

Licensing Act Sub Committee

Date of Meeting:

Report Title: Review a Premises Licence following a Closure Order – Prince Albert, 140 Newton Street, Macclesfield SK11 6RW

Senior Officer: Frank Jordan - Executive Director Places

1. Report Summary

- 1.1. The report provides details of a review pursuant to Section 167 of the Licensing Act 2003 in relation to the Prince Albert, 140 Newton Street, Macclesfield, SK11 6RW and outlines the evidence presented by the parties in relation to the review. The order was issued following agreement between the Police and the Premises Licence Holder at Crewe Magistrates' Court on 27th October 2020.

2. Recommendations

- 2.1. The Licensing Act Sub-Committee considers the premises licence review instigated by S167 of the Licensing Act 2003 for the licence granted to Mr. Simon Johnson for the premises known as the Prince Albert, 140 Newton Street, Macclesfield, SK11 6RW.
- 2.2. The Licensing Act Sub-Committee is requested to consider the review application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.
- 2.3. Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives. Where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:
- a) The prevention of crime and disorder
 - b) Public Safety
 - c) The prevention of public nuisance

d) The protection of children from harm

2.4. Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence presented by the parties in relation to the review.

2.5. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:

- a) The rules of natural justice
- b) The provisions of the Human Rights Act 1998

3. Reasons for Recommendations

3.1. The Licensing Act Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution, and provide the key reasons why the recommendation/s has been made. Link your reasons into appropriate council policies and corporate objectives.

4. Other Options Considered

4.1. Not applicable.

5. Background

5.1. Under S167 of the Licensing Act 2003 a premises licence review is triggered where a Magistrates' Court has made a Closure Order under Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014.

5.2. On 19th October 2020, Cheshire Constabulary issued a Closure Notice on the premises following an increase in the number of serious incidents taking place in and around the Prince Albert involving large scale fights involving multiple people, damage to cars, loud noise, illegal lock ins and reports of drink drivers leaving the property. Cheshire East Council's Licensing Service also received multiple reports of anti-social behaviour going on into the early hours of the morning mainly related to drunken people leaving the pub many hours after it should have closed and often urinating in the street. A copy of the Closure Notice is contained within **Appendix 1**.

5.3. An application for a Closure Order was made to Chester Magistrates's Court on Wednesday 21st October 2020, however at the request of the premises

licence holder's solicitor, the matter was adjourned to Tuesday 27th October 2020.

5.4. On Tuesday 27th October 2020 Crewe Magistrates' Court heard the application for the Closure Order and as a result made a Closure Order which closed the premises for a period of 2 months (8 weeks) commencing on 27th October 2020. Submissions from the police including the statement in relation to the Closure Order and previous history of the premises are attached at **Appendix 1**.

5.5. During the course of the Closure Order hearing, the police and the premises licence holder's legal representative agreed an 8 week closure (commencing on 27th October 2020 and ending on 22nd December 2020), an application to vary the premises to specify a new DPS will be submitted, the premises will remain Covid-19 compliant, CCTV will be installed to the satisfaction of the Cheshire Police and Licensing Authority, new DPS to hold a meeting with the local residents to address their concerns.

5.6. The Magistrates' Court has a duty to notify the Licensing Authority of the Closure Order and this was received on 27th October 2020. A copy of the Closure Order is attached at **Appendix 2**.

5.7. The Licensing Authority is required to notify responsible authorities and interested parties of the review and invite representations.

6. The Premises

6.1. The Prince Albert Public House is a small pub situated in a heavily populated residential area. The property is an end terrace and is located very close to the town centre of Macclesfield. It has a small outside area to the rear of the premises, which is used as a beer garden/smoking area. Newton Street has a mixture of residential and business premises, but mainly residential terrace properties.. A copy of the current premises licence is attached as **Appendix 3**.

6.2. Licensing records suggest that the premises has been licensed under the Licensing Act 2003 since 2005 and was transferred to a Mr. Paul Shrubsall in April 2011. Mr. Shrubsall was named on the premises licence as the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) until a further application to transfer the premises licence was made on 24th December 2019 to specify Mr. Simon Johnson as the PLH. Mr. Paul Shrubsall remained as the DPS named on the licence.

- 6.3. On 5th August 2020 Cheshire East Council received an application to vary the DPS to specify Mr Neil Naylor as the DPS, however on 18th August 2020 Cheshire Police submitted an objection to Mr. Neil Naylor becoming the DPS on the grounds of suitability. As a result of this objection, the application to vary the DPS was withdrawn by the PLH and this meant that Mr. Paul Shrubsall remained as the named DPS on the premises licence.
- 6.4. On 29th September 2020 Cheshire East Council received a Section 41 Notice (Request to be removed as the DPS) from Mr. Paul Shrubsall. This request had been submitted with immediate effect. A copy of the notice is attached as **Appendix 4**.
- 6.5. The effect of the submission of a S41 Notice meant that alcohol could no longer be sold from the premises until an application to specify a new DPS had been submitted to Cheshire East Council as the Licensing Authority.
- 6.6. On 29th September 2020 an email was sent to the PLH to advise him of the receipt of the S41 notice. This email was followed up by a letter. A copy of the email and letter are attached at **Appendix 5**.
- 6.7. On 01st October 2020 Cheshire East Council received an application to vary the premises licence to specify a new DPS. This application was submitted with immediate effect which means that the application takes effect during the application period.

7. Premises History

- 7.1. The premises came to the attention of Cheshire Constabulary and Cheshire East Council's Licensing Service as a result of an increase in the number of incidents taking place in and around the area of the premises, specifically following 4th July 2020 when premises could re-open following a period of "lockdown" as a result of the Covid-19 pandemic. On 06th August 2020, Cheshire Police called a meeting with the PLH to discuss their concerns.
- 7.2. Present at the meeting was Mr. Simon Johnson, PLH, Mr. Neil Naylor, Acting DPS, Ms. Jayne Bailey, Partner to DPS, PC Matt Bassirat, Beat Manager for Macclesfield, Lesley Halliday, Licensing Officer for Cheshire Police and Amanda Andrews, Licensing Enforcement Officer for Cheshire East Council. During the meeting it became apparent that the Prince Albert was being run by Mr. Neil Naylor who had no previous experience of running a licensed premises and the Police implemented a Licensed Premises Action Plan. A copy of the Action Plan is contained within **Appendix 1**.

7.3. During the months of August and September the Police were called to a number of further serious incidents at the premises and as a result PC Matt Bassirat visited the premises in order to conduct a licensing visit to check on the progress of the action plan. PC Matt Bassirat very quickly became aware that there were a number of failures in relation to the action plan and it is following this visit that the Police decided to take formal action by issuing a Closure Notice.

8. Representations

8.1. The Licensing Authority is required to notify the Responsible Authorities and interested parties of the review.

8.2. Notices are required to be placed at the premises and on the Council's website. These have been complied with as per the regulations. The consultation period expired on 04th November 2020. A copy of the notice of review is attached at **Appendix 6**.

8.3. This hearing is required by the Licensing Act 2003 because a review has been triggered by the issue of the Closure Order.

8.4. At the time of publishing this report, the consultation period had not finished.

9. Implications of the Recommendations

9.1. Legal Implications

9.2. Under section 76 of the Anti-Social Behaviour, Crime and Policing Act 2014, a police officer of at least the rank of inspector, or the local authority, may issue a closure notice if satisfied on reasonable grounds:

- a) (a) that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public, or
- b) (b) that there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

9.3. A closure notice is a notice prohibiting access to the premises for a period specified in the notice. The maximum period is 48 hours:

- (a) If, in the case of a notice issued by a police officer, the officer is of at least the rank of superintendent; or
- (b) If in the case of a notice issued by a local authority the notice is signed by the Chief Executive Officer of the authority or a person designated by him

or her for the purposes of this section.

9.4. Whenever a closure notice is issued an application must be made under Section 80 of the 2014 Act to a magistrates' court for a closure order.

9.5. An application for a closure order must be made:

- a) By a constable, if the closure notice was issued by a police officer or;
- b) By the authority that issued the closure notice, if the notice was issued by a local authority.

9.6. The application must be heard by the magistrates' court not later than 48 hours after service of the closure notice. In this case, the matter was heard at Chester Magistrates' Court on 21st October 2020 and as a result adjourned until 27th October 2020.

9.7. The court may make a closure order if it is satisfied:

- a) That a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or
- b) That the use of the premises has resulted, or (if the order is not made) is likely to result in, serious nuisance to members of the public, or
- c) That there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

9.8. A closure order is an order prohibiting access to the premises for a period specified in the order. That period may not exceed 3 months. A closure order may prohibit access:

- a) By all persons, or by all persons except those specified, or by all persons except those of a specified description;
- b) At all times, or at all times except those specified;
- c) In all circumstances, or in all circumstances except those specified.

A closure order:

- a) may be made in respect of the whole or any part of the premises;
- b) may include provision about access to a part of the building or structure of which the premises form part.

9.9. Once the licensing authority has received notification from the court that a closure order has been made, it must reach a determination on a review of the premises licence no later than 28 days after the day on which it receives the notice.

9.10. The review hearing itself has to be commenced within 10 working days of receipt of notification and within 5 working days notice being given to the licence holder and the police (and any other participants) of the hearing.

9.11. The Sub-Committee must consider the order and any relevant representations received.

9.12. The below course of actions are open to the Sub-Committee at the review hearing; they can:

- a) Modify the conditions of the Licence (permanently or for a temporary period of up to 3 months);
- b) Exclude a licensable activity from the scope of the licence (permanently or for a temporary period of up to 3 months);
- c) Remove the Designated Premises Supervisor;
- d) Suspend the Licence for a period not exceeding 3 months;
- e) Revoke the Licence;
- f) Any or none of the above.

9.13. Members are reminded that should any conditions be added or modified, they should be practical, enforceable and appropriate to promote the Licensing Objectives.

9.14. By virtue of section 52(11) of the Licensing Act 2003, any decision of the Sub-Committee to take one or more of the steps set out above does not have effect:

- a) Until the end of the period given for appealing against the decision; or
- b) If the decision is appealed against, until the appeal is disposed of.

9.15. Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to exercise its various functions doing all that it can to prevent Crime and Disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.

10. Finance Implications

10.1 There are no financial implications.

11. Policy Implications

11.1 The Licensing Authority has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003.

11.2 The Licensing Authority must also have due regard to the guidance issued under section 182 of the Licensing Act 2003.

11.3 Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.

12. Equality Implications

12.1 There are no direct equality implications.

13. Human Resources Implications

13.1 There are no human resources implications.

14. Risk Management Implications

14.1 The Licensing Sub-Committee will hear representations made on behalf of both the applicant and the 'relevant person' who has submitted their representation and will make a decision on the basis of the evidence presented to it. The Licensing Act 2003 makes provision for appeal to the Magistrates' Court of any decision made by the Licensing Authority.

15. Rural Communities Implications

15.1 There are no direct implications for rural communities.

16. Implications for Children & Young People/Cared for Children

16.1 There are no direct implications for children and young people.

17. Public Health Implications

17.1 There are no direct implications for public health.

18. Climate Change Implications

18.1 There are no direct implications for Climate Change.

19. Ward Members Affected

19.1 Macclesfield Central – Councillor Liz Braithwaite.

19.2 Macclesfield Central – Councillor Ashley Farrell.

20. Consultation & Engagement

20.1 Consultation in respect of submitting an application to review a Premises Licence Application is prescribed in the Licensing Act 2003 and has been fully complied with.

21. Access to Information

21.1 The background papers relating to this report can be made available by contacting the report writer.

22. Contact Information

22.1 Any questions relating to this report should be directed to the following officer:

Name: Amanda Andrews

Job Title: Licensing Enforcement Officer

Email: Amanda.andrews@cheshireeast.gov.uk

Appendix 1 – Submissions from the police including the statement in relation to the Closure Order and previous history of the premises

Appendix 2 – Copy of Closure Order from the Magistrates' Court

Appendix 3 – Copy of current Premises Licence

Appendix 4 – Copy of S41 Notice

Appendix 5 – Copy of email and letter sent to PLH following receipt of S41 Notice

Appendix 6 – Copy of application to vary the premises licence to specify a new DPS

Appendix 7 – Copy of public notice of review under S167 of the Licensing Act 2003