

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 7 JULY 2020

VIRTUAL MEETING - SKYPE

MINUTES

Present: Councillor ; Deane, O'Quinn and Simson

Officers: Mark Savage-Brookes (Licensing Officer), Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer)

PART ONE

7 TO APPOINT A CHAIR FOR THE MEETING

7.1 Councillor O'Quinn was appointed Chair for the meeting.

8 PROCEDURAL BUSINESS

8a Declaration of Substitutes

8.1 There were none.

8b Declarations of Interest

8.2 There were none.

8c Exclusion of the Press and Public

8.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

8.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of Item 9 onwards.

9 WIMPEY LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

- 9.1 The Panel considered a report of the Executive Director of Neighbourhoods, Communities & Housing in relation to an application for a Review of Premises Licence under the Licensing Act for Wimpy, 14 Station Road, Portslade, BN41 1GA. Present at the hearing were: Mark Savage-Brookes (Licensing Officer), Duncan Craig (Solicitor), Hannah Staplehurst (Sussex Police), Peter Savill (Barrister for Sussex Police), Robert Lovell (Sussex Police) Rebecca Siddell (Legal Advisor), Gregory Weaver (Democratic Services Officer).

Introduction from the Licensing Officer

- 9.2 The Licensing Officer gave the following opening statement:

“This hearing has been convened so that the licensing authority can determine a review application submitted by Sussex Police in regard to the premises licence issued for Wimpy, located at 14 Station Road, Portslade. A copy of the premises licence can be viewed in **Appendix A** from **page 13** in today’s papers.

The review application was submitted to the licensing authority on 15th May, citing grounds relating to the Licensing Objectives for The Prevention of Crime & Disorder and Public Safety. The review application can be seen in **Appendix B** from **pages 21 to 29** of today’s hearing papers.

Two representations have been received in support of the review application and these were submitted by the Licensing Team and the Home Office’s Immigration, Compliance and Enforcement team. These can be viewed in **Appendix C** on pages **31 to 37**.

Sussex Police submitted further supporting evidence last week to the Licensing Authority which can be seen in Addendum 1. The licence holder’s representative also submitted supporting information yesterday and this morning, which has only been circulated to the relevant parties for this hearing, due to the sensitive nature of the information it contains. For clarity, it contains identification information for employees of Wimpy. There were also two conditions offered this morning by the licence holder. All of the addendums have been circulated to all parties including the Panel Members.

Section 52 of the Licensing Act 2003 provides that where the licensing authority considers that action in relation to the review application is necessary, for the promotion of the licensing objectives, it can take the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition)
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence

The Council’s Licensing Enforcement Policy has adopted the approach set out by the Home Office and DCMS document entitled “Problem Premises on Probation - Red and Yellow Cards; How it would work” (in 2008). The document sets out to encourage partnership working in identifying problem premises and lists steps to be taken in first and second intervention measures together with a list of possible conditions. First

intervention may be suspension with conditions (yellow card) and second intervention would look to revoke a licence (red card). The Guidance makes it clear that proposed interventions would not prevent the giving of an instant red card in an appropriately serious case. Our Statement of Licensing Policy details this scheme in full from page 41 of the policy.

It is noted that in their review application, Sussex Police recommend the revocation of the premises licence.”

Questions of the Licensing Officer

- 9.3 In response to Councillor O’Quinn, the Licensing Officer stated that the premises was granted an alcohol licence on the 19th March 2019 and transferred to the current holder in October 2019.
- 9.4 In response to Councillor Deane, the Licensing Officer stated that the original application in March 2019 and was for off sales with deliveries.
- 9.5 In response to Councillor Simson, the Licensing Officer confirmed that the original application granted off sales in 2019, however since, there had been an agreement to remove this and that the premises was on sales only which included the outside area.

Representation from Sussex Police

- 9.6 Mr Savill addressed the panel and gave the following statement:

“You have a very full application notice and you have in particular, the witness statement of Inspector Lovell which is a very comprehensive document that explains why the Police makes the application they do and why they ask for revocation in this case. This is on any analysis, a very serious case. It demonstrates complete failure on the part of the licence holder but more over it proves to be a ghastly demonstration of quite what can happen when those with a responsibility for licensed premises don’t abide by this as part of their responsibilities and don’t abide by the law and have no regard for the obligations that rest on them.

In this case, the licence holder has employed a DPS who, when he is spoken to by police, believes he has nothing to do with the premises. He employs a manager who should never have been employed in this country at all, he is an illegal entrant and absconder because he is wanted for immigration offences and he is someone who uses his position to get the victim drunk, you’ve seen reference in the papers to multiple empty bottles of vodka lying around the floor of the premises when the Police attended. Told her the CCTV camera has been turned away and raped her. The chef too has no right to work within the UK.

The licence holder himself appears to have failed to declare a commotion for a relevant and that is a conviction for drink driving. Where the premises licence holder was so drunk that he drove into a wall in 2014. No suggestion that he is reported or notified the court or any authorities that matter. And there’s complete failure to have regard to the CCTV condition, it is a perfectly clear from Donna Lynsdale’s evidence that they breached that condition in January and then around March / April time we simply don’t

know if there was CCTV there or not. The suspicion that Police have, and I can't put in any higher than a suspicion, is that the hard drive was taken after the commotion of the rape. We simply don't know what happened to it, it is not there.

In all the circumstances, these are dreadfully run preferences and the consequences of that dreadful running have been awful.”

- 9.7 In response to Councillor O'Quinn, Peter Savill stated that authorities were informed that the DPS used to work at Worthing Wimpy before moving to the Portslade shop.
- 9.8 In response to Councillor Simson, Hannah Staplehurst stated that Sussex Police visited the scene, it was clarified that the DPS believed they had signed everything to the offender. It was noted that the DPS was unable to answer further questions once informed that they were still the DPS holder.
- 9.9 In response to Councillor O'Quinn, Peter Saville gave a chronology of the events.
- 9.10 Councillor Simson requested further clarification with regard to the DPS having stated that he had nothing to do with the business.
- 9.11 Hannah Staplehurst, Sussex Police, gave a brief overview of the events leading to the interview.
- 9.12 Councillor Simson enquired if there was any evidence of monitors installed in the premises.
- 9.13 Peter Savill noted that there were apps on the licence holder's phone for other premises but not this one.
- 9.14 Robert Lovell stated that a crime scene investigator had documented that a CCTV monitor couldn't be found.
- 9.15 Councillor O'Quinn noted the abundance of empty vodka bottles and stated that it appeared the victim was given a lot of alcohol and remarked that there alcohol was provided for free or discount.
- 9.16 Peter Savill stated that the venue was not licensed as a bar and that this was far removed from what a responsible licence holder ought to permit.
- 9.17 Hannah Staplehurst stated that all alcohol had to be removed from sale during lockdown.
- 9.18 Councillor O'Quinn referred to the immigration officer and noted that it was alarming that the manager worked for another Wimpy Premises and that the immigration status hadn't been checked there. It was noted that it was further alarming as it took this case to realise there were 2 people illegally working in the country.
- 9.19 Hannah Staplehurst stated that she was unsure as to how the offender was able to work at Wimpy.

Representation from Licence Authority

9.20 The Licensing Authority Officer made the following representation:

“I make this representation on behalf of the Council’s Licensing Team, in their capacity as a responsible authority, in relation to an application made by Sussex Police seeking to review of the Premises Licence for Wimpy, 14 Station Road, Portslade, Brighton BN41 1GA.

This representation is made as the Licensing Team have concerns that the licensing objective of the Prevention of Crime and Disorder and Public Safety are not being upheld.

The history of this matter is explained in more detail in the application of Sussex Police.

Following an application received by the Licensing Authority notifying of a change of Premises Licence Holder and Designated Premises Supervisor I was allocated a job sheet to carry out a Licence Inspection at the premises of Wimpy, 14 Station Road, Portslade.

On Wednesday 8 January 2020, I visited the premises and carried out a full licensing inspection. At the time of my visit, I spoke with ‘Nambi’ who informed me that he was the manager.

During my inspection I asked ‘Nambi’ if Ketheesan Tharmasseelan was still the Designated Premises Supervisor (DPS). At first he said he didn’t know who that was, and then advised that Ketheesan Tharmasseelan visited the premises every 4-6 weeks, sometimes longer and that it was the owner, Kapilraj Vigneswaran who visited the premises regularly.

Whilst going through the licence with ‘Nambi’ I asked if he could show me the CCTV and whether it was working correctly and storing footage for 31 days. He advised that he couldn’t show me, as it was locked away and he didn’t have access to it. He also was unable to show me any training records.

Following my inspection on 10 January 2020 I wrote to the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) outlining my findings and breaches of the premises licence found. (A copy can be found on pages 33 to 36).

On 12 March 2020, I was contacted by DC Booth of Sussex Police. DC Booth informed me that there had been an incident at the premises and during their investigation they had found a copy of my inspection form and asked me to clarify whether at the time of my inspection I had physically seen the CCTV system. I informed him that I did not and followed this in an email to DC Booth attaching a copy of my breach letter sent to the premises following my inspection

It seems that the DPS, Ketheesan Tharmasseelan, has no or very little involvement in the running of the business and is merely a name on the premises licence. I also have

no confidence in the PLH, Kapilraj Vigneswaran or any of the individuals who are running the business.

In the circumstances, I fully support the application of Sussex Police seeking the revocation of the premises licence and consider that this is necessary to ensure that the licensing objectives of the Prevention of Crime and Disorder and Public Safety are met.”

9.21 In response to Councillor Deane, the Licensing Authority Officer stated that they had only received short responses.

9.22 In response to Councillor Simson, the Licensing Authority Officer stated that there was normally an in step approach, such as constantly offering training. This would normally be followed up in 3-4 months.

Mr Duncan Craig representation on behalf of the License Holder.

9.23 Mr Duncan Craig addressed the panel and stated the following:

- Visas had been provided as evidence which showed that the Licence Holder was in India from the 1st to the 10th March 2020.
- It was stated that the individual was employed around the time the licence was transferred.
- It was confirmed that CCTV had been functioning and operational however this had disappeared and that the individual was in no way responsible.
- It was stated that there was evidence to support that it was the perpetrator.
- The Client had acknowledged that necessary checks weren't undertaken.
- In regard to the second visit, the Licence Holder's position was that Mr Kajooran was not working on that occasion.
- It was stated that with regard to the failure to declare the drink drive conviction, it was noted that this had occurred at a time when there was less of a focus on people who held personal licences declaring the fact that they were in receipt of this.
- It was stated that the law had subsequently tightened up. It was noted that there were over a million personal licence holders in the country and that it was not rare for licence holders to not disclose this.
- It was agreed that this was a serious series of events however it was noted that the licence holder had never been in this situation before.
- It was stated that the conditions were proportionate.

Questions to the Mr Duncan Craig

9.24 In response to Councillor O'Quinn, Mr Craig stated that while away the DPS attended the premises although this wasn't everyday. It was stated that the client didn't in any way aid or abet what had happened that evening and that it would be wrong to overly burden him with this. It was also clarified that the app wouldn't work once the hard-drive was removed from the premises.

9.25 In response to Councillor Simson, Mr Craig stated that the licence holder did undertake steps and that the CCTV was installed however it had been removed. It was further stated that training had been undertaken but that this hadn't been logged. Mr Craig

noted that the Licence Holder's time was split between all 3 premises and that it wasn't clear why they chose this specific DPS , it was further stated that if the panel felt that they were not fulfilling their obligations then the panel had a duty to remove it. It was clarified that Sussex Police had the power of veto should anyone be named that would pose a threat.

- 9.26 In response to Councillor Deane, Mr Craig stated that they didn't know if he was on the official pay roll, it was noted that the licence holder came back before the 5th March and that this had taken place before lockdown.

Final Summaries and Decision

- 9.27 The Licensing Officer stated the following:

"The Licensing Team fully support the application of Sussex Police seeking the revocation of the premises licence and consider that this is necessary to ensure that the licensing objectives of the Prevention of Crime and Disorder and Public Safety are met."

- 9.28 Mr Peter Savill noted that the sheer weight of evidence pointed to one direction only. It was stated that it was striking that the licence holder managed to get so much wrong. The options for the panel were given.
- 9.29 Hannah Staplehurst had no further additional summary.
- 9.30 Donna Lynsdale had not further additional summary.
- 9.31 Duncan Craig agreed with Mr Savill in that the licence holder fell short and requested BHCC pull back from revoking the licence. It was restated that he was out of the country at the time and had taken demonstrable steps to rectify this. It was suggested that the panel should suspend the licence for an appropriate time.
- 9.32 **RESOLVED** – That the panel's decision was as follows:

"The panel have considered this application for review, supporting representations, and further information submitted by the police, and on behalf of the licence holder. The licence holder sent his apologies via his legal representative, barrister Duncan Craig, saying that his wife was ill and he could not attend the hearing. He did not seek to apply for an adjournment and wished the hearing to proceed in his absence. The Home Office Immigration officer was also not able to attend the hearing. The panel listened carefully to all the submissions made at the hearing. The panel have had regard to the S182 Guidance and the Council's Statement of Licensing Policy.

The review is brought by Sussex Police on the basis of the Prevention of Crime and Disorder and Public Safety licensing objectives. Representations supporting the review have been made by the Home Office, South East Immigration, Compliance and Enforcement Team, and the Licensing Authority.

The application and evidence supplied by the police describes how the serious crime committed in the licensed premises on the 8th March 2020 by the manager of the

premises was the culmination of a series of management failures on the part of the licence holder which seriously undermined the prevention of crime and disorder and public safety licensing objectives. The representation from the licensing authority detailed concerns regarding breaches of the CCTV and other conditions on the licence in January 2020 only shortly after the current licence holder had taken over the premises and which were the subject of a formal warning letter. The representation from the immigration officer at the home office explained how during the investigation into the offence committed it came to light that the perpetrator was an illegal entrant to the UK who had failed to adhere to bail conditions and was thus considered an immigration absconder and had no right to work in the UK. Another employee at the premises who was the chef also was disqualified from working by virtue of his immigration status. The licence holder had a legal responsibility to conduct checks before employing staff and the statutory guidance to the licensing act made it clear that the prevention of crime and disorder objective includes the prevention of illegal working in licensed premises. Furthermore in the context of reviews of premises arising in connection with crime, the guidance states that there is certain criminal activity that may take place in connection with licensed premises which should be treated particularly seriously and this includes use of premises for employing a person who is disqualified from work by reason of their immigration status. In light of the extreme failures of management and the devastating consequences of those failures the police and those supporting the review call for revocation of the licence.

On behalf of the licence holder his barrister wished to make it clear that his client was not in the country at the time of the incident on the 8th March and had submitted visa evidence of this. He was very upset about the incident and now makes the appropriate immigration checks on his employees. 2 conditions are offered in relation to this. He said that his client did put a CCTV system in place following the licensing warning in January and believes that the offender removed it prior to committing the offence. The barrister acknowledges that the licence holder has behaved irresponsibly but asked that the action stop short of revocation but include removal of the DPS, attachment of conditions and suspension of the licence for an appropriate period which could in this case be the maximum of 3 months.

The panel must take such statutory steps under the Licensing Act 2003 in response to the review as are appropriate to promote the licensing objectives. The panel have also considered the Council's Statement of Licensing Policy and enforcement approach and the S182 Statutory Guidance in relation to reviews.

Overall in relation to this review the panel find the evidence of the police and those supporting the review to be compelling and proof of a complete failure of management in relation to these premises which has had serious consequences and undermined the licensing objectives. The panel appreciate that the licence holder was not in the country at the time of the incident on the 8th March, but the management of the premises remained his responsibility and it was his failure to discharge that responsibility and manage the premises in accordance with the legal requirements that led to the incident. He did not for example have a working App connected to the CCTV system when he went to India which was, as it turned out, a very significant failure.

The panel have considered all the options available to them in response to this review.

In terms of modification of conditions, the panel have considered the conditions proposed by the licence holder and in general. It is clear that conditions on the licence have not been complied with, the most serious relating to the CCTV including the suspected tampering with and removal of the CCTV after the offence was committed on the 8th March and the question mark as to the working order of the system prior to that. The immigration check breaches are of extreme concern and have had serious consequences. As the police point out, on the night of the incident on the 8th March, 2 out of 3 employees working in the premises were working illegally. The panel do not have confidence given the history that the licence holder will comply with further conditions. In terms of removal of the DPS, the actual DPS has had very little involvement with these premises and on the evidence submitted thought he had been removed. The DPS role in relation to licensed premises is very important and in our view it is a further management failing to employ a DPS who is not fulfilling that role.

In terms of suspension of the licence, the panel do not consider this is appropriate. This would in effect be a yellow card and we consider that this case is so serious as to warrant an instant red card under the terms of our policy. We share the views of the police and those supporting the review in this respect. This approach is supported by the S182 guidance at 11.26 and 11.28. In the short period in which he has held this licence the licence holder has shown no regard for the law or the licensing objectives and has so badly mismanaged these premises that the panel can have no confidence in his ability to behave responsibly in the future. The panel consider therefore that the only appropriate action in this case is revocation of the licence.”

The meeting concluded at 12.10pm

Signed

Chair

Dated this

day of