
Report of the City Solicitor

Licensing Committee

Date: 28th June 2011

Subject: "The Vine Public" House-Licensing Act 2003 Magistrates Court Appeal.

Electoral wards affected:

City & Hunslet

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Executive Summary

This report informs Members of outcome of "The Vine" Magistrates Court appeal. It also recounts the background to this appeal before identifying the implications of the result.

Purpose of this report

1.1 This report sets out the result of the "The Vine" Magistrates' Court appeal for Members. The appeal never reached a final hearing and this report explains why.

2.0 Background information

2.1 Abbey Business Contracts Limited are the premises licence holders for "The Vine" located at 13, The Headrow, Leeds. The licence permits the sale of alcohol and regulated entertainment.

2.2 During the course of 2010 the premises began to attract particularly high levels of crime and disorder. West Yorkshire Police recorded and scored these incidents on their matrix. These scores being classed as zones described as green, amber or red.

2.3 The premises entered the "amber zone" and West Yorkshire Police attempted to engage with the premises. Guidance was offered to them and an action plan agreed. The premises failed to adhere to this guidance and eventually entered the "red zone." The situation eventually culminated in West Yorkshire Police applying for the review of the premises licence pursuant to Section 51 of the Licensing Act 2003.

2.4 At the review hearing, Members heard representations from West Yorkshire Police and the managing director of the licence holder. Members noted that problems at the premises could be attributed to the excessive drinking of its patrons, a lack of

strong management and an insufficient number of SIA registered door staff at certain times. Much of this was conceded by the licence holder.

- 2.5 West Yorkshire Police had suggested that revocation of this premises licence was not necessary or proportionate. They suggested the existing licence should be modified with the imposition of conditions. Members concluded that this was the correct approach and applied conditions on the licence. These conditions increased the number of door staff, introduced a check 25 proof of age scheme and required staff at the premises to be retrained by an external trainer to the satisfaction of West Yorkshire Police. Finally members suspended the licence for a three week period.
- 2.6 This decision was appealed. The premises licence holder felt the suspension and increased door staff, with door staff required throughout the day, was neither necessary or proportionate.

3.0 Main issues

- 3.1 As Members are aware, the appeal stayed the decision of Members. The public house was therefore permitted to trade through the autumn of 2010 and into the spring of 2011. It traded to its "pre review" licence.
- 3.2 During this time the premises appeared to have improved and attracted only a minimum score of six points on the matrix. Staff at the premises were retrained and a new DPS continued to manage the premises with a stronger style.
- 3.3 Unfortunately, the premises fell back into its old ways and it failed an underage alcohol test purchase. The operation was undertaken by West Yorkshire Police. The offence was committed by a 17 year old barmaid who was insufficiently supervised by the premises. This happened during April 2011. The barmaid was issued with a fixed penalty notice.
- 3.4 Lawyers acting for the premises had to concede that the failed test purchase had undermined their arguments completely. It was therefore agreed to compromise the appeal upon payment of the council's legal costs.
- 3.5 As Members are aware, when hearing an appeal a Magistrates court may uphold the decision of the committee, substitute the decision with one of their own or remit the case back to the council. On this occasion the Magistrates were invited to impose the conditions that Members had imposed at the review except for the suspension. The premises had already closed for a period to complete the re-training of staff. A further suspension would have been disproportionate
- 3.6 Accordingly the court imposed the following conditions on the licence of the premises:
- (a) One SIA registered door staff to be on duty at all times when the premises is open to the public.
 - (b) Two SIA registered door staff to be on duty at the premises from 7 pm to the close of the premises everyday.
 - (c) The premises must adopt a check 25 proof of age scheme.
 - (d) The premises must become a member of the City Centre Pub Watch Scheme.
- 3.7 These conditions took effect immediately and a new premises licence was issued. It is understood that West Yorkshire Police will continue to monitor the premises in the normal way.

4.0 Implications for council policy and governance considerations

4.1 There are no implications for council policy and there are no corporate governance considerations arising from this report.

5.0 Legal and resource implications

5.1 This appeal confirms the courts will consider how the premises presented itself at review but also how it performs between review and the final appeal hearing. The failed test purchase in April was therefore highly damaging to the appellant's case. Members will recall this principle was confirmed in the "*Hope and Glory*" Court of Appeal decision.

5.2 The premises has paid the council's legal costs. These costs will be allocated to the budget of the Entertainment Licensing Section.

6.0 Conclusions

6.1 The result of this compromised appeal is helpful. It demonstrates the importance of the reasons for imposing conditions. Members and Officers are reminded that when dealing with review hearings it is important to identify why a premises is underperforming.

6.2 Imposing focused conditions, which are necessary and proportionate for the promotion of the licensing objectives, will protect the council's position on appeal.

7.0 Recommendations

7.1 Members are invited to note the contents of this report.