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23rd July 2008

“WALKABOUT INN” – REVIEW OF THE PREMISES LICENCE

On the 1st July 2008 the Licensing Sub-Committee met to consider a Review of the Premises Licence currently held at the premises known as ‘Walkabout Inns’ 67/83 Cookridge Street, Leeds, LS2 3AW . The application to Review the Licence was made by West Yorkshire Police (WYP) under section 51 of the Licensing Act 2003 having regard to all four stated licensing Objectives, namely:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

This letter represents the formal decision of the Sub-Committee in respect of this matter.

Preliminary Procedural Matters

At the commencement of the hearing the Sub-Committee considered the preliminary matters of a purely procedural nature. There were no declarations of interest made and the Sub-Committee agreed not to vary the procedure for dealing with Reviews.

Having noted these elements of the procedure for hearing the Sub-Committee then considered whether to exclude the public at any point and decided to exclude the public from that part of the hearing where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

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Prior to the hearing the Sub-Committee had considered the Licensing Officers report which set out the recent licensing history of the premises including a copy of the application and existing Premises Licence. The report also included an appendix of documents submitted by the applicant – West Yorkshire Police (WYP). In addition further information had been circulated to all parties prior to the hearing which included statements from the following:

- Pc. Catherine Arkle
- Pc. Cietak
- Pc. Saleem
- Pc. Coward
- Pc. Barran
- Pc. Flusk
- DC. Strangeway
- Details of Training Programme for Walkabout Inn Staff provided by Walkabout Inns

The Hearing

The following interested parties attended the hearing:

- Mr. T. Carey, Area Manager
- Mr. T. L'Huiller, Manager, Walkabout Inn, Leeds
- Mr. S. Walsh, Counsel for the Applicant
- Mr. N. McCann, solicitor
- Ms. S. Davies, solicitor

In considering the Review the Sub-Committee took into account the written submissions contained within the report and circulated to all parties prior to the hearing plus the verbal submissions made at the hearing by interested parties.

The Sub-Committee also had regard to the provisions of the Licensing Act 2003, Guidance under Section 182 of that Act and Section 12 (Enforcements and Reviews) of the Council's own Licensing Police and in particular those matters listed in paragraph 12.23 with particular attention.

The Sub-Committee then went on to consider the following paragraphs of the Guidance taking the view that these paragraphs had a bearing on the application:

- 11.17 Powers of a Licensing Authority on the determination of a review
- 11.18 – 11.21 Matters to note when considering possible courses of actions

Reason for the Application

Walkabout Inn failed three police test purchase operations in an 8 month period, from June 2007 until January 2008. West Yorkshire Police and Leeds City Council entertainments Licensing have a criteria where any venue which commits three of these under 18 sale offences in any 12 month period is liable to a Premises Licence Review.

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When visited as part of a West Yorkshire Police test purchase operation, bar staff sold alcohol to the 14-15 year old volunteers on three separate occasions:

- Thursday 21st June 2007
- Thursday 16th August 2007
- Saturday 12th January 2008

After the first failed test purchase a letter was sent to the premises advising them of the failure and also asked for renewed vigilance.

After the second failure the management were invited to attend a meeting at Millgarth Police Station to try to prevent a third sale.

After the third failure the premises management attended at Millgarth Police Station and were advised of the possibility of a Premises Licence Review

Evidence made on behalf of WYP – The Applicant

Pc. Arkle began by stating that she was aware the Members had read through the documents she had submitted as part of the Review and did not wish to go through all the notes verbatim but would refer to the documents in her representations. Pc. Arkle also added that although she was presenting the application by herself she did not want the Sub-Committee to think that West Yorkshire Police did not take the application seriously. WYP took seriously the protection of children from harm especially as it affected the three other Licensing Objectives, crime and disorder, prevention of public nuisance and public safety. Where premises failed three test purchases in a twelve month period WYPs procedure was to apply for the Review of the Premises Licence.

Between June 2007 and January 2008 "Walkabout Inn" failed three test purchases. Prior to the failed purchases WYP had not had a great deal of concern with the premises. In 2006 Pc. Arkle had spoken to the DPS in relation to the premises and there appeared to be no problems. In June 2007 the premises failed its first test purchase. The test purchase took place on at Thursday night at 19:25 hours where a male member of staff served alcohol to a male and female both aged 15 years old. Sgt. Fullilove, responsible for organising test purchases, had strict requirements in selecting the volunteers to conduct test purchases. All volunteers were under 16 years old and had to look and dress their age. They were required to tell the truth when asked for their age or date of birth and were not allowed to use false identification. The standard procedure for dealing with a failed test purchase was to issue the member of staff who had sold the alcohol with a Fixed Penalty Notice and to write to the premises licence holder and the DPS advising of the failure. It would be expected that following a failed test purchase due diligence and security would improve at the premises. A test purchase took place in 7th July 2007 which was successful and then on 16th August 2007 the premises failed another test purchase. This time alcohol was served to a 15 year old female and a 14 year old male at 17:45 hours on a Thursday evening. There were no door staff present, the previous DPS had been removed and replaced with Mr. Adam Bowker. A Fixed Penalty Notice was issued to the member of staff and another letter was written to the DPS and premises licence holder in relation to the matter inviting them to attend a meeting with WYP Licensing Officers to avoid another failed test purchase. At this meeting the representatives of Regency Inns advised Pc. Arkle of the measures they proposed to take including a check 25 scheme which she felt was extreme and could possibly lead to more

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problems at the premises. Despite this Pc. Arkle recognised that the company was taking steps to prevent a further failed test purchase. However on Saturday 12th January 2008 at 17:33 hours the premises failed a third test purchase and a female aged 15 years old was served alcohol. Usually there would have been two volunteers however on this occasion Pc. Arkle assumed that one volunteer had dropped out and that Officers were satisfied that the remaining volunteer was able to complete the task by herself. WYP then met with Terence Griffith (Regency Inns), Jon Walker (Regional Manager) and Adam Bowker (DPS) where Mr Walker outlined further procedures the premises would operate to avoid a further failed test purchase such as a refusals register and the possibility of increasing the level of door staff. It was noted that the Check 25 policy had possibly undermined the confidence of the staff in checking identification. Following this the application for the Review of the premises licence was made but in the meantime the premises passed a total of 10 test purchases. On the 26th March 2008 a test purchase was conducted at the premises in the early evening and two females aged 14 and 15 years old were able to gain entry to the premises whilst door staff were present. The two females were refused service at the bar and asked to leave. WYP Officers spoke to Regency Inns regarding the incident and Adam Bowker was removed as DPS at the premises and Tom L'Huiller replaced him. Since Mr. L'Huiller became DPS there had been no failed test purchases and the door staff had refused any test purchases at the door. However Pc. Arkle was still concerned regarding the door staff as she was not sure what had been put in place to prevent further under age youths from entering the premises. The times and days of the failed test purchases weren't in a pattern which would suggest a condition which would prevent further failed test purchases. WYP were not seeking to revoke the premises licence but suggested the increase in door staff for a time limited period to see if this impacted.

The following issues were addressed during questions:

- It was not a requirement of the premises licence that the premises had door staff however Pc. Arkle acknowledged that door staff were the first line of defence in preventing under age persons accessing the premises. Any door staff employed by the company should be experienced enough to identify a person of 14 or 15 years old especially when a check 21 policy is in operation and even if it was dark outside.
- Pc. Arkle proposed a three to six month time limited increase in the door staff hours. The time should depend on what Regency Inns stated in relation door staff improvements.
- The register of staff who were on duty was not checked for the names of the door staff as the door staff were not required to be there as per the premises licence.
- Two of the three staff who had received the Fixed Penalty Notices were no longer working for the company. Two of the staff were fairly new to the company and one member of staff had worked there a while.

Evidence Made on Behalf of the Premises Licence Holder – Regency Inns Ltd.

Mr. Walsh began by putting the failed Test Purchases in the proper context. Walkabout Inns was a chain of Australian themed bars which served food and alcohol all day and also provided entertainment there were 47 outlets and approximately 3000 people went through the doors. Every member of staff was required to take part in training with the manager before working at the premises. The training covered areas such as health and safety, product knowledge and the requirements of the Licensing Act 2003. Since March 2007 Regency Inns recorded 23 test purchases at the premises spread out over 1 to 2 month intervals 3 of which failed. After the failure of the second test purchase Regency Inns reviewed their training

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programme and the circumstances of the failed test purchases to look at what went wrong. Training took place in three stages which was included in the Licensing Officers report. At the first stage the manager takes the member of staff through a starter pack which included information on internal policies and Licensing Act 2003 requirements. The member of staff is then shadowed at the bar at the second stage and following this there was a computer modular exam which had to be passed before the member of staff completed the training. The questions to the test had to be answered correctly to pass the test. Should a question be answered incorrectly the member of staff would have to correctly answer all questions in that module again before passing the test. Training would take place over a week and would be conducted with the manager. There were also ongoing meetings which updated staff on any changes or reminders and details of the requirement to check of identification was displayed on posters on the staff notice board.

As had been previously mentioned it was not a requirement of the premises licence that door staff are required at the premises. Instead the manager conducted a risk assessment of each event. Regarding the failed test purchase which took place in June 2007 the member of staff left voluntarily and of the staff involved in the failed test purchases in January 2008 and August 2008 one member of staff had had received a formal warning and one member of staff had been dismissed. At the January 2008 failed test purchase the member of staff had mistakenly believed that the volunteer was part of a group of students who had their identification checked by door staff. Although the company had a policy not to allow youths under 18 on to the premises it was not a requirement of the law. As this was the second time a test purchase had failed the management of the premises looked at what went wrong in this and the previous instance. During the time Mr. Adam Bowker was DPS at the premises. Mr. Bowker had worked for the company for sometime and was well-respected however on reflection it was felt that he lacked the maturity and possibly the experience to be DPS at the premises. Mr. Bowker was offered a position at another premises but decided to leave the company. Walkabout Inn then appointed Mr. L'Huiller as DPS at the premises. Mr. L'Huiller had worked for the company as DPS in branches in Manchester and Burnley and had a good working relationship with the Police. Since Mr. L'Huiller had become DPS at the Leeds branch there had been ten further test purchases all of which had been successful. The training programme was also scrutinised (page 99 of the Licensing Officer's pack) and the company involved an external trainer to provide extended training for staff on alcohol and drug awareness. Staff were brought together for a two hour training session and then formed smaller groups for a role play and question and answer sessions before coming together again. This 'Move on Up' training was now part of the training which all members of staff were required to complete with the manager before they worked on the bar.

The premises had recently installed 'Club Scan' to be used by door staff to check the identification of customers entering the premises. Identification could be scanned into a computer which can check if the identification is genuine, if the person is over 18, check if the person has been barred by the premises and will also check to see if the identification had previously been used to gain access to the premises to prevent people from passing their identification to other people for them to gain access to the premises. 'Club Scan' also acted as a deterrent to underage youths.

Since the failed test purchases the company had temporarily increased the times door staff were present at the premises. Door staff were now present on a Wednesday and Thursday evening which had previously not been the case. On a Friday night there were two door staff on the premises from 20:00 hours, a further two from 21:00 hours and an additional one at

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22:00 hours. On a Saturday two door staff were at the premises at 18:00 hours, two additional door staff started at 21:00 hours and a further member of door staff started at 22:00 hours. Door staff were also employed on different nights when events were on and the manager had carried out a risk assessment which determined how many door staff were required. Out of university term time there was less need for the door staff.

Check 21 posters were displayed throughout the premises and in response to the failed Test Purchases the company had instituted a challenge 25 policy but this had a negative impact as door and bar staff found that they were checking for identification of older people which caused problems for all staff. In consultation with the police this was returned to a check 21 policy.

Mr. Walsh asserted the Regency Inns took the failed test purchases very seriously. In addressing the options open to the Sub-Committee Mr. Walsh felt that changing the DPS would not be appropriate as the company had recognised that there was an issue at the premises and had appointed a new DPS for the premises who had passed 10 further test purchases. The Police were not seeking to revoke or to temporarily suspend the premises licence and the Sub-Committee had to consider whether or not it was necessary or proportionate in these circumstances. There had been only 3 failed test purchases out of 23 which had been carried out at the premises and the Sub-Committee may feel that it was necessary to add conditions to the premises licence where they supported the Licensing Objectives. This was the first application for the Review of the Premises Licence for the Leeds branch and had pulled the company up. The company had great concerns regarding the sale of alcohol to youths under 18 and had instituted policies in order to prevent this from happening again.

The following issues were addressed during questions:

- The premises was a member of the Local Pubwatch scheme and Best Bar None also.
- The busy times for the premises varied depending on university term dates and other events.
- On the 12th January 2008 a student event was taking place and the staff were expecting 15 people to turn up there would have usually been about 10 to 20 people at the premises. However over 45 students attended the event. Mr. Carey felt that Mr. L'Huiller was more experienced in dealing with problems like this.
- Former DPS Mr. Cantlon had resigned to go travelling and Mr. Bowker had been offered a position at a smaller venue but had since left the company.
- The door staff were provided by Rutherford Associates. All door staff took part in an induction programme with the manager before working for Walkabout Inn, Leeds and were also provided with their own handbook. The Head doorman had been dismissed and Mr. Carey had met with the company regarding the problems at the premises. All door staff were required to complete a one hour training session with the manager before working on the door. Even if the member of door staff had worked at the Walkabout Inn in Doncaster they would still have to do the training at Walkabout Inn, Leeds. The same company was used 90% of the time and if they tried to send a member of door staff who had been sacked from the premises they would not get paid and could potentially lose their contract. Pc. Arkle confirmed for the Sub-Committee that it was common practice that a pub or club employed an external company to provide door staff services.
- Only one DPS, Mr. Bowker, had been removed as the company felt that he was not able to manage a venue of Leeds' size.

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- There had been no other Reviews of the Premises Licences of any of the 15 pubs which Mr. Carey was in charge of.
- Mr. L'Huiller had previously worked in Manchester where the capacity of the premises was 1800-2000 people which was larger than the Leeds venue.
- Mr. Walsh acknowledged that door staff are the first line of defence in preventing underage sales and reminded Members that whilst it was company policy not to allow someone under 18 on the premises it was not against the law to have them on the premises. Mr. Walsh also asserted that when there were no door staff present it was easier for the bar staff to check for identification as they could check everyone without worrying that they were checking for the second time. The failed test purchases was not a failure of door staff to check for I.D. but of the bar staff.
- Mr. Walsh felt that it was not appropriate for the premises to have door staff when it wasn't busy and that door staff were employed after the manager had carried out a risk assessment of the event and sometimes in consultation with the police.
- Pc. Arkle informed the Sub-Committee that Club Scan, which had recently been installed at the premises, was only operated at the door by the door staff when they were working. Test purchases which are carried out by the police take place throughout the day.
- At this stage Members of the Sub-Committee were provided with a demonstration of Club Scan. Club Scan was used during the periods when the premises was busy and not during the day. If the device detected fake identification it was confiscated and taken to the police station. The device was located at near the front door to the premises
- Pc. Arkle informed Members that the sale of false identification was not illegal as they were sold as novelties and companies in Leeds did bring in the false identifications to the police.
- Before being allowed to work at the bar staff were shadowed at the bar at an early time in the day when it wasn't very busy. They would then complete further training and be shadowed at the bar during a busy time.
- Of the staff who served the test purchase volunteers one member of staff had been there a month and the other had been there nearly two months.
- When door staff were not present bar staff kept a refusals register at the bar and noted down every time they refused service to a customer including the reasons for the refusal. The premises had also passed a number of test purchases and all of these passes had taken place when door staff were not on the premises. The door staff also had a refusals register which was kept and the manager of the premises input this information into a database which is cross checked by himself and the area manager. A copy of a recent refusals register was tabled to Members with the approval of all parties.
- Pc. Arkle informed the Sub-Committee that she was aware of only one other premises in Leeds which used Club Scan and the technology was very new so it was difficult to determine whether or not it would be successful when test purchases happened.
- The use of Club Scan did not slow down the movement of the queue into the premises and any information displayed on the screen was only accessible to door staff. One of the benefits of Club Scan was that the picture on the I.D. was enlarged on to the screen to enable door staff to have a clearer picture. The device also indicated whether or not the ID had recently been used to get into to the premises preventing youths from sharing ID.

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- Mr. Carey informed the Sub-Committee that the company used Club Scan in a number of their venues in London. Blackpool and Birmingham and they had not had any failed test purchases.

Submissions by West Yorkshire Police

Pc. Arkle stated that she felt that Regency Inns had recognised that there had been a breakdown in management systems at the premises. There had been 3 DPSs in the last eight months and acknowledged that she was aware that Mr. Cantlon had resigned to go travelling. Two members of the bar staff had been very inexperienced and did not seem to be properly supported by senior members of staff or managements. Mr. Griffith, the previous Area Manager and Mr. Bowker, the previous DPS were not longer with the company which indicates that the company recognises that there was a problem at the premises. Pc. Arkle applauded the work which had taken place at the premises to resolve the issues which had been raised by the failed test purchases. However the protection of children from harm was very important to the police. Pc. Arkle was aware that Mr. L'Huiller had taken over management of the premises in 21st April 2008 and that there had been four successful test purchases since that date. There had also been six successful test purchases under the previous DPS. Despite the positive work and the successful test purchases WYP were still nervous regarding Walkabout Inn's ability to maintain the progress they had made. The test purchase volunteers were all 14 to 15 years old, were not made up to look older and were not allowed to lie when asked their age however other youths may be made up and lie about their age to gain access to the premises. The requirement for the premises to have door staff was purely voluntary by Walkabout Inn as it was not a condition of the premises licence, Pc. Arkle suggested that the Sub-Committee should consider a time limited requirement for door staff to be at the premises on certain days and times. It would not be sufficient for a member of staff to stand at the entrance to the premises as they would be required to be S.I.A. registered also Regency Inns may have an issue with staff safety if they were required to stand at the door.

Submissions on behalf of Walkabout Inn

Mr. Walsh did not intend to repeat what had just been presented at the hearing. Regency Inns did not accept that there had been a fundamental breakdown in the management at the premises. There had been concern regarding Mr. Bowker's ability to manage the premises and the company had behaved very well in respect of this matter. The venue had 3000 people passing through its doors and had passed 20 of the 23 test purchases which had taken place at the premises. Mr. Walsh felt that this did not indicate a breakdown in the management at the premises. Regency Inns had addressed the issues and concerns raised by the police. Mr. Bowker had not been as robust as he should have been and had been removed as DPS. The door staff were SIA trained to protect against violence and nuisance at the premises but ultimately the bar staff were responsible for selling alcohol. Training for staff had redoubled since the failed test purchases to ensure the no one under 18 was allowed into the premises or to purchase alcohol. When the premises was busy there would be no reason why well trained bar staff could not check for identification. Door staff were there to maintain order and as the first line of defence to prevent under 18's from accessing the premises. Door staff were not present at the premises between Monday and Thursday as usually there were only 5 to ten people at the bar at any one time. Door staff were employed on a Friday and Saturday night from 18:00 hours and also for events where the risk assessment carried out by the manager indicated that they would be required. In relation to bank holidays the premises

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was usually busy over the August Bank Holiday due to the Leeds Festival but was quieter for other bank holidays. Rotas for all staff were sent to the area manager for sign off and Mr. Carey informed the Sub-Committee that it would be commercial suicide for the premises to operate with door staff during quiet periods.

The Decision

The Sub-Committee had read the review application from the police, the police statements and other documentation provided by both parties. The Sub-Committee had also heard representations made by PC Arkle on behalf of the West Yorkshire Police and Mr Walsh, Counsel on behalf of the respondent. The Sub-Committee were very concerned about underage drinking and consider that the police were correct in this instance to bring an application for a review of the premises licence. The Sub-Committee did consider the imposition of conditions on the licence but decided that this would not be proportionate in the circumstances in view of the action already taken by the company. The Sub-Committee decided to issue an informal warning to the licence holder.

The Sub-Committee commented on the premises' previous good character, improved training policies and the further test purchases which had been successful at the premises and noted that they had taken these things into consideration when making their decision. From the refusals list which had been provided the Sub-Committee felt that the check 21 policy was operating appropriately. Member also noted the installation of Club Scan which they suggested its use should be extended at the premises and that the police should look into the device and its performance.

In making its decision the Sub-Committee was satisfied that its decision was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:
Clerk to the Justices
Leeds Magistrates Court
Westgate
Leeds
LS1 3JP

and accompanied by a copy of this decision letter and the court fee of £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours sincerely

Laura Pilgrim
Governance Services Officer