
OUTCOME OF RECENT COURT APPEAL PROCEEDINGS

Purpose of Report

1. To advise Members of the outcome of recent Court appeal proceedings following a decision made by a Licensing Act Sub Committee.

Information and Analysis

2. The schedule attached as **Appendix 1** to this report give details relating to:
 - (a) The determination of the review of a Premises Licence by the Licensing Act Sub Committee following the receipt of an application to review from Durham Constabulary and supporting information from the Director of Public Health
 - (b) The outcome of a Court Appeal against the decision made by the Licensing Act Sub Committee.

Human Rights Act

3.
 - (a) Article 1 of Protocol 1 of the European Convention of Human Rights confers on individuals (and companies) the Right to Peaceful Enjoyment of their Possessions and the Protection of Property.
 - (b) When considering matters relating to the grant, revocation, renewal or refusal of licences and the placing of conditions on licences, the Committee must consider whether the decision affects an individual, group or company's Human Rights as set out in the Convention and if it does, whether the interference with those rights is permissible by reason of the justifications set out in the Convention. In addition consideration must be given to whether the interference is proportionate to the general purpose.
 - (c) Article 6 of the European Convention on Human Rights confers on all the right to a fair hearing.

The Appeal Process

4. Appeals against the decision of the Licensing Committee are made to the Magistrates' Courts. The case is heard as a new Hearing, when further information, which was not available to the Licensing Committee, can be considered. The Magistrates, however, sit in the same capacity as the Licensing Committee, must have regard to the Council's Licensing Policy and must not put aside lightly such Policy. A decision of the Magistrates' Courts is final.

Legal Implications

5. This report has been considered by Legal Services for any legal implications in accordance with the Council's approved procedures. There are no issues which Legal Services considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Crime and Disorder Act 1998 Section 17

6. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. Although the prevention of crime and disorder is one of the four licensing objectives this is not a relevant matter in relation to the information in respect of the outcome of the appeal

Recommendation

7. That Members note the contents of this report.

Ian Williams
Director of Economic Growth

Background Papers

No background papers were used in the preparation of this report

Appendices

Appendix 1 The George Public House, 107 Bondgate, Darlington, DL3 7LB

Pam Ross Extension 388647

Name of Premises: THE GEORGE PUBLIC
107 Bondgate, Darlington, DL3 7LB

Date of Committee: 03 December 2013

An application, made by Durham Constabulary to review the premises licence on the basis of the prevention of crime and disorder and the protection of children from harm, which was supported by the Director of Public Health was considered by Members. The Sub Committee was given information about failed test purchases and underage drinking at the Premises and concerns from the Police that the licence holder was frequently under the influence of alcohol when the Police attended the premises.

Committee Decision:

Members decided that the evidence before them was so serious that the only appropriate course of action was to revoke the Premises licence. Members advised that they had initially considered removing the Premises Licence holder as Designated Premises Supervisor (DPS) but concluded that this was not sufficient or proportionate to ensure that the changes needed in the premises would take place.

Appeal Details: 14 April 2014 at Darlington Magistrates Courts.

Appeal Information: Prior to the appeal legal representatives for the Appellant contacted the Council to propose a way forward as follows:

- That the Appellant would no longer be the DPS and would be replaced by another named person.
- That the Appellant would no longer hold the Premises licence for a minimum of 12 months and that it would be transferred to Star Pubs & Bars Ltd

As a result Officers contacted the Police and the Chair of the original Sub Committee for their views. It was agreed by all parties that this would be a sensible way forward given that the Appellant had made some efforts to improve matters during the time between the Sub Committee decision and date of the appeal. He had attended training, obtained his personal Licence and there had not been any further incidences recorded of underage sales. It was unlikely therefore that the Courts would support the revocation of licence and the likely outcome would be that which was offered in advance of the appeal hearing. A joint Consent Order was therefore agreed stating that the Appellant would not hold the Premises Licence for at least 12 months and that he would also no longer be the DPS.

Both parties agreed to pay their own costs. The Consent Order was subsequently approved by the Courts.