

LICENSING SUB COMMITTEE

Thursday, 16 February 2012

Premises: Premier Inn, 20 St Mary At Hill, London, EC3R 8EE

Sub Committee

Alderman Simon Walsh MA (Chairman)

Deputy Doug Barrow CC

Peter Dunphy CC

City of London Officers

Rakesh Hira - Town Clerk's Department

Paul Chadha - Comptroller & City Solicitor's Department

Peter Davenport - Markets & Consumer Protection Department

The Applicant

Represented by Chris Grunert (John Gaunt & Partners LLP)

Parties with Representations

City of London Police - Inspector Rita Jones, John Hall and Paul Holmes

Also in attendance

Jon Averbs, Environmental Health and Public Protection Officer

Licensing Act 2003 (Hearings) Regulations 2005

1. A public hearing was held in the Committee Rooms, Guildhall, London, EC2, to consider the objections submitted in respect for an application made by Whitbread Group Plc for the proposed premises 'Premier Inn, 20 St Mary at Hill, London, EC3R 8EE'.

The application sought to provide licensable activities for the:

- i) Sale by retail of alcohol and;
- ii) Films

between the hours of:

10:00 to 00:30 Monday to Sunday;

And for the provision of late night refreshment between the hours of:

23:00 to 00:30 Monday to Sunday.

The application sought to open the premises between the hours of:

06:00 to 01:00 Monday to Sunday.

In addition the application sought to permit the sale by retail of alcohol from 10:00 New Year's Eve to 00:30 New Year's Day (morning of 2 January). The application sought to permit the sale by retail of alcohol to hotel residents 24 hours a day.

2. The Chairman introduced himself and the other Members of the Sub-committee.

3. It was noted that no members of the panel had any personal or prejudicial interest.
4. The Chairman began by explaining why a Sub-committee had been convened with regards to this application. He explained that the Licensing Committee placed great importance on its long-standing policy of having 2003 Act licences bear only as few conditions as were needed and of having those conditions expressed in clear and unambiguous language. The Sub-committee felt that the agreement between the police and the Applicant, however well-intentioned, did not adequately recognise this policy as some of the conditions were disproportionate and, in places, less clearly worded than they could have been. Furthermore, he pointed out that the statutory basis for this policy and the Sub-committee's unusual stance could be found in s4(1) and s4(3) of the 2003 Act, paragraphs 46-52 of the Corporation's Licensing Policy (2011) and sections 10.2, 10.3, 10.4, 10.7, 10.8, 10.10, 10.11, 10.13 and 10.14 of the Guidance issued by the Secretary of State under s182 of the Act (October 2010). In respect of section 10.8, the Sub-committee noted with approval the efforts made between the parties to reach agreement but also noted that this might have been more easily achieved had those negotiations begun before submission of the application, as the Guidance recommends, rather than afterwards. All of the preceding references were read out in full by the Chairman.
5. In response to a question by the Chairman, Inspector Rita Jones explained that that crime and disorder may take place around the premises ranging from drunkenness to- rape which could occur in a hotel room hence a number of conditions were placed on the licence which were lifted from the City of London's pool of conditions. She was however content with any guidance the Sub-committee may have.
6. A detailed discussion took place on the CCTV condition which was suggested by the City Police to be placed on the licence. Inspector Rita Jones explained that CCTV was a tool which the police could use to prevent crime or to determine if someone was or was not a suspect by looking at the CCTV data; and in order for this to take place a staff member who was conversant with the operation of the CCTV system should be present at the premises at all times so that in the event of an incident he/she could show the Police the recent footage with minimum delay. It was noted that the CCTV would cover all public entries and exits (not fire exits or the toilets which were within the licensed area).
7. In response to a question by a Member of the Sub-committee, Inspector Rita Jones explained that it was not envisaged that a CCTV condition would be placed on every hotel premises licence in the City but that it depended on the hotel and would be determined on its individual merits.
8. A discussion took place on the role of the Crime and Reduction Officer, Inspector Rita Jones explained that this Officer would visit the premises and provide advice on where best to fit CCTV cameras which may for example only be in the bar area, once this was done the Officer would produce a report which

would detail where the cameras will be located and would be sent to the premises and the City Police.

9. A discussion took place on the SIA registered door supervisors and the need for each entry to be verified by the signature of the Designated Premises Supervisor (DPS) or in their absence by such other person authorised in writing by the DPS to do so. Mr Grunert pointed out that events would not take place on a day-to-day basis in the basement area and therefore a SIA door supervisor would not always be required but if this condition provided comfort to the police it could be placed on the licence. Inspector Rita Jones explained that there had been incidents in her experience with other premises whereby there had been problems with door supervisors and therefore it was suggested that this condition be put on the licence.
10. A discussion took place on the incident log book condition and the Chairman pointed out that if for example, a chambermaid had stolen a guest's watch and it was not recorded in the incident log the barman would not be able to sell any alcohol. The Chairman highlighted that the operator should be fully clear on what duties had been imposed on them. Inspector Rita Jones explained that she would welcome any guidance the Sub-committee had to offer on the wording of the condition. Mr Grunert pointed out that a log book of some sort would still be completed whether a condition was placed on the licence or not.
11. Mr Grunert explained that the application sought to grant the licence which would be in place in 12-18 months time once the property transaction was completed.
12. The Members of the Sub Committee withdrew to deliberate and make their decision, accompanied by the representatives of the Town Clerk and the Comptroller and City Solicitor.
13. The Chairman informed all parties that the application for a premises licence had been granted and that a detailed letter would follow within the statutory timescales.
14. The Chairman thanked all those present at the hearing.

The meeting closed at 11.10am

CHAIRMAN

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Decision of the Sub-committee circulated to all parties on 22 February 2012

THE COMMON COUNCIL OF THE CITY OF LONDON
LICENSING SUB-COMMITTEE

Alderman Simon WALSH, MA (Chairman)
Doug BARROW, Deputy
Peter DUNPHY, CC

Thursday 16 February 2012 (09.30-11.10)

IN RE:

PREMIER INN (proposed)
20 St Mary at Hill, London EC3

At today's hearing the sub-committee was addressed by Mr Chris Grunert of John Gaunt & Partners on behalf of the Applicant and by Insp Rita Jones and John Hall on behalf of the Commissioner of Police of the City of London. There were no other written representations.

No documents were submitted to the sub-committee beyond those contained in the bundle prepared by the Town Clerk for the hearing.

On 20 December 2011 Whitbread Group plc applied under the Licensing Act, 2003 for a premises licence in respect of commercial premises in St Mary at Hill which it is their intention to convert, at some time in the future, into a hotel under the well-known 'Premier Inn' brand. One relevant representation was received from the police who felt the Applicant's operating schedule did not go far enough to promote the crime prevention objective. Subsequent discussions between the police and the Applicant resulted in a set of proposed conditions acceptable to both parties.

The parties were therefore perhaps understandably surprised to be called to a hearing. The Chairman explained why: the Licensing Committee placed very great importance on its long-standing policy of having 2003 Act licences bear only as few conditions as were needed and of having those conditions expressed in clear and unambiguous language. The sub-committee felt that the agreement between the police and the Applicant, however well-intentioned, did not adequately recognise this policy as some of the conditions were disproportionate and, in places, less clearly worded than they could have been.

The statutory basis for this policy and the sub-committee's unusual stance can be found in s4(1) and s4(3) of the 2003 Act, paragraphs 46-52 of the Corporation's Licensing Policy (2011) and sections 10.2, 10.3, 10.4, 10.7, 10.8, 10.10, 10.11, 10.13 and 10.14 of the Guidance issued by the Secretary of State under s182 of the Act (October 2010). In respect of section 10.8 the sub-committee noted with approval the efforts made between the parties to reach agreement but also noted that this

might have been more easily achieved had those negotiations begun before submission of the application, as the Guidance recommends, rather than afterwards. All of the preceding references were read out in full by the Chairman at the start of the hearing.

Insp Jones presented the Commissioner's position in a commendably forceful submission backed up by her own recent personal knowledge. Without rehearsing the detail of what she said, she left the sub-committee in no doubt that the police view was that they would and should use every possible means to acquire the widest range of crime prevention and detection tools for the general benefit of law-abiding City residents, businesses, workers and visitors. We could find no fault with this laudable aim. We did, however, feel that her proposed conditions were excessive and disproportionate for the reasons which are given below. If this is in any way a criticism it is meant to be a positive and constructive one and we hope that it will be taken in this way as the sub-committee very much values the extraordinary work done by the City Police to promote the licensing objectives across the range of licensed premises in our dense and varied community.

Mr Grunert rode spiritedly to Insp Jones' defence on many points, perhaps to justify his firm's agreement to the conditions we appeared to be criticising. We accept, of course, that he was acting in his client's best interests both in advance of and at the hearing but we must point out that not all those who apply for licences in the City have pockets as deep as those of Whitbread and that we must have a policy that is fair and proportionate to all.

CCTV: We agree that CCTV is an indispensable deterrent and crime fighting tool in the City and we have no difficulty at all in seeing this on a licence as a condition. The City has, however, over time developed a first-class CCTV condition intended to be used in large, late-night bars and clubs where serious disorder or other serious crime can reasonably (and hopefully only occasionally) be expected. Such premises invariably make large profits for operators who can, therefore, be expected to fit top-of-the-range equipment. We do not feel that the bar/restaurant in the basement of a Premier Inn is likely to be such a crime hotspot. What was proposed in this case was the very best CCTV condition where it simply was not needed: such conditions should be properly tailored to the premises to which they apply. Discussion at the hearing also highlighted other problems with the condition proposed to us¹:

A licence condition should be wholly self-contained. The proposed condition referred to the requirements of the Crime Reduction Officer but there would be no way anyone looking at the licence (as any bar manager should) would know if an installed CCTV system was lawful. Nor would any enforcing police officer always know, as the recommendations would likely only be found "in the file". The condition we have imposed may seem vague but in fact it is not. The position, number and quality of cameras and recording equipment is a matter for a responsible operator and our condition gives necessary flexibility. Whitbread are a responsible operator and we are sure they will take and act

¹ which we took as that in Mr Hall's letter to the Town Clerk dated 9 February 2012 rather than Mr Holmes' letter to the Licensing Team dated 30 December 2011.

on police advice when installing their system. If we are wrong in this their position on any future review would be difficult to say the least; A CCTV condition requiring all entrances and exits (including staff and fire exits) to be covered may be proportionate in a large nightclub but it is difficult to justify as a condition of running a basement bar in a hotel spread over several floors and, as in this case, over several (albeit contiguous) buildings; Care must be taken when drafting conditions to differentiate between the use of the word "premises" to describe the hotel building *in toto* or to describe only that part of the hotel building delineated (usually by a red line) on the Reg 23 plan as being where licensable activities will take place, sometimes also unhelpfully called the "licensed premises". In this case of this particular condition, the police spotted the possible problem and required the CCTV to cover only "all public areas authorised for licensable activities". What the police did not do was then look at the Reg 23 plan for if they had they would have seen that they were requiring CCTV *inside* the toilets and possibly even the toilet cubicles. It really should not be the job of a Licensing Sub-Committee to point such things out and this only serves to highlight why such specificity in conditions is usually undesirable.

Conversant staff to operate the CCTV: There are times when the police need access to CCTV images quickly yet there are sadly some types of premises or operators where this is not granted - either negligently or deliberately. We just do not believe that Whitbread are such an operator and we are much happier to accept their assurance to us that they will always use their best endeavours to help the police speedily than rather criminalising the bar staff if, for some reason, they do not always achieve their aim. A bald condition requiring CCTV conversant staff at all times would mean that more staff than are absolutely necessary need to be trained and/or on duty to work, lest the bar need be shut because a particular staff member is held up on the way to work. A 'best endeavours' condition would mitigate this but it is too vague to be enforceable.

SIA register with daily attendance countersigned by the DPS: Again, there are badly run premises where it is necessary to keep a strict control on operators who flout the law in respect of those who are suitable to work as door supervisors. This is often the case where operators condone or even encourage door supervisors who are unnecessarily violent or themselves involved in the trade in illegal substances in licensed premises. It became very clear during the hearing that the number of times these particular premises might expect to need door supervisors at all would be very limited indeed and we were quite satisfied that on such occasions Whitbread would have no reason at all not to use staff with relevant training and qualifications. If they wish to keep a register for their own internal purposes, they are free to do so in whatever way and in whatever form best suits them: it needs no intervention from us.

Incident log: There was clearly a difference of opinion on the merits of the incident log *per se*. At the end of the day we were again quite satisfied by Mr Grunert's comments that Premier Inn will keep the equivalent of a log, for their own purposes, of all such matters as would properly interest the police for crime prevention or detection and that they will be happy to share such information with the police either after an incident or, we imagine, at regular meetings between the two parties. For much the same reasons as we mention above in respect of CCTV conversant staff,

we feel that prescribing what should go in the log *for this particular operator of these particular premises* would not actually advance the first licensing objective for the police and might even, because of problems of clarity, undermine it. The particular problems of clarity we identified in discussion were:

“all crimes reported to the venue”: not only did this introduce a third unclear concept of ‘venue’ (as opposed to premises and/or licensed premises) it would cover a report of an alleged theft from a bedroom and a report of a street mugging outside. Neither of these would be particularly relevant to the sale of alcohol in the bar/restaurant and should not, in our view, form part of a Licensing Act 2003 condition. The comments by the police that they would not necessarily be looking for such matters to be included in the log and that they would not take action if they were not included just emphasised how much this part of this proposed condition offended against sections 10.2 and 10.10 of the s182 Guidance;

“any complaints received”: this is simply too wide for, as presently drafted, it covers lumpy pillows, sour beer and excessive garlic in the food;

“any refusal of the sale of alcohol”: this is again simply too wide as it could include someone who came to the bar 5 minutes after closing time or a refusal to a customer who did not appreciate that drinks could not be taken out onto the street whilst smoking;

“any visit by a relevant authority or emergency service”: we are not sure what a ‘relevant authority’ is and even if it meant a responsible authority (LA 2003 s13(4)) we cannot understand why it would not also include an authorised person (LA 2003 s13(2)). So far as emergency services are concerned we cannot see the benefit of recording a visit by the fire brigade to check a smoke alarm.

The discussion at the hearing also identified ways in which the condition relating to outside drinking could be improved, when the licence should start, and how sale of drink to bedroom guests at night could best be dealt with. We would like to thank Insp Jones and Mr Grunert for their forbearance whilst we ironed out the problems that this application highlighted and to thank the licensing officers for a much improved report.

Our decision is to GRANT a premises licence with immediate effect to the Applicant for 20 St Mary at Hill.

The licence will permit:

The exhibition of films from 10.00 until 00.30 (the following morning), every day;

The provision of late night refreshment from 23.00 until 00.30 (the following morning), every day;

The sale by retail of alcohol, all day every day

With the following conditions (in addition, of course, to the mandatory conditions under ss19-21 of the Licensing Act, 2003):

Between 00.30 and 10.00 each day alcohol may only be sold to a person staying overnight in the hotel;
Alcohol may not be sold in open containers for consumption outside the hotel;
CCTV shall be installed covering the main front door and the hotel bar. Such CCTV shall record continuously and recordings shall be kept for no less than 31 days.

And in doing so we noted the willingness of the Applicant to cooperate with the police licensing team, to provide prompt and effective assistance where required and to offer the police the benefit of learning developed from its records concerning its operation of the hotel.

If the sub-committee was wrong and these conditions prove insufficient to promote the crime prevention objective associated with these premises, all parties are reminded that any responsible authority, business, resident (in the vicinity) or a Member of the Court of Common Council is entitled to apply for a review of the licence which may result, amongst other things, in a variation of the conditions, the removal of a licensable activity or the complete revocation of the licence.

If any party is dissatisfied with this decision, he or she is reminded of the right to appeal, within 21 days, to a Magistrates' Court. Any party proposing to appeal is reminded that under s181(2) of the Licensing Act, 2003, the Magistrates' Court hearing the appeal may make such order as to costs as it thinks fit.