

Appendix 1

SUNDERLAND CITY COUNCIL LICENSING AUTHORITY LICENSING SUB-COMMITTEE HEARING REVIEW HEARING

LICENSING ACT 2003 LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

NOTICE OF DETERMINATION

DECISION

The Sub-Committee, in reaching their decisions, have taken full account of all of the written documentation that was presented in the two bundles of evidence and have listened very carefully to three days of oral evidence in respect of this review application. The application was by the Police and was based upon the two licensing objectives of:-

- (a) the prevention of crime and disorder; and
- (b) the prevention of public nuisance.

Following the publication of the Notice of Review additional representations were received from Environmental Services and interested parties. This Hearing has taken too long to come to final determination because of a number of factors particularly relating to requests for further disclosure. We do not propose to comment further on this other than to advise that we believe that this situation could have been avoided. It is of some concern that this matter appears to have been handled as a criminal trial rather than a review hearing in the format of a discussion led by the licensing authority.

That being the case we are conscious that in reaching our decision we have to be entirely fair to all of those concerned and provided full and ample opportunity to make such representations that are appropriate to all the respective positions. In the Hearing there has been representations from the Police, Environmental Services and interested parties plus, of course, those representing Mr. Young, the owner of the premises and premises licence holder.

In respect of the evidence we heard our findings are as follows. We heard brief evidence from PC Mick Butler, the Licensing Officer. PC Butler took us through CCTV footage of a disturbance which occurred at the premises on the 25th February, 2007. The footage shows a large number of customers leaving the nightclub, many who appeared to be inebriated. Scuffles taking place, punches being thrown, others drinking from bottles and entering residents' gardens. It is noted that the patrons were

not quickly moving away from the scene despite this incident taking place at 2.40 a.m. in late February. The situation is clearly one that involved a large number of police officers having to attend and would have made it entirely impossible for any residents to sleep through or be unaffected by it.

PC Butler advised that he was not aware of any cheap drink promotions at other premises. With the exception of the football club the closest other licensed premises was over 400m away. He confirmed that the Wetherspoons establishment had a value for money policy which meant that their prices tended to be lower than other premises. PC Butler confirmed his involvement with Mr. Young, particularly following the raid, and had been involved in providing Mr. Young with a list of other door security companies to take over from the original company which, it was felt, were inadequate and in part responsible for the premises to be used for the supply of drugs which resulted in the raid by the Police on the 8th June.

PC Butler confirmed Mr. Young eventually went with a company of door supervisors which was not on the list that he provided, but that this company did cover a number of premises in Sunderland and did use SIA registered door staff. He accepted that Mr. Young complied with all of the Police's requests at that time and confirmed he had assisted in the location of the additional CCTV cameras.

Superintendent Blyth was the main Police witness in the statements. She confirmed that for a long period of time the Police had been concerned with the number and severity of incidents which were related to these premises. A number of historical incidents were identified. She confirmed in her evidence that the Police raid on the 8th June had resulted in 13 convictions of individuals for supplying drugs, including Class A, and that the majority of these persons who had been convicted had received custodial sentences. The Committee are fully aware of the difference between a conviction for possession of drugs and supply and note with deep concern that these 13 people were convicted of supplying. It is therefore our belief that these premises had a significant problem relating to drug usage.

Superintendent Blyth confirmed the levels of liaison that she and her officers had had with Mr. Young and his staff before the Police raid and subsequent to it. The Police confirmed that in the application for the review they had identified 7 items which they wished the London Inn to agree to before withdrawing the review. It was accepted that following negotiations, Mr. Young complying with all of these requests with the exception of agreeing to a reduction in hours. The Police had agreed not to pursue this aspect of the review. She confirmed that the Police had however changed their view following the incidents on the 29th December when an individual is recorded as being assaulted by door staff within the premises and that the lack of faith in the management to run the premises was finally dissolved by the further assault witnessed by Environmental Services Officers on the 26th January, then the attempts to intimidate those same Officers the following night by up to 12 men incorporating the nightclub's door staff.

This was then followed by an inappropriate and threatening telephone call to Marion Dixon on the 28th January which appeared to have sinister connotations. It was confirmed that the man who was assaulted by the door staff refused to make a

complaint or assist the Police and that the Environmental Services Officers failed to pick out the man responsible in an ID parade arranged almost 2 months later.

In respect of the particular incidents we heard evidence from the 2 Environmental Services Officers, Mr. Reay and Mr. Main. We also have read the Police's account as to what happened. These witnesses were all vigorously questioned by Counsel for Mr. Young, Mr. Knowles. The 2 Environmental Services Officers gave accounts of their location and the view that they had on the 26th of the assault which they believed was carried out by the door staff of the London inn.

Having heard the accounts it is our belief that they are entirely accurate in respect of what had occurred and that despite no conviction or charge being brought those persons involved who were dressed with dark jackets, white shirts and visible badges, were clearly members of the door staff of The Groove. It was suggested that the surrounding of the Environmental Services Officer's car whilst parked 30 yards away in the football club the following night was a direct result of a robbery which occurred in October last year. This robbery was by a man armed with a knife and occurred during the daytime hours. The surrounding of the Officer's car occurred at about 2.00 a.m. in the morning. It is our finding that the behaviour of the door staff had nothing whatsoever to do with this robbery incident but was directly linked to the same officers observing the assault carried out by the door staff the day earlier.

The 2 Environmental Services Officers were questioned in respect of whether they felt intimidated or not. A group of 12 large men, some of whom were door staff with their badges displayed, split into 2 groups, blocked the exit, approached their vehicle, 2 standing in front of the vehicle with their hands on the bonnet can only, in our view, be interpreted as being intimidatory. Whilst it is accepted that the Police Officers' statement state they attended at this time and spoke to the 2 Environmental Services Officers who advised that they were not intimidated we believe this cannot be the situation. The Environmental Services Officers both did not in evidence recall the word intimidation but both advised that they were asked if they were alright and since they had not at that stage been physically or verbally threatened they confirmed this with the Police.

The version of events that the Police were called across by the door staff to enquire as to what the 2 officers in the car were doing contradicts with the evidence, that the Police just happened to arrive at that particular time causing the door staff to back off, leaving the situation to be resolved without anything worse occurring. This situation seems to have been confirmed and exacerbated by the fact that Mr. Collins, the proposed DPS, had contacted Marion Dixon on the 28th January and advised her that he had access to the officers' names and home addresses. It is our view, as expressed by Superintendent Blyth, this has significant and serious connotations and believe was nothing short of trying to intimidate and trying to prevent Environmental Services from carrying out their tasks.

The reasons provided for the other incidents on the 29th December were that the door staff, having received information via a pub watch radio message, that the Police were looking for an individual who was carrying a knife and they identified that this individual was in the West One Lounge. Door staff had then entered, restrained in an appropriate headlock, patted him down to see if he was carrying a knife and removed

him from the premises. Having viewed the CCTV footage it is our opinion that he was deliberate ran head first into the pole by the door staff and was further assaulted outside of the premises.

This incident followed the implementation of the new requirements of the Police and according to Mr. Young they operate a search and hold policy. On this occasion they did not keep a hold of this man or call the Police having put forward that they believed he was the man wanted by the Police for an assault. Indeed we heard evidence from PC Fee who confirmed that he had attended the premises on the 29th December having received a call that a fight was taking place at the club house and believed that this referred to the London Inn. He spoke to door staff who made no mention of having earlier ejected the individual who they claimed the Police had wanted and even ran to the football club ahead of the officer to ascertain that no fight had occurred at these premises either.

It is our conclusion that the door staff deliberately ran the man's head into the pole and deliberately misled the Police irrespective of whether they believed it was the individual the Police were seeking or not. The review also heard evidence from Inspector Wright and PC Watson in respect of whether the level of incidents at The Groove had increased or decreased subsequent to the raid in June. Inspector Wright denied having informed Mr. Young that there had been a 75% reduction in reported incidents. He acknowledged he may have said over a particular week or short period that things appeared to have been very quiet.

PC Watson, from the information, as the Performance Officer who analyses these statistics, stated that the exact figures had not yet been calculated but that having had a fall it was his belief that the number of incidents was again rising and that these fluctuations of trends could be affected by the weather and other outside factors which was why statements regarding specific dramatic falls were not made by the Police until a long period of evaluation statistically proved this.

Despite not having exact figures on the matter we believe there is no evidence of the dramatic change suggested by Mr. Young.

Marion Dixon, the Environmental Services Manager, gave evidence partly in respect of the 2 officers who we believe were intimidated confirming that they were not videoing the premises which was at one time suggested. She confirmed her conversations with Mr. Young and Mr. Collins regarding the various incidents and gave evidence in respect of the number of noise monitoring reports that were carried out in the area.

It was suggested to her that the noise monitoring reports simply demonstrated that Spout Lane was a busy road with a high volume of traffic and that 98% of all of the recordings above the World Health Organisation's 45 dB recommended level related to that and not the noise from the patrons leaving the night club.

In the course of the Hearing we heard a recording from a resident's home in Spout Lane and would have to acknowledge what Mrs. Dixon is saying and that the level of noise heard on the tape is such that it would disturb any resident subjected to it and prevent sleep. It is our finding that the noise from the patrons leaving the night club is

a public nuisance and would constitute a significant problem to any resident subjected to it.

Mrs. Dixon suggested that she believed there was no other option to deal with this problem other than reducing the hours of the night club and that this was her recommendation. She confirmed that in respect of internal noise Mr. Young had been extremely co-operative and had done all the work requested to ensure that this did not create a problem. In addition to the responsible authorities we heard evidence of 2 interested parties. Mrs. Gardner was acting as a representative of a number of elderly residents of Whiteladies Close and for a Mr. Brown who had submitted representations but was unable to attend because of ill-health.

She advised of the levels of disturbance and fear that the local residents have from customers going to and from the night club. She gave evidence in respect of the concerns regarding noise, screaming and shouting, vandalism, fighting, people have sex in the garden, urinating in gardens and street. We believe Mrs. Gardner to be an honest and concerned individual and accept fully the evidence that she has given and the impact the situation is having on these residents.

The second interested party, Mrs. Reid, we again found a most impressive and reliable witness who gave clear heart felt evidence in respect of the problems which she associated directly with the club. She, having lived in Spout Lane for 12 years, described the situation as a living hell advising that she could not sleep during the nights that The Groove was open, that her health was being affected by having to take sleeping tablets. She was able to provide very clear evidence regarding whether or not Spout Lane was a through route for traffic and we find we were persuaded by her evidence that it is not.

She advised that the traffic noise that caused a problem was the numerous taxis that were picking up from the night club. She described the scenes within the CCTV as reminding her of Newcastle's Big Market and we must acknowledge the similarities.

The interested parties expressed the view that this was a residential area and not suitable for a night club and were seeking the revocation of the licence because of this.

Mr. Young gave evidence that he had run the premises for 12 years and had not had any problems that neither the Police nor Environmental Services and no local resident had ever made any complaint to him. He advised that he had fully co-operated with the authorities and would continue to do so and would do everything possible to minimise any problems. He explained that his night club was the main source of his income and any reduction in hours would have a devastating affect on this.

We acknowledge that Mr. Young, certainly from the day of the Police raid and the Closure Notice, has done a significant amount of work to attempt to alleviate the problems, indeed he has complied fully with the requirements of the Police regarding having the Closure Order lifted.

Much has been made in the Hearing of Mr. Young's management structure and his ability to deal with the running of the 4 premises within the London Inn complex. He

indicated that he has upped his involvement in the business from attending the premises only once or twice per month to a level that he is there very regularly. He acknowledged that he has made a genuine mistake in putting forward Mr. Collins as the DPS but relied on the references that Mr. Collins had. He also believed that he had acted appropriate in dealing with the assault by a member of his new door security company by banning that individual from taking that role. The Police, via Superintendent Blyth in particular, questioned his ability to adequately run the premises bearing in mind the number and nature of incidents that have occurred.

It is our view that Mr. Young, until recently, spent very little time in managing his premises and, as such, the management has been seriously shoddy and lacking in significant areas. It is our view that the curtain put up at Mr. Young's direction was not as he said, decorative, but was a simple attempt to exclude the view of the CCTV camera. Mr. Young also acknowledged that he does not have somebody monitoring the numerous CCTV cameras within the premises. This is, in our view, a significant failing and one that needs to be rectified.

If Mr. Young, or anybody else, had viewed the cameras they would have clearly seen that this curtain was wholly inappropriate. As such we find it very difficult to reach any other conclusion than that which we have stated.

Mr. Young made a point of stating that he would be bankrupt if the hours for the night club were changed. Whilst not having access to the financial documentation to substantiate or contradict this, Mr. Young has 3 other licensed premises within the building and presumably makes money from these premises as well. In that respect we have been referred to the Government Guidance, in particular we have considered paragraph 11.23 which at the end states "the licensing authorities' duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises.

In addition, again in respect of the criminal activity, we have considered paragraph 11.25 which it is stated that the Secretary of State considers activity should be treated particularly seriously where licensed premises are used for the sale and distribution of Class A drugs.

The 13 convictions the Police obtained for supplying drugs lead us to take a serious view of activities on these premises. We also have considered the Guidance in respect of conditions and acknowledge as per paragraph 2.4 that conditions cannot regulate customer behaviour once they are beyond the direct management of premises. This does not, however, mean that the premises concerned being where they are, is not the source of the problems. Clearly, patrons' behaviour away from the premises is not something that Mr. Young can control. It does remove the fact that these premises would not be in this area if it were not for the presence of this particular night club.

We have also considered paragraph 2.36 of the Guidance in respect of focussing any conditions on sensitive period. The Guidance gives the example of music noise from premises from midnight where residents in adjacent properties may be attempting to sleep and that conditions may also prove necessary to address disturbance anticipated as customers enter or leave.

It is our belief that local residents within the vicinity are significantly affected by public nuisance in the early hours of the morning as a consequence of these premises.

In considering what action we need to take we have considered paragraph 11.18 of the Guidance and acknowledge that the remedial action taken should generally be directed to the causes and should be no more than a necessary and proportionate response. It is finding that The Groove night club is the direct cause of the concerns.

The Sub Committee have considered very carefully all of the evidence and what action is necessary to promote the licensing objectives. We have considered all of the Powers available under Section 52(4) of the Act. It is our view that this is not a matter that can be dealt with with no action and is one that at very least requires modification of the conditions attached to the license to promote the licensing objectives in respect of the prevention of crime and disorder and prevention of public nuisance.

We have considered whether it is appropriate or necessary in order to promote the objectives to revoke the licence completely. This is an option that we do not propose to follow at this particular time. We want to provide Mr. Young with a further opportunity of demonstrating that he can get his house in order. We accept that there are serious concerns in respect of the way the premises have been managed and note that Mr. Young is to bring in a new designated premises supervisor and would require that this be done sooner rather than later and that Mr. Young takes a full and active role in the running of the premises.

In deciding not at this stage to revoke the license what other options are appropriate. We do not think that a suspension of the licence for a period of 3 months is anything other than a punitive measure and would not achieve the changes that we are hoping for. To exclude a licensable activity from the licence would not achieve anything other than to make the business almost unsustainable.

In respect of removing the DPS clearly that has already been addressed with Mr. Young putting forward an alternative to Mr. Collins. That leaves us with modifying the conditions on the licence. Since the Police raid in June the suggested improvements have been carried out by Mr. Young. It is our view that those requirements listed 2 to 7 in this Notice be imposed as conditions on the licence with the additional requirement regarding CCTV that a member of staff be appointed to monitor the output of all of the cameras operated in connection with these premises at all times they are open to the public.

RESOLVED that the Committee decided that:-

The final decision that we make is that the hours in all of the various premises within the London Inn building, that comprises of The Groove Night Club, West One bar, Westminster Lounge, Piccadilly Bar be precluded from engaging in any licensable activity after 12:00 midnight every day of the week and that for those bars where activities currently finish prior to midnight, the earlier existing closing time on those days will continue to operate on the licence.

The conditions that we are seeking to impose will be permanent and not temporary conditions. It is our view that Mr. Young has got to get his house in order and demonstrate for a significant period of time that no problems will arise from a later opening hour before seeking our agreement to any relaxation by way of variation of the hours we have decided upon. The change of hours may well reduce the numbers of people attending and certainly will ensure that those attending are well clear of the premises before the early hours of the morning which the problem in the case.

In our view no other option was available to us in this matter.

Signed D. Richardson
Chairman

Date: 11th April, 2008