

Licensing Sub-Committee

Minutes of a Meeting of the Licensing Sub-Committee held in Committee Room 1, Civic Centre, Tannery Lane, Ashford on the **24th January 2019**.

Present:

Cllr. Feacey (Chairman);

Cllrs. Krause, Pickering.

Also Present:

Licensing Officer, Environmental Protection & Licensing Team Leader, Principal Litigator, Member Services and Ombudsman Complaints Officer.

PC A Pringle – Applicant's Representative.

PC G Hart – Kent Police.

PCSO K Wellbourne – Kent Police.

Mr S Ahmadzai – Premises Licence Holder.

Mr K Ahmadzai – Premises Owner/Manager .

Mr S Axtell – Press .

306 Election of Chairman

Resolved:

That Councillor Feacey be elected as Chairman for this Meeting of the Licensing Sub-Committee.

307 Minutes

Resolved:

That the Minutes of the Meeting of this Sub-Committee held on the 15th June 2018 be approved and confirmed as a correct record.

308 The Cod Father, 15 High Street, Ashford, Kent TN24 8TH – Review of the Premises Licence

The Chairman opened the meeting and welcomed all those present. He explained the procedure to be followed at the meeting.

The Licensing Officer summarised the application as set out in the report. The application for a review of the above premises licence was based upon an event which occurred in the vicinity of the premises on 7th October 2018 at approximately

04.40 hours. A Council CCTV operator made a radio call to Kent Police to advise that there was a fight in the High Street involving a number of males and during this altercation 4 vehicles were damaged and weapons were used. On 23rd November 2018 the Council had received a request from Kent Police to review the licence of the premises under the objectives of the prevention of crime and disorder and public safety, citing incidents of crime and disorder at or associated to the premises, in particular the use of weapons. The application had been correctly displayed by way of a notice at the premises, on the Council's website and on a notice board at the Council offices at the Civic Centre. On 10th January the Immigration Office had advised the Police that two members of staff at the premises were 'illegal workers', and drew attention to 11.27 and 11.28 of the Revised Guidance issued under Section 182 of the Licensing Act 2003.

PC Pringle explained the reasons for the application to review the premises licence. He drew attention to the failure of the Licence Holder to prevent crime and disorder and protect public safety. He indicated that the standards of operation and management fell below those required. He amplified the details of the immigration incident and confirmed that a Civil Penalty Referral Notice had been served on the owner for employing two 'illegal workers' at the premises. He said that these were the immigration offences referred to in the Guidance and said that this was an example of the disregard for law at the premises. PC Pringle said that the incident on 7th October had started at 4.47am. There was footage from a CCTV camera which showed that a knife was brought out of the Cod Father, and that bats were used during a scuffle near the premises. Little information was subsequently provided to the Police, staff did not report persons with weapons, and did not activate the panic alarm. The Licence Holder attended a meeting with PC Pringle and the Council's Licensing Officer on 23rd October. The Licence Holder said he could not be held responsible for the behaviour of staff after work. Suggestions were made to help the Licence Holder more fully support the licensing objectives and a number of conditions were proposed to this end. The Licence Holder refused, with no attempts at negotiation. He was shown footage from the nearby CCTV cameras of a male coming out of the Cod Father with what appeared to be a knife. The Licence Holder said it was a customer, not a member of staff. PC Pringle said that in the footage the Licence Holder stood close to this man and did not appear to be afraid. He said there was clearly a prior connection between the two men. He also argued that a member of public would not have known where to find a knife in such a short space of time. He said that a bat and broom were also used during the incident and staff were clearly acting in retaliation to the damage caused to the Licence Holder's car. PC Pringle said that the Licence Holder showed an inherent disregard for law and order, and had taken no control or responsibility. This was an example of taking poor decisions, and, as Licence Holder, he was expected to uphold the licensing objectives during an incident and in the aftermath. PC Pringle had written to the Licence Holder on 4th January asking about details of staff training and whether the in-house CCTV system was operational. He also requested details of all staff. This was not provided immediately, and some of the details, such as staff training certificates, were only provided that morning to the Sub-Committee. PC Pringle said he had written to the Licence Holder on 26th October, outlining the conditions which had been discussed at their meeting on 23rd October. PC Pringle drew the Sub-Committee's attention to page 59 of the agenda which outlined the recommendations suggested and the reasons behind the recommendations. Kent

Police formally requested a revocation of the licence, or a period of suspension to allow the premises to make the necessary changes.

309 Exclusion of the Public

Resolved:

That pursuant to Section 100A(4) of the Local Government Act 1972, as amended, the public be excluded from the meeting during consideration of the following item, as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to paragraphs 1, 2 and 7 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

PC Pringle, during the exempt session, showed the Sub-Committee CCTV footage of the incident that occurred on 7th October. The footage was taken from two CCTV cameras in the vicinity of the Cod Father premises and the nearby High Street.

The Sub Committee came out of exempt session.

310 The Cod Father, 15 High Street, Ashford, Kent TN24 8TH – Review of the Premises Licence

In response to a question, PC Pringle said that no officers had been informed about a knuckleduster at the time of the incident, nor had it been raised during his meeting with the Licence Holder. This Sub-Committee meeting was the first time he had heard it mentioned.

PC Pringle advised that the premises licence allowed the premises to open until 5.00am. This incident happened at approximately 4.50am. The Sub-Committee questioned whether an earlier closing time would prevent this type of incident. PC Pringle responded that businesses operating at this time tended to draw intoxicated people. The remedy was either to employ door staff or reduce the opening times. The Sub-Committee questioned whether the requirement for 2 door staff was draconian but PC Pringle considered that 2 security staff would mean that premises staff did not need to take action in the event of disturbance.

In response to a question about the in-house CCTV, PC Pringle said that the Licence Holder had visited the police station and brought the hard drive from the CCTV system. However, he had not brought the necessary cables, so it was not possible to view the footage immediately. It was late on Friday afternoon and PC Pringle did not believe at that stage that any footage would incriminate staff. PC Pringle considered all aspects and did not pursue the matter immediately. The CCTV system was thought to record only for 24 hours, so by Monday it was thought no longer possible to obtain footage from the night of the incident. PC Pringle said that in retrospect he believed footage from the premises would have helped identify who came and went.

The Sub-Committee questioned what had happened regarding the Immigration Office. PC Pringle said he now had the names of the two staff who were considered to be 'illegal workers'. The Licence Holder said he had appropriate evidence but PC Pringle questioned when these documents had been retrieved from the two staff, who had Italian passports. PC Pringle confirmed that he had received a letter from the Immigration Office along with a penalty. The Principal Litigator advised the Sub-Committee that this was a matter for the Immigration Office, who had made their formal decision to issue a penalty, and it was not a matter for the Sub-Committee to go behind that decision.

The Owner/Manager spoke. He said he was cashing up when the incident first began, and the Licence Holder was upstairs. Some staff were still on site and were cleaning the premises. At first, the Owner/Manager tried to break up the fight, but there were many people involved. He did not call the Police because he did not wish to cause extra trouble for himself and his business. He was not able to break up the fight. His car was hit by another car, with a drunk driver. He removed the keys from that driver and walked away, without getting involved any further in the fight. Some of his friends arrived and started getting punched. At that point the Owner/Manager removed a baseball bat from the boot of his car, just as a police car arrived. He attempted to talk to the Police and explain the situation, but he was told to sit in a car, and was then told that he was being arrested. He was only holding the baseball bat, and did not hit anyone with it. He was intending to defend himself, if necessary. He questioned why drunk drivers were allowed to 'get away with it', when the Police were always very hard on his business. He confirmed that the Licence Holder had not been involved.

In response to a question, the Owner/Manager said that the panic button did not work any more as the response agency was no longer operating. He clarified the confusion with regard to a response the Licence Holder had given to the same question at the time of the incident. The Owner/Manager explained that the Licence Holder did not speak good English and had been confused when he said the button would not work as the shop was closed. The Owner/Manager also clarified that when questioned the Licence Holder thought the Police were asking about hygiene certificates, not conflict management certificates, and he had answered that all staff had them.

The Principal Litigator explained to the Owner/Manager that this was a hearing to review the premises licence held by the Licence Holder, and the Owner/Manager was only here to assist him in that regard. She said he needed to explain why the licence should not be revoked and explain how the licensing objectives were addressed by the Licence Holder. The Sub-Committee asked if the Licence Holder knew what the licensing objectives were. The Licence Holder was unable to answer. He asked to confer with the Owner/Manager and was still unable to answer afterwards. The Chairman said the Licence Holder should be well aware of the licensing objectives and that this was a cause for concern. He said the business would attract drinkers and should have good communications with the Police. The Licence Holder and Owner/Manager had no business trying to defuse altercations near the premises. The Owner/Manager said that the Licence Holder would adhere to the conditions which he had presented to the Sub-Committee at the start of the

meeting. The Sub-Committee referred the Licence Holder to the relevant page in the committee document that detailed all the licensing objectives and, in particular, his own premises licence certificate. Still he was unable to explain the licensing objectives to the Sub-Committee. The Owner/Manager was asked the same question and was given the same direction to the committee documents. He was also unable to answer the question. The Sub-Committee then asked the Licensing Officer to explain what the licensing objectives were. Further to this explanation, the Sub-Committee asked the premises Licence Holder to explain what steps or measures he had in place to promote the licensing objectives when operating his business. Neither the premises Licence Holder nor the Owner/Manager of the business could adequately explain to the Sub-Committee how they conducted their business in light of these objectives i.e. how they prevented crime and disorder, how they protected public safety, how they dealt with the prevention of public nuisance and how they protected children from harm. In response to a question, the Owner/Manager said that four members of staff had now been trained in how to deal with customers who were abusive and drunk.

In summing up, the Police expressed a lack of faith in the Licence Holder to work with the Police and uphold the licensing objectives. PC Pringle proffered that revocation of the premises licence was the only sure way of preventing crime and disorder and protecting the public.

The Sub-Committee then retired to make their decision.

On return, the Principal Litigator read out the Licensing Sub-Committee's decision and reasons. A copy of the decision notice and reasoning was issued to the Licensee after it had been read.

The Chairman said that the Council wanted to promote a thriving night-time economy in the town and weapons on the street had no place in civilised society. The Sub-Committee took a dim view of this.

Resolved:

That the licence be revoked.

The decision notice and formal wording read out by the Principal Litigator is appended to these minutes. The decision notice was duly issued to the Premise Licence holder at the meeting before the meeting was formally closed.

**LICENSING SUB-COMMITTEE
THURSDAY 24th JANUARY 2019**

**APPLICATION FOR THE REVIEW OF A PREMISES LICENCE FOR THE COD
FATHER (15 HIGH STREET, ASHFORD, KENT, TN24 8TH) UNDER THE
PROVISIONS OF SECTION 51 OF THE LICENSING ACT 2003**

LICENSING SUB-COMMITTEE DECISION AND REASONINGS

LICENSING OFFICERS

Alison Simmonds
Trevor Ford

**REASON FOR
MEETING:**

An application was made by the Chief Officer of Police for the review of a premises license for The Cod Father (15 High Street, Ashford, Kent TN24 8TH), under the grounds of 'The Prevention of Crime and Disorder' and 'Public Safety'.

DELIBERATION:

The Licensing Sub Committee listened to the introduction given by the Licensing Officer in respect of the application made, who also drew attention to the fact that 11.27 and 11.28 of the Revised Guidance issued under Section 182 of the Licensing Act 2003 were pertinent sections of the Guidance in light of an immigration incident that had taken place at the premises.

The introduction was swiftly followed by the comprehensive amplification of the application made by the Police for review. The Police were represented by PC Pringle, who explained his concerns as follows: the failure of the Licence Holder to prevent crime and disorder and protect public safety. He indicated that the standards of operation and management fell below those required. He amplified the detail of the immigration incident and confirmed that a Civil Penalty Referral Notice had been served on the business owner for employing two 'illegal workers' at the premises. He detailed that these were the immigration offences referred to in the guidance. He indicated that this was indicative of the disregard of the law at the premises.

In terms of the incident that happened in October, it was detailed that whilst the premises Licence Holder and the owner had initially exited the premises to defuse the incident, when this was not effective they simply joined in, what should have happened is that they retreated back to the premises and called the Police. This did not happen, neither did they deploy the panic alarm.

The Police indicated to the Sub-Committee that the premises was a magnet to drunk people because they are open and therefore attract customers to their premises to purchase hot food. Whilst

this is not within the control of the premises Licence Holder, how they react to drunk patrons and altercations in the vicinity of the premises is within their control and wielding the knives associated with food preparation, e.g. kebab knives, is a worrying concern as it was what appeared to be a long kebab knife that was taken from the premises into the street during the incident in October.

The Police indicated that if revocation was not the preferred option for the Sub-Committee then there should be very strict control measures, e.g. reduced timings and door security to ensure public safety and reduce crime and disorder. The belief was that if there were door staff then staff members at the premises would not get involved, or take on security issues themselves.

The Sub-Committee were then shown CCTV footage of the incident in question. Both the Police and the owner of the business explained what was happening on the screen. The premise Licence Holder and the premise owner indicated to the Sub-Committee that they wanted to break up the fight. They indicated that they did not call the police because the police would make trouble for them, the police would associate the problems occurring with the premises of the Cod Father. However, the altercation taking place in the street was not related to the Cod Father. The premise owner indicated to the Sub-Committee that the panic button did not in fact work any more, it was not connected to an external company monitoring centre.

The Sub-Committee questioned the Police about the necessity of SIA door staff, believing that perhaps this measure was draconian. The Police indicated that if there was door staff then staff members would not get involved, would not take on the security themselves, and this would protect public safety and would promote crime and disorder objective.

The Sub-Committee noted that CCTV was a condition on their current licence and that the premise Licence Holder had offered the hard drive to the Police to view, attending the station with the said hard drive. PC Pringle accepted that it was his judgement call not to take the hard drive, get the lead from the Licence Holder and view the footage as it was a Friday and his view was that it was unlikely to hold any information worth viewing.

The Sub-Committee then proceeded to listen to the response to the application made by the premise Licence Holder who was represented by the owner of the premises, a Mr K Ahmandzai. The detail provided by Mr K Ahmandzai concentrated on the events that took place on 7th October. Whilst they had provided documentation detailing conflict management training, this was not expanded upon in any great detail, except to say that the only public facing staff were the four individuals who had attended the

training and that no-one else needed it. There was no discussion about how this would be cascaded down to any new members of staff that commenced employment with the premises. They indicated that they had drivers and cleaners but that they did not need to attend the training, since they did so few hours.

In respect of the training that had taken place, the premise owner indicated that the premise Licence Holder was confused when previously asked whether staff were trained in conflict management/received conflict management training. The premise Licence Holder indicated previously that certificates were held, believing that the question that was being asked was about the hygiene certificates which his staff do hold. However, since this review application conflict management training has been undertaken. This took place on 17th January 2019.

The Sub-Committee proceeded to question the premise Licence Holder who up until this point had said very little in the proceedings, all representations/information had been provided by the owner of the property, Mr K Ahmandzai and not Mr S Ahmandzai, the premise Licence Holder. In view of the fact that the Police had serious concerns about how the premises conducted their business in light of all the licensing objectives but in particular those of 'crime and disorder' and 'public safety', the first question posed was that of 'what are the licensing objectives?' The premise Licence Holder was unable to answer. He asked to confer with the owner of the premises and after conferring was still unable to answer.

The Sub-Committee referred the premise Licence Holder to the relevant page in the committee document that detailed all the licensing objectives and in particular his own premises licence certificate. Still, the premise Licence Holder could not tell the Sub-Committee what the licensing objectives were. The premises owner was asked the same question and was given the same direction to the committee documents. He also was not able to answer the question.

The Sub-Committee then asked the Licensing Officers to explain what the licensing objectives were. Further to this explanation, the Sub-Committee asked the premises Licence Holder to explain what steps/measures they had in place to promote the licensing objectives when operating their business. Neither the premises Licence Holder or the owner of the business could adequately explain to the Sub-Committee how they conducted their business in light of these objectives i.e. how they prevented crime and disorder, how they protected public safety, how they dealt with the prevention of public nuisance and how they protected children from harm.

In summing up the Police proffered that revocation of the premises licence was the only sure way of preventing crime and disorder and protecting the public.

In light of the above, the Sub-Committee considered the following relevant licensing objectives:

1. Prevention of Crime and Disorder

The Sub-Committee took the application for review made by Kent Police very seriously. The footage shown by the Police was alarming and of great concern. Whilst the Sub-Committee noted that initially the premise Licence Holder and the premise owner appeared to work to defuse the situation, when this was clearly not successful it was inappropriate to become involved by joining in with the proceedings e.g. getting baseball bat out of a car boot, cricket bat, broom, not having control of kitchen equipment and so forth.

Whilst it is commendable that some staff have undertaken what appears to be a conflict management course on 17th January, it would appear further to questioning in the licensing hearing that the premise Licence Holder does not understand the licensing regime and conditions under which he is to operate e.g. the Licensing Act 2003 and his responsibilities under the said legislation. It appeared that the course was taken in light of these proceedings further to the suggestion from the Police but they did not appear to fully understand the purpose of this requirement or its necessity.

The Sub-Committee were alarmed that the premise Licence Holder had no idea what the licensing objectives were, namely Crime and Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children from Harm. Not only that, he did not know what measures he had in place i.e. the parameters within which his premises could lawfully operate in respect of the promotion of the licensing objectives. As such, the Sub-Committee were concerned that the Crime and Disorder objective would not be promoted by the premise Licence Holder because he did not understand what it was to therefore conduct his business in a way that secured this licensing objective.

The Sub-Committee were mindful of the immigration offences that had taken place and the Civil Penalty Referral Notice that had been served on the business owner for employing two illegal workers at the premises. The Sub-Committee were mindful that the guidance issued under Section 182 of the Licensing Act 2003 detailed that this criminal activity should be treated particularly seriously and that where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that

revocation of the licence – even in the first instance – should be seriously considered. The Sub-Committee were minded not to go behind the decision of the Home Office in issuing the aforementioned Notice and therefore did not give much weight to the representations made by the Licence Holder in this regard, mindful that it had been put before the Home Office in consideration of whether there was a statutory defence.

The Sub-Committee were concerned at the lack of cooperation between the premise Licence Holder and the Police. The lack of contacting the Police when incidents take place, especially events such as those that took place in October where offensive weapons were produced, motor offences were taking place, fights in the street and car crashes, events which are quite serious and alarming, is a great worry. Calling the Police should be at the forefront of the premise Licence Holder's mind in such instances. Instead, they chose not to contact the Police because they do not wish to alert them to troubles that could be associated with their premises. This lack of cooperation and lack of public duty to report crime and disorder is indicative of their failure to promote this licensing objective.

2. Public Safety

The Sub-Committee were very concerned that the premise Licence Holder had no idea what the licensing objectives were, namely Crime and Disorder, Public Safety, Prevention of Public Nuisance and Protection of Children from Harm. Not only that, he did not know what measures he had in place i.e. the parameters within which his premises could lawfully operate in respect of the promotion of the licensing objectives. As such, the Sub-Committee were concerned that the Public Safety objective would not be promoted by the premise Licence Holder because he did not understand what it was to therefore conduct his business in a way that secured this licensing objective.

3. The Prevention of Public Nuisance

No representations had been made regarding this licensing objective.

4. Protection of Children from Harm

No representations had been made regarding this licensing objective.

DECISION MADE:

To revoke the licence

Right of Appeal

- The decision does not take effect:
 - a. Until the end of the period given for appealing against the decision,
or
 - b. If the decision is appealed against, until the appeal is disposed of.
- There is a right of appeal against this decision. An appeal must be commenced by notice of appeal given by the Appellant or anybody affected by this decision to the Magistrates Court within 21 days of the date of this notice.

Dated: 24th January 2019

This page is intentionally left blank