer for Trafford. During that meeting PC Parkin confirmed that based on the reported details of the incident in question, and the lack of historic incidents linked to the premises; the Police would not support an application for review on the grounds of crime and disorder and public safety.

## **5. FURTHER ENQUIRIES – ROLE OF LEE DAVIES/SIA COMPLIANCE**

- 5.1 In the application itself and in subsequent responses from the Club several comments have been made in relation to the role of Mr Davies and Club policy and procedures in relation to that role.
- 5.2 Mr Nordstrum for his part alleges that Mr Davies, on 2<sup>nd</sup> November 2016, was not displaying his SIA licence as he should. In support of this contention he points out that Mr Davies had acted in a security capacity by attempting to evict him from the premises. He goes on to claim that the Club's management, by allowing Mr Davies to act in this manner, are undermining the licensing objective of the prevention of crime and disorder.
- 5.3 In response to enquiries from Licensing David Roberts from Eversheds outlined the position of the Club in relation to Mr Davies's role at the time of the incident on the 2<sup>nd</sup> November 2016 (Appendix E). In summary their position is that whilst Mr Davies was properly registered with the SIA his role as a "front of house officer" would not require him to display his SIA licence.
- 5.4 This position appears somewhat at odds with Mr Roberts' previous statement in point 3 of the summary in his email of 6<sup>th</sup> January 2017 that states "Front of House Officers are all identifiable from other members of staff by their own distinct uniform. They have since been reminded of the requirements to display their SIA licences".

5.5 However in examining the SIA guidance about what constitutes licensable activities The guidance about the need for an SIA licence says that manned guarding activity includes any of the following:

1. Guarding premises against unauthorised access or occupation, against outbreaks of disorder or against damage;
2. Guarding property against destruction or damage, against being stolen or against being otherwise dishonestly taken or obtained;

References to guarding premises against unauthorised access include being wholly or partly responsible for determining the suitability for admission to the premises of persons applying for admission. *“However, this does not include the activities of a person who exercises control over the persons allowed access to any premises to the extent only of securing, or checking, that persons allowed access have paid for admission or have invitations or passes allowing admission.*

*The manned guarding activities above do not apply to the activities of a person who, incidental to the carrying out of any activities in relation to a group of individuals which are neither manned guarding activities or checking that persons allowed access have paid etc (as above), maintains order or discipline amongst those individuals. An example might be a school teacher accompanying children on an outing.”*

The manned guarding activities which require a licence *do not apply to the activities of a person who, incidental to the carrying out of activities which are not wholly or mainly the activities of a security operative, responds to a sudden or unexpected occurrence.*

5.6 In summary therefore the position of the club appears to be that their front of house staff do not need to have an SIA licence, but do have a licence, which on this occasion Mr Davies had on him but he was carrying out a role at the club that did not require him to be licensed. This claim appears to have merit.

## **6. THE POSITION OF THE LICENSING TEAM**

6.1 In addition to regular discussions between the relevant officers as enquiries progressed Joanne Boyle and Graeme Levy held a meeting on 18<sup>th</sup> January 2017 to consider their views on this application. In reviewing the matter several key factors were discussed.

6.2 It was felt that in considering an application for review on the grounds of public safety and the prevention of crime and disorder consideration should initially be given as to whether a stand-alone incident, of itself, is deemed so serious as to warrant a full review. Secondly consideration should also be given to the wider picture in terms of a history of recent problems at the premises.

6.3 In relation to the first of the considerations above officers were firmly of the view that whilst this incident will have been upsetting for the parties involved it is not serious in terms of public safety or crime and disorder. It was felt likely

that the incident on the 2<sup>nd</sup> November 2016 was related both to the earlier incident on the 31<sup>st</sup> October 2016 and to the particular parties involved, rather than there being evidence pointing to the likelihood of similar or more serious problems involving other parties. In relation to events on the 2<sup>nd</sup> December 2016 two separate allegations of assault were made to the police, neither of which were taken forward to formal sanction. It is recognised that in terms of evidential thresholds the police/CPS threshold is far higher than that in terms of matters justifying consideration by this Committee. Nevertheless the feedback to the Licensing team from the police suggest that the incident on the 2<sup>nd</sup> November 2016 was not a serious one in relative terms.

- 6.4 In terms of the previous history, other than the log data supplied by Sergeant Nutsey in her email of 19<sup>th</sup> December 2016, the Licensing team are not aware of there being any previous problems in terms of public safety or crime and disorder at or related to the Club. The Licensing team are in regular contact with PC Neil Parkin on a range of licensing issues and it is likely that had there been incidents to justify him raising the issue with the Licensing team he would have done so.
- 6.5 Another of the key factors considered by officers was the question of proportionality. Officers had in mind the following question – would the calling of a review of the licence, on the basis of this representation, with the costs and inconvenience that would cause, be proportionate? It was felt by officers that this was not the case. In reaching this view officers had in mind the limited contribution such a review would make to the protection of public safety and the prevention of crime and disorder.
- 6.6 The applicant clearly has a different view and maintains that this incident is indicative of a wider threat to the two aforementioned licensing objectives. In this regard his pursuance of this matter could be seen as him acting in the public interest. He has indeed pursued this matter with some rigor and on several occasions complained to the Licensing team about the rate of progress or questioned why the matter was not progressing straight to a hearing. There appears to be a significant level of commitment on his part.
- 6.7 It could be seen however that this level of commitment is indicative of a motivation other than the wider public interest. Officers are of the view that the incidents on the 31<sup>st</sup> October and the 2<sup>nd</sup> November 2016, will have left Mr Norstrom with a sense of grievance over what had happened to him. It would be understandable if he felt a certain loss of face at being ejected from the club of which he is a member, in front of friends and other members. This sense of grievance may well have been heightened by having his membership of the club terminated. It is the view of officers that Mr Norstrom is motivated by a wish to bring the Club to account in some way for what happened to him and this representation is his way of doing it.

## **7. CONCLUSION AND RECOMMENDATION**

- 7.1 The ability to review a licence under the 2003 Act is a valuable tool in ensuring that the four licensing objectives are met. A review is no small matter and has potentially serious consequences for the business involved. Trafford

Council has taken premises to review in the past. Typically this has been where there has been evidence of serious crime and disorder associated with a premises or, for example, where a premises has a proven history of blatant supply of alcohol to those under age.

- 7.2 It is felt by officers and the police, who are the responsible authority most heavily involved in the protection of public safety and the prevention of crime and disorder, that a review is not warranted in these circumstances. It is the firm view of officers that the representation made by Mr Norstrom is vexatious, in that it is intended to cause aggravation or annoyance to the Club without sufficient cause or justification. For this reason officers recommend that the application is rejected.