

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

**10.00am 9 DECEMBER 2019**

**HOVE TOWN HALL, ROOM G79 - HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors; O'Quinn, Rainey and Simson

**Officers:** Sarah Cornell, Senior Licensing Officer, Rebecca Sidell, Legal Adviser and Penny Jennings, Democratic Services Officer

**PART ONE**

**44 TO APPOINT A CHAIR FOR THE MEETING**

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

**45 PROCEDURAL BUSINESS**

**45a Declaration of Substitutes**

45.1 There were none.

**45b Declarations of Interest**

45.2 There were none.

**45c Exclusion of the Press and Public**

45.3 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).

45.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration any item of business on the agenda.

**46 LICENSING PANEL -(LICENSING ACT 2003 FUNCTIONS)THE GIN TUB, 16, CHURCH ROAD, HOVE - REVIEW OF A PREMISES LICENCE**

- 46.1 The Chair introduced the Panel and it was noted that this hearing had been arranged in order for Panel to consider a report of the Executive Director, Neighbourhoods, Communities and Housing requesting that members determine the application to review the licence granted to the premises known as "The Gin Tub", 16 Church Road an application under the Licensing Act 2003.
- 46.2 The other attendees present at the hearing also introduced themselves Justine Guille, the licence holder was in attendance accompanied by her husband who also was also engaged in the day to day operation of the business and Scott Callister, Mrs Guille's son who was currently acting as premises manager and was a fully accredited DPS. Councillor Phelim Mac Cafferty was in attendance in his capacity as a Local Ward Councillor. The Police were represented by Peter Savill, Barrister at Law, Also in attendance were PC Andre Bernascone and Hannah Staplehurst of the Police Licensing Team.

### **Introduction by the Licensing Officer**

- 46.3 The Senior Licensing Officer, Sarah Cornell, explained that a representation had been received from local ward councillors on the grounds of Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance supporting the application for review which had been submitted by the Police Licensing Team.
- 46.4 It was explained that at in determining the action to be taken in reviewing the licence the licensing authority must consider the application which had been made in accordance with Section 51 of the Licensing Act, consider relevant representations made and take such steps (if any) which were considered appropriate for the promotion of the licensing objectives. These steps were:
- to modify the conditions of the licence;
  - to exclude the licensable activity;
  - to remove the designated premises supervisor from the licence;
  - to suspend the licence for a period not exceeding 3 months; or
  - to revoke the licence.

For this purpose the conditions of a premises licence were considered to be modified if any of them were altered, omitted or if any new condition(s) were added. Provision was such that it allowed for modification or exclusion to be for a specified period not exceeding 3 months. Any determination made by the Panel would not have effect until after the appeal period, or, if an appeal was lodged, until after the appeal had been disposed of.

- 46.5 The licensing authority was required to act to promote the four licensing objectives of:
- the prevention of crime and disorder
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.
- 46.6 It was noted that a review represented a key protection for the community. Where a licensing authority considered action necessary under its statutory powers it would take

necessary steps to support the licensing objectives. Action following review needed to be informed by licensing enforcement policy. Where the style of operation of a premises led to applications concerning likelihood of crime or incidents the review process also needed to support the community safety policy. Action should be proportionate.

### **Questions to the Licensing Officer**

- 46.7 Councillor Simson sought clarification regarding the licensing history of the premises as that was not clear from the submitted paperwork. It was explained that the premises had been operating various forms and with several variations agreed without the need for a Panel hearing. On each occasion the licence had been updated its operating conditions had undergone corresponding amendment. In addition events had also taken place following the grant of Temporary Event Notices. The date at which the current licence holder(s) had taken over the premises was also confirmed.

### **Police Representation**

- 46.8 Peter Savill, Barrister at Law made representations on behalf of the Police. He referred to the details contained in the Police's submission and to the additional supporting evidence which had also been circulated. Those concerns and the rationale for requesting that the licence be reviewed had been set out clearly including details of the three occasions when the Police had visited and swabs indicating the presence of Class A drugs had been taken. Notwithstanding the follow up action which had been taken and advice which had been given this did not appear to have been heeded and on each occasion evidence of drug use/misuse in various locations across the premises had continued to be found. There had been other licence breaches as well. The licence already contained stringent conditions stressing that the premises management were expected to have an absolute zero tolerance policy towards drugs and drug misuse, as the management had failed to take action to improve things over a significant period of time it was difficult to see what further conditions or other measures could be adopted and the Police were therefore recommending that the licence be revoked.
- 46.9 The Chair, Councillor O'Quinn, sought further clarification regarding the readings, noting that it was concerning that traces of drugs had also been found at the bar and throughout the building, also enquiring regarding the levels of the readings taken and whether some of them could have been the result of cross contamination. PC Bernascone explained that where trace amounts were found it was possible that cross-contamination could have occurred. However, larger than trace amounts had been found in a number of locations across the premises and those readings could not be attributed to that.
- 46.10 Councillor Simson enquired regarding the times of day at which the swabs had been taken and sought clarification as to whether that carried any significance. It was explained that the tests had been taken when an officer was available to visit the premises. In answer to further questions it was explained that if effective cleaning had taken place during the day that was likely to impact on the readings taken, confirming that swab tests were taken as standard in instances where drug use had been reported in connection with any premises. When positive readings had been taken that would result in follow up visits. Swab tests were used in addition to viewing of CCTV recordings.

- 46.11 Councillor Rainey also referred to the times at which the swab readings had been taken as they appeared to have been taken between 4 and 5 pm in the evening she asked whether if they had been taken later in the evening it was expected that they might have been higher and whether it was possible that the readings taken could also include residual amounts from the previous day.
- 46.12 The Chair, Councillor O'Quinn, referred to the fact that swab tests had been taken on three separate occasions and that following the first two no improvements appeared to have been effected. Mr Guille explained that it was regrettable that this had occurred as the business had taken its eyes off the ball. The business was family run and had a good clientele, the management had been naïve in that that they had failed to appreciate the potential severity of the problem. Measures were now in place however to address the problems identified and they just wanted the opportunity to prove that, that was the case and would elaborate on that when they made their submission.

### **Submission by Local Ward Councillor(s)**

- 46.13 Councillor Mac Cafferty spoke in his capacity as a Local Councillor for Brunswick and Adelaide Ward in which the premises were situated and on behalf of his ward colleague Councillor Clare. He and Councillor Clare had written in support of the Police's request that the premises licence be subject of a review. The premises' location fell within the Special Stress Area in recognition of the impact that the number of licensed premises had on the immediate area which was densely populated. The premises was located in close proximity to a large residential population and as ward councillors they received reports from residents regularly regarding the impact of anti-social and drunken behaviour. There was a clear and well evidenced relationship between alcohol consumption and anti-social behaviour and crime and residents were already suffering high number of incidents in consequence of that. It was very concerning therefore that that the Police had found evidence of use of Class A drug activity at the premises and that until very recently measures did not appear to have been put into place to address this. Both ward councillors had received unsubstantiated reports from residents of drug use on the premises.

### **Applicant's Representation and Questions to the Applicant**

- 46.14 Mr Guille spoke on behalf of his wife, Mrs Justine Guille, the premises licence holder he explained that the references to his establishment made it sound as if it was badly/irresponsibly run whereas that was certainly not the case. It was a family run business and maintaining it was vital to their livelihood and financial survival. All those engaged with the business had a breadth of experience and had not experienced these difficulties before. Their customer base was 30 plus years old professional people and they had never experienced trouble or drunken behaviour and had therefore been put on the backfoot by what had occurred. The family also had an interest in the "Copper Rooms" which were located elsewhere in the city which was also well run and at which no problems had been experienced.
- 46.15 Mrs Guille went on to explain that notwithstanding her experience she considered that it would be more appropriate if her son, Scott Callister took over the day to day running of the premises and they had put arrangements in place for him to do that going forward.

Mr Guille also confirmed that was the case. He explained that additional security measures had been put into place and that the layout of the premises had also been adapted in order to reduce/remove the opportunities for drug use at the premises. CCTV in operation at the premises had failed to identify the problems.

- 46.16 The Chair, Councillor O'Quinn, sought clarification regarding the business and the areas of the building which were in use. Mr Guille confirmed that the premises was a high-class cocktail bar specialising in gin based drinks (over 130), which were ordered from the bar using a retro-style telephones beer and wine was also available but there were no cheap alcohol offers as the premises aimed to provide a unique experience for mature customers. It was confirmed that there was a dance area.
- 46.17 Justine Guille stated that she had lived in the area (Selbourne Road) for a number of years and was aware that there were a number of late opening establishments in the area which served alcohol until late at night and that in some instances that had given rise to problems of late night noise and other nuisance. The premises had not generated any complaints that they were aware of, as none had been notified to them. They were aware of problems experienced in the area and their premises had not contributed to any of them, the Police had never been called to the premises.
- 46.18 Mr Guille explained further that in the wake of these testings his step-son, Scott Callister would now be taking over day to day running of the "Gin Tub" and that Mrs Guille would confine her involvement to over-seeing the day to day running of the "Copper Rooms". Mr Guille confirmed that Mr Callister was a DPS in his own right and that he would be based at the Gin Tub" and would be in attendance there daily. It was explained that in future door staff would monitor those going into the toilets which appeared to be associated with a lot of the drug activity at the premises, seize, record and safely store any drugs which were found. Additionally, the toilets had been re-designed to hamper drug use.
- 46.19 Councillors Simson and Rainey enquired as had the Chair regarding why measures had not been put into place earlier following the first incidence at the premises. Mr Guille explained that although they had taken the incidence seriously they had considered the first one to be a one-off problem. On the second occasion they had met with the Police and had discussed measures which could be undertaken. Following the third incident further meetings and discussions had been sought but had been declined by the Police on the grounds that they had requested that the licence be reviewed stating that at that point the most appropriate course of action would be to for the Guille's and Mr Callister attend the hearing and to address the Panel in person.
- 46.20 Mr Savill was also given the opportunity to ask questions on behalf of the Police in accordance with the legislative protocol for hearings. He stated that much had been made of the appointment of Scott Callister and to the expertise which he would bring to the future operation of the "Gin Tub". He sought clarification that Mr Callister had been present at the premises when following the second set of high swab readings had been taken, also, that he had been party of the meeting at which discussions had taken place regarding measures to mitigate against the problems identified. It was confirmed that was the case.

### **Closing Submissions/Summaries**

46.21 The Senior Licensing Officer, Sarah Cornell, made the closing submission on behalf of the Licensing Authority. It was re-iterated that the Panel acting as the licensing authority for the purposes of the review in arriving at its decision needed to take steps which it considered necessary under its statutory powers to support the licensing objectives. The steps available to the Panel were as set out.

### **Police**

46.22 Each of the parties had the opportunity to make a closing submission and reiterated the points which they had made earlier in the meeting. Peter Savill re-iterated on behalf of the Police that in their view this represented a serious and repeated flouting of the licence. Clearly conditions which were already included on the licence designed to prevent drug use had not been complied with, following the two previous visits which had taken place the intervention which had taken place and advice given had not been headed. Swabs and readings taken on a third occasion had still indicated class A drug use throughout the premises. The first high reading had been taken as long ago as February and some of the subsequent readings taken had been higher than of the first occasion. Readings had indicated a mixture of Class A drugs in use, cocaine, heroin and methylamphetamine. All of the relevant licensing legislation and Government guidance cited the presence of Class A drugs as being something which should be treated particularly seriously and that the Panel's duty is to take action in the interests of the wider community and not those of the individual licence holder.

46.23 The management did not appear to have understood their responsibilities notwithstanding that they had been spelt out to them, nor had they responded effectively or appropriately in a timely way, their approach had been tardy and re-active rather than pro-active as it should have been. Proper record keeping and use of sufficient numbers of trained door staff should already have been in place. In view of this the Police did not consider that there was any merit in adding conditions to the existing licence, given that the robust ones in place had not been observed. Scott Callister had prior involvement with the premises and had been present when the second set of high drug readings had been taken and potential remedial measures had been discussed. Notwithstanding that subsequent high reading had been taken, which did not therefore indicate that a change of management/DPS would address that problem. The premises had not taken this issue seriously enough and changes made to the operation had only be made in response to the review hearing, they had yet either to be in or to be tested. The Police considered therefore that the only measure which was appropriate in answer to such persistent abuse was to revoke the licence.

### **Ward Councillor**

46.24 Councillor Mac Cafferty made his closing submission and re-iterated his earlier comments and those set out in his letter in support of the Police's application for review. In view of the well documented incidence of anti-social behaviour and late night nuisance experienced it was particularly concerning that that on three separate occasions, some months apart high drug swab readings had been taken at this premises, that was very serious.

### **Licence Holders**

- 46.25 Mr Guille re-iterated on behalf of the licence holders that they fully acknowledged that they had taken their eyes off the ball but were confident that with Scott Callister in charge and with institution of the measures which had been referred to, there would be no further incidents going forward. Security arrangements had been improved as indicated and the toilets had been redesigned without flat surfaces. There could be every confidence that all of the matters raised had been addressed effectively. This was a family run business with a great deal at stake there had been no problems at their other premises, nor previously at this one and they simply wished to continue to trade and to prove themselves.
- 46.26 It was confirmed for the benefit of the applicants that any determination made by the Panel acting in their capacity as the licensing authority would not take effect until after expiry of the period during which an appeal could be lodged or, if an appeal was lodged until after the appeal had been determined by the Magistrates Court.

### **Decision**

- 46.27 The Panel's decision was as follows:
- 46.28 The Chair, Councillor O'Quinn, confirmed that the panel had considered this application for review, supporting representation, and all the submissions made at the hearing. The panel had regard to the S182 Guidance and the Council's Statement of Licensing Policy. The review had been brought by Sussex Police on the basis of the Prevention of Crime and Disorder and Public Safety licensing objectives. A Representation supporting the review had also been made by the local ward Councillors.
- 46.29 The review had been applied for because of 3 high drug swab readings had been taken at the premises over the course of 2019. After the first high reading in February 2019 the police had contacted the premises licence holder and explained the results and their concerns. The premises said that action would be taken. A second set of higher readings were taken in April 2019 after which a meeting had been held to discuss the situation. A warning had been given and action was promised by the licence holder and staff. A third set of high readings had been taken in September 2019 accompanied by a licensing check which had revealed breaches of some of the conditions on the licence such as CCTV, training, refusals documentation and drugs storage. Because no improvement had been shown despite interventions, the Police had stated that they had no confidence regarding management of the premises and had called for the licence to be revoked. The local ward Councillors supported this action on behalf of residents.
- 46.30 The licence holder and management had stressed how important their business was to them and that it was a family run concern. They accepted that they should have done more to improve the situation but explained that they have now put measures in place to address the issues found. They had refurbished the toilets, put in place searches of patrons on entry by door staff, and would have a member of the security staff on duty outside the toilets. It was proposed that Scott Callister would become the DPS and take control of the premises to ensure compliance.
- 46.31 The Panel must take such statutory steps under the Licensing Act 2003 in response to the review as were appropriate to promote the licensing objectives. The panel had

considered all the options available to them. The panel had also considered the Council's Statement of Licensing Policy and enforcement approach and the S182 Statutory Guidance in relation to reviews. In terms of modification of conditions, the panel had noted that the current licence already had 3 conditions about drugs, the first one stating that the management would have an absolute zero tolerance policy towards drugs and drug misuse. The panel had explored with the licence holder possible conditions around the premises using the services of a testing agency if such existed. However, current conditions on the licence had not been adhered to and therefore adding more in such circumstances was not considered to be appropriate. The current DPS was also the licence holder so removal would not be appropriate. The panel had been asked to put their confidence in the proposed new DPS, Scott Callister, but in reality he had already been involved to some extent as this was a family business. He had been present at the meeting with the police on 26<sup>th</sup> April 2019 and thus had been made aware of the concerns of the police at an early stage and that action needed to be taken. In terms of suspension of the licence, the panel did not consider that this was appropriate or see what purpose this would serve at this stage.

46.32 The panel were very concerned that the management had not taken the issue of Class A drug use in their premises seriously enough despite the evidence, interventions and warnings from the police. The panel appreciated that some of the right measures might now be being put in place but this was only really in response to this review and had not been tested. The panel were not confident that the management would sustain lasting improvement and compliance as they did not appear to have understood their responsibilities and responded effectively at the appropriate stage. The Section 182 Guidance and the council's policy enforcement approach was clear that where circumstances warranted it, the licensing authority should not hesitate to take tough action and where other measures were deemed insufficient, revoke the licence. Such action would be taken to promote the licensing objectives, in this case the prevention of crime and public safety in the interests of the wider community and not those of the individual licence holder. The panel considered that in view of the evidence submitted this was an appropriately serious enough case to warrant revocation of the licence and that was therefore the decision which the panel had taken.

46.33 **RESOLVED** – That the premises licence in respect of “The Gin Tub”, 16 Church Road, Hove BN3 2FL be revoked for the reasons set out above.

**Note:** The Legal Adviser to the Committee explained that the premises licence holders would receive notification of the panel's decision in writing with details of their appeal rights attached. This determination would not take effect until the end of the period given for appealing against the decision or, if the decision was appealed against, the time the appeal is disposed of.

The meeting concluded at 12.35pm

Signed

Chair



Dated this

day of