

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

**10.00am 19 JUNE 2024**

**VIRTUAL**

# **DECISION LIST**

## **Part One**

---

### **2 DECISION LETTER**

**Licensing panel hearing held virtually via Teams on Wednesday 19th June 2024 and Monday 15th July 2024 in respect of a review of the premises licence for Persia, 126 Church Road, Hove BN3 2EA**

The panel has considered this application for review along with the supporting representations, statements and documentary evidence produced by the Licence holder. The panel has listened carefully to all the submissions made at the hearing. The panel has had regard to the S182 Guidance and the Council's Statement of Licensing Policy. The review is applied for by Sussex Police. The review is brought on the basis of the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives. On a joint licensing inspection visit on the 19th April 2024, police officers witnessed a staff member altering training records at the alleged direction of the premises licence holder to ensure compliance with the training condition on the licence. The police say that the act of falsifying the records is sufficiently serious to bypass the usual stepped approach in relation to reviews, has led to a loss of trust in the licence holder to promote the licensing objectives and that therefore revocation is the appropriate step. Full details of the incident are in the papers before us including statements from the officers concerned. The police also include an incident in April 2023 when officers met with resistance to provide CCTV in relation to a sexual assault. Three representations supporting the review have been made by the Licensing Authority, Planning Enforcement and Immigration Enforcement.

At the hearing in private session, the police showed 3 excerpts of body worn video which the police filmed during the incident of training record alteration. The altered record is in the papers. It was asserted that the member of staff tipped out the reference to 2023 on the paper as she was told it all had to be 2024. Training is hugely important and the police considered that training was not being carried out and upon questioning the licence holder could not say how many staff he employed.

The Immigration enforcement officer detailed the 2 visits (2021 and 2023) to the premises during which they found what they considered to be illegal working when they encountered persons (asylum seekers) without the right to work in the kitchen apparently working with food debris on them. The explanation given was that they were there to eat not work. No formal enforcement action was taken as there was not sufficient evidence of control, obligation and remuneration to apply the civil penalty, but in the opinion of the officer, employment of illegal workers was taking place and right to work checks had not been carried out. The planning enforcement officer described her involvement with the premises in terms of the unauthorised planning works that were carried out to the first floor. There had been complaints from neighbouring properties about the works and Shisha lounge which had subsequently been set up. The premises licence holder was unsuccessful in his planning appeal and an enforcement notice was being prepared breach of which would be a criminal offence.

It was acknowledged that planning and licensing were separate regimes but the officer supported the police review as it was considered that the involvement of planning illustrated the propensity of the licence holder not to follow proper procedures or advice and there was a public nuisance element in the complaints received.

The officer on behalf of the licensing authority detailed her involvement and concerns about the Shisha bar and incident on the 19th April. She fully supported the police request for revocation of the licence.

On behalf of the licence holder, his barrister strongly refuted the allegations made and the application to revoke the licence. In the papers were statements from the premises licence holder and staff explaining their version of events and disputing especially the deliberate falsifying of records and employment of illegal workers. A supporting email from the vice chairman of the Brighton & Hove Muslim Forum stated that this premises was part of a community program to provide meals to refugees and others in need. It was submitted that the licensing objectives were not being breached and no harm or detriment could be shown; this was not a problem premises. The staff were trained and had made statements confirming this. Staff numbers changed throughout the year so it was difficult to say exactly who was working there. Much of what was stated was speculation and interpretation. Revocation should not be based on one incident and the normal stepped approach should not have been bypassed.

Legal submissions were made about the relevance of planning considerations and unsubstantiated allegations from Immigration Enforcement which it was contended should not be taken into account or given little weight in deciding what action to take. The CCTV incident was over a year ago during which time no further incidents and was open to different interpretation and explanation.

The panel was invited to dismiss the application to revoke the licence.

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 has also considered the Council's Statement of Licensing Policy and enforcement approach and the S182 Statutory Guidance in relation to reviews and reviews arising in connection with crime. The panel has considered all the options open to it. The S182 guidance emphasises that remedial action should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

This has been a very difficult case for the panel to assess and ascertain the relevant facts as there are differing versions and interpretations of events often forcefully put forward. The panel takes very seriously the concerns and evidence presented to us by the police. Training of staff is of crucial importance and the condition on the licence reinforces this and thus proper keeping of records is key.

It does seem likely to us on a balance of probabilities that the records were falsified deliberately to make up for poor record keeping but we accept that there is an element of uncertainty surrounding precise motive. The panel does not dismiss as legally irrelevant the representations of planning and immigration enforcement.

These are both Responsible Authorities under the Licensing Act, they are supporting the review and therefore their concerns must be taken seriously. Immigration can impact directly on licensing as illegal working is clearly relevant to the prevention of crime and disorder objective. In this case there was not the evidence to establish that illegal employment was definitely taking place though this was what officers suspected.

Although planning is a separate regime, the relevance for us here lies in the apparent disregard of the licence holder for proper processes. Advice given was not followed. The licence holder has now stated that the Shisha lounge will no longer operate and it is to be hoped that formal planning enforcement action will not be necessary. With both representations also at issue is the credibility of the licence holder. The steps the panel takes must however be rooted in the licensing objectives and be proportionate.

The panel has seriously considered revocation of the licence. The licensing objectives are clearly undermined by poor record keeping and thus inability to establish that training has been carried out. The credibility of and trust in the licence holder is at issue in relation to this and the alleged employment of illegal workers. However, the panel is not convinced that revocation of the licence is proportionate or the most effective option in this case.

The panel believes that a short period of suspension is however appropriate to mark the seriousness of the concerns which have been expressed in this review, to act as a deterrent and give the licence holder the opportunity to ensure that measures are in place as detailed below. The panel thus imposes a 14-day period of suspension which will take effect at the end of the 21-day period for appeal unless an appeal is lodged.

Furthermore, the panel considers it is appropriate to ensure the licence holder is able to demonstrate compliance with the licence conditions and objectives.

In terms of the training and staff issue, the panel attaches the following additional condition to the licence as follows:

*Staff training records (as detailed in condition 9 on the licence) shall be submitted to the Licensing Authority every 8 weeks (by email) along with a list of current staff working at the premises.*

The panel believes this condition is necessary in light of what has happened so that there is clear focus on record keeping and training of all new and existing staff.

The panel is concerned about the apparent absence of the Designated Premises Supervisor (DPS) in this case.

Both in the S182 guidance and in our policy at 4.1.2 it is expected that the DPS will be in effective day to day management of the premises and contactable should problems arise. The appointment of the separate DPS is relatively new but the panel expects that going forward that person will take a more active role especially in relation to record keeping and staff employment.

In terms of the Immigration Enforcement concerns the panel believes action is necessary by the licence holder to prevent any further intervention or suspicion on the part of Immigration enforcement (if they should revisit the premises).

A clear policy and protocol should be put in place and documented to explain how the premises are participating in the stated community initiative to provide meals to asylum seekers and other persons in need. This should include provision of an appropriate space in which to eat other than the kitchen and a space in which to pray if necessary which should not be in the kitchen.

If such a protocol is in place then a repeat of the circumstances of those visits should be avoided and the crime prevention objective promoted. This is not imposed as a formal condition but a strong advisory.

Finally, but of upmost importance, the panel is mindful that this is a first formal review intervention so is issuing a clear warning or 'yellow card'. Should a further review of this premises licence come before us the consequences would be extremely serious and would give rise to a presumption of revocation of the licence.

In summary the steps taken are:

1. 14-day suspension of the premises licence.
2. Modification of conditions to include the new training record condition as above.
3. Strong advisory about the need for a protocol for meals for asylum seekers.

**Please note:** This determination does not take effect until the end of the period given below for appealing against the decision or, if the decision is appealed against, the time the appeal is disposed of. The minutes of the panel will be available on the Council's website under the rubric 'your Council'.

#### Appeal Rights

(Section 181 and schedule 5 of the Licensing Act 2003)

1. The licence holder may appeal against the decision to modify conditions and suspend the licence

2. The applicant for review may appeal against the decision made

All appeals must be made to Magistrate's Court, Edward Street, Brighton, within 21 days of deemed delivery of this letter. Delivery will be deemed to have been effected on the second working day after posting.

a) **FIELD\_TITLE**