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19 September 2013

Licensing Decision Notice

Background

1. The Chief Constable of Surrey Police acting through Licensing Sergeant 2934 Dean (**Applicant**) submitted an application for a review under section 51 of the Licensing Act 2003 (**Act**) of the premises licence for The Lincoln Arms, Station Approach, Dorking, Surrey (**Application**).
2. In accordance with section 52(2) Licensing Act 2003, a hearing was arranged and took place on 17 September 2013 at 10.00 in the Council's Chamber to enable the Council's Licensing Sub-Committee, consisting of Councillor Sharland, Councillor Yarwood and Councillor Murdoch to determine the Application. Councillor Sharland was elected chairman.

Attendance and Participation

3. The hearing was attended by:

On behalf of the Applicant	Ms Amy Clark	Barrister
	Andy Rundle	Inspector
	Bert Dean	Licensing Sergeant
	Dan Miller	Licensing Officer
On behalf of the Premises Licence Holder	Piers Warne	Solicitor
	Nicholas Greene	Designated Premises Supervisor (DPS) and Lessee of the Premises Licence Holder (PLH)
	Matt Pocock	Representative of the PLH, Punch Taverns plc

	Matthew Greene	Brother of Nicholas Greene
	Claire Greene	Supporter
Other People	None	

With the exception of Dan Miller, Matt Pocock, Matthew Greene and Claire Greene, the Licensing Sub-Committee heard from each of those attending.

4. The Licensing Sub-Committee is satisfied that notice of the hearing was served on all relevant parties, and that all those entitled to speak at the hearing had an opportunity to do so.

### Summary of Discussion

#### Applicant

5. Ms Clark submitted that the application for a review had been made in response to (i) a lack of pro-active management of the current conditions attached to the premises licence and (ii) the violent incidents and the breaches of the licence and of the Act identified on 26 July 2013. Ms Clark referred to the table of incidents set out at Annex 1, in particular and those which took place after 11pm.
6. In reference to the relationship between the DPS and the police, there had been meetings between the DPS and the police, to encourage the DPS to rectify the lack of CCTV. These efforts to encourage compliance were unsuccessful.
7. The purpose of the police covert and then overt visit on 26 July 2013 was to observe the premises and see if there were any breaches of the licence or breach of the Act. The observations made by the police covert officers were stated in the Application, and the offences as set out on LC9 were identified during the full licence check by uniformed officers, and this evidenced a lack of management control of the premises. It was noted that it was a Mr Baker (who it was noted has subsequently resigned), not the DPS, who was managing the premises on 26 July 2013.
8. The lack of pro-active management and lack of control led to the Application and the three recommendations:
  - a. The removal of the DPS
  - b. The reduction of the terminal hour to 23.00 Monday to Sunday for all licensable activities
  - c. The imposition of the eight additional conditions as set out on LC10 and LC11.
9. Ms Clark submitted that the recommendations were reasonable and proportionate to achieve a change in culture and did not penalise the PLH unnecessarily. The aim of the recommendations was to turn around the attitude of the PLH and to achieve clear and consistent compliance with the terms of the licence and with the Act.
10. The Applicant in discussions with the PLH after the letter submitted by TLT on behalf of the PLH dated 6 September 2013 and before the hearing had agreed to accept the imposition of the eight additional conditions. The removal of the DPS and the reduction in the terminal hour had not been agreed.

11. Subject to a reduction in the terminal hour and the imposition of the eight conditions proposed by the Applicant, the Applicant conceded that the removal of the DPS was not necessary.
12. The Application proposed a reduction in the terminal hour to 23.00 Monday-Sunday for all licensable activities. This was in order to achieve a change in the culture, and in light of the time at which the incidents of violence had occurred. The Applicant was prepared to accept a lesser reduction in the terminal hour Thursday-Saturday from 00.00 to 23.30 as this was still appropriate in light of the timing of the previous incidents, key to reducing the incidents of violence and would promote the licensing objective of the prevention of crime and disorder. In response to a question, Ms Clark submitted that the reduction in the terminal hour to 23.30 was for the sale of alcohol only, and that all other permitted licensable activities could continue to terminate at 00.00 (or 00.30 in the case of indoors late night refreshment).
13. Ms Clark submitted that whilst the reduction in the terminal hour might damage the business, there were no definitive figures given by the PLH or DPS, and the financial damage had to be balanced against the promotion of the licensing objectives. In this case, the licensing objectives and compliance with the Act should take precedence. In her view, such a reduction need not be a permanent reduction and when an improvement had been achieved, the reduction could be reviewed.
14. The Applicant had not taken the most heavy-handed approach of issuing a closure notice, or prosecuting, but had given the PLH/DPS an opportunity to comply. It was not merely that best practice had not been followed; the terms of licence had been breached. There had been improvement but it was questioned whether compliance would be maintained and the objective of the Application was to build on what had been achieved to date.

#### Premises Licence Holder

15. Mr Warne stated that the PLH had agreed all eight conditions and that an additional condition, as set out in the letter from TLT LLP dated 6 September 2013, had been offered. The additional condition, which required a risk assessment of events and of outside promoted events, addressed the root cause of the incidents recorded by the police and was proportionate and pragmatic.
16. Removal of the DPS would represent an element of punishment. He cited paragraph 11.22 of the Guidance (June 2013) and noted that the Applicant was happy for the DPS to remain, subject to a reduction in the terminal hour.
17. Of the eight offences set out at LC8 and LC9, the five offences relating to failure to display signage had been rectified as soon as the breach had been notified. Photos evidencing the signage were submitted to the hearing.
18. The CCTV was installed on 15 April 2013, following the third meeting between the DPS and the Applicant. The meetings had related to CCTV and not the incidents. It was acknowledged that the CCTV should have been installed before, but that the Applicant had been kept informed of the position. Mr Warne submitted that it had been open to the Applicant to issue a section 19 closure notice to remedy the

breach, or to have prosecuted the PLH for the breach of the CCTV condition and for the lack of signage.

19. Mr Warne submitted that on 26 July 2013, there were an additional two members of staff collecting glasses and checking the toilets, and one of these was Mr Baker, who stopped a woman from dancing on the bar. Records of checks were now available and the PLH would work with the police to agree what was required by way of drug policy. In relation to the record of incidents, the staff was proactive in calling the police and there had been no other enforcement action before. It would be disproportionate to remove the DPS.
20. In relation to the recommendation to reduce the terminal hour, Mr Warne submitted that there had been only four incidents in seven months, which was not a high rate, and indicated that it was not caused by the premises' average clientele. It was noted that there were no representations from neighbours or Environmental Health. The premises operated and applied a barring policy for incidents involving regular customers.
21. The direct effect of reducing the terminal hour would be a £3,000 loss/month. Mr Warne cited para 11.23 of the Guidance (June 2013) '*any detrimental financial impact ... is appropriate and proportionate to the promotion of the licensing objectives*' and submitted that it would penalise the premises and would be disproportionate.
22. The current terminal hour of midnight was not late and was critical to the business. An earlier terminal hour of 23.30 would be earlier than other town centre pubs, would prevent bookings, and would drive customers away to other areas of the town with a later terminal hour. It could result in customers ordering or accumulating a large number of drinks and subsequently binge drinking. It would be difficult for management to differentiate between those customers buying a round of drinks and those customers who might be accumulating drinks ahead of the terminal hour for later consumption.
23. In response to Ms Clark's submission that such a reduction need not be permanent, Mr Warne submitted that it would require an application for a variation to be submitted, and that such an application could be refused, and that it imposed a burden on the DPS and had cost implications. The option of submitting TENs or late TENs to enable events to go ahead to a later terminal hour, given the limit on duration and the number which could be submitted in any 12 month period did not give sufficient coverage to the business.
24. In summary, the current DPS and the current terminal hours should be retained.

#### Mr Nicholas Greene, DPS

25. Mr Greene made the following submissions:
  - a. A reduction in the terminal hour would affect the viability of the business. The premises offered a free function room, which was used by community groups as well as Mole Valley Housing Association, as well as for wakes, parties and weddings. Customers making a booking expect a terminal hour of midnight. An earlier terminal hour would make the premises uncompetitive as later hours were available elsewhere.

- b. The additional conditions recommended by the Applicant and accepted by the PLH would uphold the licensing objectives.
- c. There was one other personal licence holder on his staff, and another member of staff who has completed the training but was not yet in a position to apply for a personal licence, and his brother, Mr Greene, is also a personal licence holder. One personal licence holder lives on site. He was willing to train additional personal licence holders but it would take more time. On Thursday-Sunday a personal licence holder was always around. He would seek to increase the number of personal licence holders.
- d. As at 26 July 2013, training records were not kept, but an incident book was kept, but it had not been requested. Since 26 July 2013, logs were being kept. A comprehensive training manual had been set up and would be reviewed on a regular basis, which the staff had to sign as having read and understood.

#### Questioning by the Sub-Committee

- 26. Ms Clark clarified that since 26 July, the premises had not been inspected, as once an application for review is submitted, it would be heavy-handed to then inspect. Depending on the outcome of the review hearing, an inspection would be undertaken subsequently.
- 27. Ms Clark confirmed that the Applicant had no objection to the additional condition, subject to being informed of the criteria.
- 28. The Applicant confirmed that over the last four years, there had not been as many incidents as there had been in the past six-nine months, and that the way in which premises came to the attention of the police tended to be cyclical.
- 29. Ms Clark confirmed that a personal licence holder had a clear position of responsibility, and the requisite managerial capacity. The individual would need to be present and readily available but did not need to be in a specific area of the building, as a level of trust was required.

#### Decision

- 30. The Licensing Sub-Committee gave weight to the Applicant's concession that it was not necessary to remove the DPS. On the night of 26 July 2013, the DPS was not on duty, is experienced in the industry, is a personal licence holder, and is the tenant and the operator of the premises.
- 31. The Licensing Sub-Committee noted the Applicant's further concession that the proposed reduction in the terminal hour from 00.00 Thursday-Saturday be revised to 23.30 for the sale of alcohol only. Given however that the other licensable activities would continue until midnight, and that late night refreshment (indoors only) was permitted until 00.30, with a closing hour of 00.30, it found that there would be little to be gained by reducing the terminal hour to 23.30 for alcohol sales on Thursday-Saturdays. It could undermine the licensing objectives of the prevention of crime and disorder, and the Sub-Committee gave weight to the submissions made by Mr Warne

on this point which were not refuted by the Applicant. The Sub-Committee considered whether the damage to the business from reducing the terminal hour could be mitigated through the TEN process or through a subsequent application by the PLH for a variation to the licence but accepted the submissions made by Mr Warne and by the DPS on this point.

32. The Licensing Sub-Committee in principal accepted the conditions agreed between the parties are as a means to improving the management of the establishment. Several minor changes were made and the revised conditions to be imposed are set out below.

1. A comprehensive digital colour CCTV system of evidential standard agreed with the Police Crime Prevention Officer must be installed on the premises and fully operational at all times. The system must cover the public areas of the front and back bars as well as external areas where the consumption of alcohol occurs. All CCTV footage must be retained for a minimum of 28 days and made available either for viewing or in a format that can be downloaded within 24 hours of any request being made by a Police officer or authorised person (subject to the requirements of the Data Protection Act 1998). Notices will be displayed at all entrances to the premises and at each bar advising that CCTV is in operation.

2. A personal licence holder must be on duty on the premises from 2100 hours until closing when any licensable activity is taking place.

3. The age verification policy required by the mandatory conditions shall specify the age of 25 instead of 18 so as to require that any person who appears to be under the age of 25 shall be asked to provide proof of age in the required format before being served alcohol. A refusals log is to be maintained and made available to any responsible authority on request.

4. Training must be given to all persons involved in the sale of alcohol regarding offences under the Licensing Act 2003, the Challenge 25 policy and acceptable forms of ID (photographic driving licence, passport or cards bearing the PASS hologram). Written records will be kept for all training that is carried out and such records will include details of the names of staff trained including their signatures and a summary of the matters covered by the training. Training records will be kept on site for a minimum of two years and will be available for inspection at the request of the police and local authority officers. Refresher training will be provided every six months and recorded on the training records.

5. The premises licence holder shall implement a zero tolerance drug policy that includes signs placed visibly at all entrances to the premises and visibly in all male and female toilets. The signs shall indicate that no illegal drugs are allowed on the premises and that anyone being in possession of such drugs will be ejected from the premises. The zero tolerance drug policy is to be agreed with Surrey Police within one month of the date of the hearing.

6. An incident log shall be kept at the premises. A record of all incidents relating to crime and disorder and anti-social behaviour shall be logged showing the date and time of the incident, details of the nature of the incident and the individual(s) involved and the name of any member(s) of staff involved. The log shall be kept up to date and on the premises at all times and made available for inspection on request by officers of the licensing authority or police.

7. At each exit located at the premises signs shall be erected which are easily visible to customers and which request customers to leave quietly. The size, lettering, wording and location of such signs shall be agreed in writing with the Licensing Authority within one month of the date of the hearing.
8. Any events or outside promoted events shall be risk assessed by the DPS or suitably trained person to ensure that there is adequate staffing and controls to ensure that the event does not undermine the licensing objectives. This risk assessment must be kept for a minimum of 14 days after the event and shall be available for inspection on reasonable demand by the officers of the licensing authority or police.
9. All windows and doors shall be closed by 20.00 hours (except for ingress and egress) when there is regulated entertainment taking place.
10. Regular checks shall be made of the garden, car park and toilet areas by staff every hour and shall be recorded in the log book.
11. Children must be accompanied by an adult and are not permitted in the bar area.
12. Children are not permitted on the premises after 21.00 hours.
33. These conditions will not take effect until the end of the period given for appealing against this decision (as set out in paragraph 36 below) or if this decision is appealed against, until the appeal is disposed of.
34. Although we have not imposed the eighth condition recommended by the Applicant, in light of the legal advice given that such a condition is unenforceable, we note the submissions made by Inspector Andy Rundle on the scheme and recommend that the DPS/PLH test and re-evaluate the Dorking Town Link radio scheme for adoption at the premises.
35. In reaching this decision, we have had regard to the Council's Statement of Licensing Policy dated November 2011 (including but not limited paragraphs 10.1 and 10.3) and to the statutory guidance issued under section 182 of the Licensing Act 2003 dated June 2013.

Rights of Appeal

36. The Applicant and/or the Premises Licence Holder have a right to appeal to the Magistrates Court within 21 days of receiving this written decision notice.

Signature.....  
 Chairman