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Your reference:

Our reference: A61/hg/Squares Review

17th October 2006

SQUARE - REVIEW OF A PREMISES LICENCE FOLLOWING AN APPLICATION MADE UNDER SECTION 51 OF THE LICENSING ACT 2003

On 29th September 2006 the Licensing Committee met to consider a Review of the Premises Licence currently held at the premises known as "Square", 58/63 Boar Lane, Leeds LS1 6HW. The Review had been necessitated following application made by West Yorkshire Police under Section 51 of the Licensing Act 2003 and with regard to the following licensing objectives:

- The prevention of crime and disorder
- Public nuisance
- The prevention of public nuisance

This letter represents the formal decision of the Committee in respect of the Review.

Preliminary Procedural Issues

The Committee considered preliminary matters of a purely procedural nature.

There were no declarations of interest made.

The Committee decided that the procedure for the hearing would be varied to allow the parties present sufficient time to make their case.

The Committee also considered if the public should be excluded from any parts of the hearing. The Committee decided to exclude the public from that part of the hearing where Members would deliberate on submissions and evidence 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.

Prior to the hearing the Committee had considered the Licensing Officers Report containing a copy of the application as made by West Yorkshire Police (WYP) which included several witness statements supplied by officers from WYP and WY Trading Standards.

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Following the despatch of the agenda the hearing the owners of the premises submitted additional information in the form of a report drafted by an independent Licensing Consultant, for Members reference. This had been despatched to all parties prior to the hearing and was accepted by the Committee. Additionally WYP had submitted one further witness statement for the Committee to consider. This too had been despatched prior to the hearing and was accepted as evidence at the hearing.

The Committee then went on to consider the review of the Premise Licence.

The Hearing

The Committee considered the verbal submissions from Ms Emma Farnsworth – barrister – on behalf of WYP. She was accompanied by the following;

Ms Helen Harvey – from the Office of the Force Solicitor

Mr Kevin Robson - West Yorkshire Trading Standards

PC Cath Arkle }
Sgt R Fullilove }
PC Paul Curtis } WYP
Sgt Paul McKenna }
Mr Bob Patterson }

The Committee also considered the verbal submissions of Mr Andrew Woods – solicitor for Tattersal Castle Group Acquisitions. He was accompanied by the following:

Mr Nigel Lunn – observing

Miss Lisa Adamczyk - former DPS of the Square

Mr Craig Southall - current DPS of the Square

Mr Kevin Bradley - Independent Licensing Consultant

Mr Steve Ellison - Operations Manager for TCG Acquisitions

In considering the Review, the Committee took into account the written submissions contained within the Licensing Officers report plus the submissions made at the hearing by the interested parties.

The Committee also had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the Council's own Licensing Policy and in particular Section 12 (Enforcement and Reviews)

The Committee then went onto consider the following paragraphs of the Guidance as the Committee took the view these paragraphs had bearing on the application:

5:99	Reviews
5:107	Powers of a Licensing Authority on the determination of a Review
5:110	the cause or causes of the concerns which the representations identify
5:111	matters to note when considering possible courses of action

Immediately prior to the commencement of the formal hearing, the Committee requested sight of photographs of the two juvenile females who had made one of the test purchases referred to in the evidence provided by WYP. These were provided to the Clerk and distributed to the Committee. The Clerk then made the photographs available to Mr Woods – the solicitor for the Premises Licence Holder.



Following this, it was noted that Mr Woods had not seen the video evidence due to be produced by WYP and WY Trading Standards as part of their submission. The Committee permitted additional time prior to the formal hearing for this video evidence to be shown to Mr Woods and representatives of the Premises Licence Holder.

Reasons for the Review request

In brief, WYP had been concerned about under age drinking within the City Centre and the impact this had on the number of incidents of crime and disorder subsequently perpetrated by persons under the age of 18. To this end, WYP had, in conjunction with West Yorkshire Trading Standards, undertaken a series of monthly test purchases since November 2005 in the City Centre whereby juvenile volunteers would gain entry to premise and attempt to purchase alcohol from bar staff. Square had been visited as part of these operations and on three separate occasions, juvenile volunteers aged 14/15 years had been able to enter the premises and purchase alcohol.

WYP and LCC Entertainment Licensing Department operate criteria whereby any venue that commits three such offences in any 12-month period is liable to a Premises Licence Review, and it was for this reason that WYP sought a Review for the "Square" Premises Licence.

Submissions and Evidence on behalf of the applicant - West Yorkshire Police

The Committee heard representation from Ms Farnsworth on behalf of WYP. Ms Farnsworth made it clear that none of the evidence submitted by WYP had been contested by the Premises Licence Holder. Furthermore, the barstaff involved in the incidents had admitted their guilt and had been issued with relevant Fixed Penalty Notices at the time.

Ms Farnsworth called on Mr Robson of WY Trading Standards to play video footage showing one of the female juvenile volunteers taking part in a test purchase operation at the end of February 2006. It was made clear that the video did not show a test purchase being undertaken at the Squares premises. The video footage was submitted purely to show how the volunteer usually appeared when undertaking a test purchase. The footage had been recorded one week before this particular volunteer had successfully purchased alcohol at Square on 3rd March 2006.

It should be noted that due to the lack of facilities in the Committee Room, Mr Robson showed the footage to groups of 3 Members at a time on a camcorder. At this point the Committee and officers from WYP commented on the lack of suitable equipment to show the footage, as there was no DVD facility in the room. It was noted that most WYP or Trading Standards evidence was of necessity digitally recorded, and often included digital CCTV footage. The Committee noted these comments and requested that adequate provision be sought for the future.

Ms Farnsworth then made her submission to the Committee, in the form of questions and answers to the Police Officers who had submitted witness statements in support of the Review application and were in attendance at the hearing.

In answer to questions from Ms Farnsworth, Sgt R Fullilove confirmed that the first successful test purchase undertaken at Square had occurred on 19th November 2005. Any

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person entering the premises would have to gain entry past the door staff on duty. Following that test purchase a warning letter was sent to the licensee on 30th November 2005. Another test purchase was made in February 2006, which was unsuccessful, however on 3rd March 2006 a successful test purchase occurred. Another warning letter was sent to the licensee on 16th March 2006 which urged vigilance; reminded them of the importance of the Check 21 initiative and of further action which may be taken.

At this point Ms Farnsworth tabled the letter dated 16th March 2006 as it was not included within the written evidence although Mr Woods had seen it.

To continue, Sgt Fullilove explained what he meant by "inability to comply" as included within his written submission. Sgt Fullilove stated he believed the company showed an inability to comply with the conditions and the law, rather than an unwillingness to do so or wilfulness not to abide by the law. He stated that when approached the company had made efforts to address the concerns of WYP but had achieved only limited success. Sgt Fullilove reiterated that the company did not appear to be wilfully trying to fail.

Furthermore, he stated WYP had no crime and disorder concerns associated with Square and had never regarded the premises as being in the top 5 problem venues in the City. He outlined his main areas concerns as being;

- Quality and nature of door staff
- Quality and nature of bar staff
- Training given and supervision given

Sgt Fullilove stated he appreciated that barstaff were often young but this was not a problem particular to this premises as it was difficult to recruit older, experienced staff throughout the trade. However he was concerned about the lack of supervision of the staff by management.

In answer to a question from the Committee, Sgt Fullilove confirmed that no more warning letters had been sent to the licensee after March 2006. Thereafter concerns were dealt with at meetings between WYP and the licensee, the last one being in September 2006. He added that a letter of congratulations was sent to the licensee after an unsuccessful test purchase in February 2006. Sgt Fullilove confirmed the company had attended all prearranged meetings and had entered into full and frank discussions

Ms Farnsworth invited Sgt P McKenna to give evidence and referred to the witness statement contained within the late submission. This related to a more recent site visit on 15th September 2006 undertaken by WYP and LCC Licensing Enforcement. Sgt McKenna explained that he had been informed that the company providing doorstaff to the venue had changed and this would be the first night of duty for the new company. He confirmed that during questioning by police officers, the doorstaff were unable to provide answers to stock questions relating to the capacity of the premises and unable to locate the required Incident Book. Incidents were being recorded within the DPS' own diary. Additionally the visiting team had found that one of the fire exits was partially blocked and slippery. Ms Farnsworth highlighted these facts as being evidence that the company was not abiding by the existing conditions of the Premises Licence. Sgt McKenna then confirmed that other conditions were being met – such as the rope divider at the entrance to separate patrons entering and leaving the premises and Check 21 posters were being correctly displayed.

The Committee sought clarification on these matters and Sgt McKenna explained that during the visit, the team split into 2 parties. The LCC Enforcement Team had discovered problems



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with the fire exit and reported these to Sgt McKenna. When he visited the premises one week later, he reported the fire exit had been cleared and cleaned to a satisfactory standard. Sgt McKenna explained this particular exit opened out onto a shared area with the Bond Street Centre to the rear of the premises. This area was used through the day by non-patrons, often as a toilet, which the Licensee then had to clean. With regard to the use of the DPS diary, he explained the Licensee had ordered the necessary stationery but until this was delivered the use of the DPS diary would be regarded as acceptable.

Ms Farnsworth introduced PC Curtis and referred to his witness statement contained within the Licensing Officers' report. PC Curtis confirmed that the test purchase teams had visited a number of premises on the same nights as Square. Usually eight to ten venues would be listed for a visit. On the evening of 9th June 2006, Square was the only venue to sell alcohol to the juvenile test purchasers.

The Committee referred to the document LIC 14 contained within the written evidence which related an incident on 2nd April 2005 when door staff at the venue had requested assistance from PC Curtis when two 15-year-old youths were found to be drunk and unwell having left the premises. PC Curtis explained that as the two were outside the premises, he could not confirm if they had been inside. The door staff could not tell him how long the youths had been inside, or whether they had been served alcohol at the bar. The Committee expressed concern that the Check 21 condition had not been adhered to, however were reminded that this incident pre-dated the new style Premises Licence and therefore the Check 21 condition on the Licence. PC Curtis added that the Licensee of the premise had made no comment at the time about the youths being in the venue, or how long they may have been inside

PC Arkle then gave a verbal submission to the Committee. Ms Farnsworth referred her to the statement at page 60 of the report relating to a meeting held on 19th June 2006 held with Ms Adamczyk and Mr Ellison. PC Arkle confirmed that the representatives of TCG Acquisitions had set out what measures they intended to introduce at the venue. Mr Bradley, the licensing consultant, had also been in attendance and had outlined the measures he had proposed in his report which was now before Committee. PC Arkle confirmed that no further test purchases had taken place since the third successful test purchase on 9th June 2006.

The Committee were keen to seek the opinion of WYP on the training provision referred to in Mr Bradley's report. PC Arkle stated she understood that training on the prevention of alcohol sales to under age persons was not included; however she had not seen the new training schedule. Ms Farnsworth referred to the additional bundle of papers which included Mr Bradley's report and highlighted the document "Refusal of U 18s" quiz. PC Arkle stated she would like such training introduced and provision should be along similar lines to that employed for prevention of sale of alcohol to persons already intoxicated. This training took the form of role-play, which she believed reinforced literature based learning.

The Committee then considered the evening of 9th June 2006 when the third successful test purchase took place. PC Curtis confirmed that the premises were very busy and the bar staff were seen to be busy, but had been coping with the trade. The premises had been no busier than any of the other venues visited that night in the City Centre. With regards to the concern that barstaff may have been under pressure and too busy to check the age of patrons, PC Curtis replied that the barstaff on that occasion had said he had thought about asking for ID but did not. That individual had been issued with a Fixed Penalty Notice.

The Chair having noted the end of WYP submissions invited Mr Woods to make representation on behalf of TCG Acquisitions (hereafter referred to as TCG)

Submissions and evidence of TCG Acquisitions – the Premises Licence Holder

Mr Woods began by stating that TCG would welcome the comment made by PC Arkle that role play should be included within the training programme, and asked the Committee to have regard to the report produced by Mr Bradley which detailed measures he had proposed. Mr Woods confirmed the report contained recommendations at page 24/25 which the company would implement with immediate effect.

Mr Woods stated the company was deeply embarrassed by the need for this Review hearing and regretted that three test purchases had been successful at the venue. He stated TCG owned approximately 100 premises nationwide and had been in the process of purchasing Square from the Spirit Group in November 2005 when the first successful test purchase had occurred. The venue had been in a transition period until 1 January 2006 when TCG had taken full control. At that time Mr Ellison had been appointed as Area Manager and Premises Licence Holder at the venue. Mr Ellison had 25 years licensing experience and he in turn he appointed Ms Adamczyk as the Designated Premises Supervisor who had 17 years licensing trade experience. She had previously worked for the Wetherspoons chain and had roles as an Area Training Co-ordinator and a "pre-opening co-ordinator" and was well versed in how to set up and operate a premise. It was Mr Woods' submission that TCG believed they had made two sensible appointments.

Mr Woods highlighted the chronology of test purchases which had been undertaken at the premises as:

November 2005 – failed test purchase February 2006 – passed a test purchase

9 February 2006 – failed a test purchase

26 May 2006 – passed a test purchase 9 June 21006 – failed test purchase.

In brief, there had been three failures at the venue since November 2005. However he noted that under TCG management there had been 2 passes and 2 failures.

Since the third successful test purchase on 9th June 2006, TCG had appointed Mr Bradley, licensing consultant, to provide advice to the company. Mr Bradley had made several recommendations in his report, and all of these had been put in place at the venue. Mr Woods added that it would have been wholly inappropriate for TCG to do nothing.

Mr Woods briefly outlined measures which had already been put in place at the premises and asked the Committee to note that, irrespective of the findings of this hearing, any suggestion made by WYP would be acted upon by the TCG:

- CCTV two new cameras had been acquired to add to and upgrade the existing
 digital colour system with 7 cameras which covered the external areas of the premises
 as well. Tapes were kept for 28 days and available to WYP on request. There were
 two monitoring screens located in each office, but these were not permanently
 monitored by staff or management
- Doorstaff following the meeting between TCG and WYP in September, the company had taken the decision to remove the existing Door Staff company and replace it with



- Pro-Tech, a well know security firm in Leeds. 5th September 2006 had been their first night of duty.
- Posters posters were now displayed within the premises, in the staff room and on the tills to remind staff of their responsibilities regarding sale of alcohol to persons under 18
- Staff meetings there had been a number of meetings between Ms Adamczyk and staff from the premises
- Training training sessions had been undertaken, and Mr Bradley had attended the last one held on 28th September 2006

Mr Woods stated that on paper the training programmes for the staff had appeared adequate, however in practice they were not. The premise was one of the busier venues in the City Centre, but that should not be seen as an excuse. The staff should not have been under that much pressure. When the successful test purchases occurred, the DPS and staff had been genuinely upset and remorseful; indeed this had been noted by PC Greasley in his written witness statement.

Mr Woods assured the Committee that since the third successful test purchase, the role of the bar supervisor had been enhanced to include a monitoring role to watch and assist the barstaff and to serve customers when required. He reminded the Committee that Spirit Group were in control of the premises at the time of the first test purchase, thereafter TCG were responsible. Ms Farnsworth confirmed that WYP did not take issue with this statement. Mr Woods closed by again offering apologies on behalf of TCG for the three incidents, noting that three test purchase were a very important concern. With the venue being one of the largest on Boar Lane he said he hoped the Committee would afford TCG some credit for the venue not being in the top 5 problem premises in the eyes of WYP

The Committee then sought clarification from Mr Woods with regard to some of the points made. With regards to pressure on staff and sales figures, Mr Ellison replied that TCG was a private firm established with the aim of selling alcohol. In the last year there had been 600,000 sales at this premise, and sales were hard in this small area of the City Centre. He agreed that sales figures were part of staff meetings, and that this premises was behind on last years sales figures. He stated that sales were important to the company in order to survive, but that did not mean that staff or the company would bypass the law to achieve the figures. Mr Ellison confirmed that there were no individual targets set for individual staff.

Ms Adamczyk explained the monitoring system now used behind the bar. She described how, if a sale of alcohol was refused by member of bar staff, they would press a button on the till marked "under age refusal" which would automatically log the non sale and reason why. She reported that approximately 15 or 16 persons had been refused sale of alcohol in the last week. Door staff employed by Pro-Tech refused entry (under the Check 21 system) to 63 persons and 80 persons on the previous Friday and Saturday nights respectively. Doorstaff were employed on Friday and Saturday nights only

The Committee noted with concern that three test purchases had been successful, however it also very likely that other under age sales, possibly hundreds, had been made by the staff during the same period, and this would cause a significant threat to the licensing objective formulated for the protection of children from harm. To this end, the Committee questioned why supervision of the staff was found to be so lacking when Ms Adamczyk had been described as having 17 years of experience and was regarded by the company as strong

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manager. The Committee highlighted the fact that improved training for staff was all well and good, but would be meaningless without strong management to reinforce it.

In response Ms Adamczyk stated she did not believe that 100s of under age persons had been sold alcohol from the premises and went on to describe the current management structure at the premises as follows: at weekends there were 3 managers on site. Mr Ellison reported the venue was approximately 12,000 square feet in size, with one bar each on the ground floor and first floor. Each bar was approximately 24 feet long, with 6 tills on the ground floor and four on the first floor. On busy nights there would be 16 bar staff serving drinks and 5 members of door staff. Ms Adamczyk further explained that on Fridays there were two managers working the bar area and one working on the floor in a roving role. On Saturday there were 4 managers on site performing those roles, one on each of the bars, one in a roving role and with one covering the upstairs area as well. She stated that the minutes of the staff meetings contained within the Mr Bradley's reports reflected how managers had been reminded to support their staff. She reiterated that there always had been management at the premises, but on those three occasions when the test purchases had been successful, the management had failed.

The Committee commented that the doorstaff at the time of the incidents should have had regard to the Check 21 policy, this would have provided the barstaff with protection Mr Ellison responded that they had not, as the test purchases had occurred on Friday and Saturday evenings when doorstaff were on duty. He suggested that the use of the doorstaff had made bar staff complacent. The barstaff appeared to rely too much on the doorstaff to check the age and ID of customers which in turn made them lax about checking age and ID at the bar. The Committee noted that Mr Bradley, the licensing consultant, had undertaken a covert operation on a Thursday night within the premises. An incident was recorded where a member of the barstaff had checked a patron's age and ID and the group of friends he was purchasing drinks for. The Committee were concerned that on a busy weekend night the barstaff would be under pressure and not able to check ID and age of patrons. Mr Bradley responded by explaining that he had undertaken a training session the previous evening with staff and reiterated to them that it was equally as illegal to allow alcohol to be bought to be supplied to under-age friends as it was to sell directly to a person under 18. He had urged the barstaff guery a patron if they had a concern about the age of the group of friends. Mr Bradley added that the staff did realise that this would be a difficult task but had accepted responsibility for this.

The Committee then turned again to the issue of sales figures and referred to the minutes of staff meetings contained within Mr Bradley's report which appeared to suggest that if sales figures remained low, staff hours could be reduced. The Committee was concerned that staff may feel under pressure to achieve sales figures. Ms Adamczyk reported that the minutes referred to managers' meetings, not general staff meetings. Mr Woods added that the minutes had been included within the submission to show the Committee what discussions were held at the managers meetings and the staff meetings. The figures would not normally be presented to the staff.

The Committee addressed the drinks promotions offered at the premises, and noted that although Mr Woods had stated earlier that there were "no drinks promotions"; the premises had held a promotion night. Ms Adamczyk provided clarification, stating the premises did not offer drinks promotions as such, however would do brand awareness evenings, such as the one referred to. That particular event had been held on a week night and involved a

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particular brewery promoting awareness of their own products. Promotions were not held on Friday or Saturday nights. Ms Adamczyk added that reduced prices were offered through the week but no drink was sold for less than $\mathfrak{L}1.50$ and there were no offers such as 3 vodkas for $\mathfrak{L}1.00$. Mr Ellison added that prices for particular drinks/brands altered weekly depending on the market

Having sought clarification on several matters from the Premises Licence Holder, the Chair then afforded Ms Farnsworth the same opportunity. Ms Farnsworth sought clarity on the employment start date of the new doorstaff company. Ms Adamczyk responded that Pro-tech had been appointed on 11th September 2006. She confirmed that although she had telephoned Pro-Tech to make sure they had received the training package and relevant information about the venue, this had not been passed onto the doorstaff on duty on the 15th September. Ms Farnsworth then sought to determine who was the DPS at the premises. Ms Adamczyk confirmed that she had been the DPS at the time of the three test purchases but had now been promoted. Mr Southall had now been appointed.

The Chair was concerned that Ms Farnsworth appeared to be cross examining the DPS and reminded her that this was not allowed in the hearing procedure rules. Ms Farnsworth then sought to determine how the new training package for the premises would succeed, however the Chair was concerned that this form of questioning implied the introduction of new evidence which had not been presented during her own submissions. The legal advisor to the Committee reiterated that cross examination, and submission of new evidence at this point of the hearing was not permissible.

The Chair allowed Mr Woods the opportunity to say a few words in conclusion. Mr Words, to sum up explained that due to the size and nature of its location, this premises did require strong supervision. He stated he felt that the original training package which had been offered to staff was similar to and as good as other training offered in other venues in the City Centre; however the three successful test purchases had been proved the training to have failed. Mr Woods highlighted the fact that TCG had started to take steps to deal with matters as soon as the incidents had occurred and he reminded the Committee that the improved training had now commenced and the measures suggested by Mr Bradley were now in place.

The Committee in reviewing the Licence considered the verbal and written evidence submitted before them from all parties. In considering this evidence, the Committee felt it first needed to establish if a problem existed at the premises. If the premises were operating in a manner which did not undermine the Licensing Objectives, then the Committee would conclude no problems existed at the premises.

Specific Incidents

The Committee were satisfied that a number of test purchases had taken place and that alcohol had been sold to persons obviously under the age of 18. The Committee also felt that realistically other persons under 18 would have purchased alcohol and that the necessary checks had not been carried out. These incidents would undermine the licensing objectives adopted by the Licensing Authority in order to prevent crime and disorder and to protect children from harm.

The Committee however accepted the comment of WYP that the premises did not cause a significant problem from the point of view of crime and disorder.

The Committee further concluded that action was needed to address this problem. In reaching this decision the Committee identified a number of issues which had caused or contributed to problems at the premises.

Decision

The Committee reviewed the Licence and had regard to all the representations, the Licensing Act and relevant Guidance.

The Committee noted the submission from Sgt Fullilove identifying the following three areas of concern as the quality of doorstaff; quality of training and the quality of supervision.

It was noted that the company which provided doorstaff had recently been changed and time will tell whether this will result in an improvement. The Committee would like the Premises Licence Holder to provide, within 28 days of receipt of this letter, a copy of the instructions given to doorstaff to both the Licensing Authority (Leeds City Council) and WYP.

The Committee heard that staff training had been amended and were satisfied that this is an improvement. It is imposed as a condition however that the training should include role-play with regard to asking for ID from customers as suggested by WYP.

The main area which caused concern to the Committee was that of supervision. It is imposed as a condition that a training document should be prepared for supervisors which should be submitted to both the Licensing Authority and WYP within 28 days of receipt of this letter and that the respondent should adequately deal with any comments thereon.

The Committee considered that this training can be carried out whilst the premises remain open. The Premise Licence is not to be suspended.

The Committee considered this to be a reasonable course of action, but the respondent was reminded that the Committee might not do so should there be a further Review for similar reasons.

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

Appeals should be accompanied by a copy of this decision letter and the court fee of £75.00.

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Yours Faithfully,

Helen Gray Clerk to the Licensing Committee

