

MINUTES OF LICENSING PANEL

MEETING DATE Wednesday, 29 May 2019

MEMBERS PRESENT: Councillors Renee Blow (Vice-Chair, in the Chair), Jane Bell and Alan Ogilvie

OFFICERS: Mark Marshall (Head of Licensing), Tasneem Safdar (Senior Solicitor), Chris Ward (Licensing Officer) and Coral Astbury (Trainee Governance and Member Services Officer)

OTHER MEMBERS AND OFFICERS: Stephanie Fairbrother (Licensing Officer) and Justin Abbotts (Licensing Officer)

PUBLIC: 0

1 Apologies for absence

None.

2 Declarations of Interests

A declaration of interest was made by the Chair, Councillor Ken Jones, as the premises under review fell within his ward.

As a result the meeting was adjourned for a short period to allow the Vice Chair, Councillor Renee Blow, to attend the meeting in the Chair's place.

3 Review of Premises Licence:- Turkish Delight

The Panel met to determine a review application in respect of Turkish Delight, pursuant to the provisions of Section 52 of the Licensing Act 2003. The application for review had been brought by the Council's Head of Licensing on behalf of the Licensing Authority as a Responsible Authority.

The Premises Licence Holder (PLH) Abdoolah Hidari and his son, Farhad Hidari were also in attendance.

Mr Chris Ward, Licensing Officer presented the Committee report and confirmed that all notice and procedural requirements had been adhered to. The PLH confirmed that all evidence had been received in advance of the meeting.

The review had been instigated by the Licensing Authority on the basis that they were of the view that the licensing objectives had been undermined, in that licensing conditions were not being adhered to and potentially employment of an individual with no rights to work in the UK.

On 18 January 2019 a suspension letter was served at the premises for non-payment of the Annual Renewal Fee (ARF). Once a suspension is served the

licence becomes void or invalid rendering any licensable activity an offence under the Licensing Act 2003. The following day, 19 January hot food was sold after 11pm so Officers entered the premises to establish who was carrying on the activity.

Mr Marshall explained that he found three individuals on the premises. No-one took responsibility for the premises. Male 1 gave his details as Abdoolah Hodari and when questioned if he had received the suspension letter replied that he had not as he had been on holiday. Male 2 details were sought and his language skills were very poor and all that could be established was that he was a Syrian refugee. He was asked for his identity card which he could not provide and when asked about his rights to work in the UK, he stated that he did have those rights. As the details of Male 2 were being established, Male 3 appeared from the back of the premises with a pizza box in his hand. He was a British born Asian male who began to cause a conflict between staff and Officers. He provided that he was not a worker and merely visiting the premises. His identity was not established. Male 1 was asked to contact the owner. After being on the premises for approximately 30 minutes the owner of the business arrived.

The male who presented himself as the owner was Abdoolah Hidari who claimed he had owned the premises for almost 1 year and was unaware of the suspension and unaware he had to transfer the licence into his name. According to Council records, we had a Zayer Naseri as the licence holder. He was asked to provide the details of the staff. Male 1 provided his name as Talib Nori, Male 2 wrote his name down as Mohamad Ahmad Gamal with a dob of 1/9/99 and Mr Hidari wrote their details on a piece of paper which was handed to Mr Marshall. Members were referred to this document within their packs.

On the 21 January 2019 the licence fee was paid and the name transferred to Mr Hidari. Officers returned on the 22 January 2019 to establish the amount of sales made after 11pm, whilst the licence was suspended. CCTV was requested from the weekend of 18/19 January in order to assist enquiries with tracing the illegal worker and to establish the parameters of licensable activity over the weekend. A letter was sent to Mr Hidari requesting the CCTV footage to be provided within seven days.

Officers returned on the 31 January 2019 to collect the footage. However, no footage had been downloaded and the licence holder was unaware of how to use the system. When officers examined the system the CCTV only had the capacity to store footage for 9 days, therefore the images from the 18/19 January had been overwritten.

Mr Marshall provided that the premises licence has extensive conditions attached to it regarding the CCTV, stipulating that footage should be held for a minimum of 31 days and a staff member who is able to operate the system should be on the premises. As the CCTV was not forthcoming, further enquiries were made with Just Eat. On the 18 January two sales after 11pm were identified and two sales on the 19 January.

The Panel were advised by Mr Marshall that warnings had not been adhered to and the CCTV condition was still being breached. The CCTV condition was in place to not only protect the general public but also the licence holder and his employees.

A further concern that Mr Marshall also relayed to members was that Mr Hidari had been employing an illegal worker. The Home Office had identified Male 2 who was

present on the 19 January as Ahmad Mahmoud Abdul Ghani, a Syrian national who had claimed asylum but had been refused. He had since not reported for his bail conditions and had absconded. He had no rights to work in the UK and had paperwork to confirm this. Mr Marshall told the panel that it was hard to believe that the individual was not an illegal worker, as he was wearing an apron and cutting the donner meat off the machine when he arrived at the premises on the 19 January.

Mr Marshall explained to the panel that he was of the view that adding/modifying conditions or giving a warning to the licence holder would not have any effect.

Mr Farhad Hidari, on behalf of his father Mr Abdoolah Hidari explained that his father had bought the business in January 2018 and this was his first business, so he was unaware of the conditions attached to the licence or that he had to transfer the licence or pay an annual fee. It was explained that the suspension letter had not been opened by any member of staff nor was it forwarded on, despite it being marked “urgent” and “suspension of licence” and therefore the licence holder was unaware of the suspension. As a result, staff had been given warnings.

In respect of the asylum seeker, the panel were informed that the male came into the shop that evening to have a chat with the licence holder who has due to arrive around midnight. The panel were told that he was not working but was waiting to discuss a job opportunity and his level of experience. The licence holder told the panel that the asylum seeker was from London and that since the 19 January he had not seen him, nor had he returned to the premises. Further, the asylum seeker had told the premises licence holder on the night of 19 January that he did not have any rights to work in the UK, and therefore he was told that there was no job opportunity for him.

The licence holder was questioned about the non-compliance in respect of the CCTV conditions. It was accepted by the licence holder that this was a fault on his part and that he was waiting for an engineer to fix the problem, despite the fact that he had been given warnings in respect of this. He explained that he had been to see a solicitor who had explained the conditions to him, however, he still did not carry out monthly maintenance checks and neither were these documented as required by one of the conditions on the premises licence.

Mr Marshall submitted that revocation of the licence would be too harsh in the circumstances. However, it was suggested that some kind of action was required to ensure that the licence holder understood his obligations.

In reaching its decision the panel took into account the following:

1. Both written and oral evidence presented in connection with the hearing
2. The Licensing Act 2003
3. S182 revised guidance of the Licensing Act 2003
4. South Ribble Borough Council – Licensing Policy

RESOLVED: (Unanimously)

1. The Panel noted that there had been some issues at the premises, which had undermined the licensing objectives namely the prevention of crime and disorder.

2. The Panel carefully considered all the evidence provided by the parties at the hearing together with the S182 Guidance and the Council's licensing policy. Mr Hidari had been served with two letters in respect of compliance with the conditions on his licence, specifically in respect of CCTV. It was concerning to hear from the licence holder that despite having consulted with a solicitor and having had the conditions explained to him, he had still not carried out any maintenance checks. Furthermore, a definite date could not be provided to the panel as to when an engineer would rectify the problem with the CCTV. This panel felt was unsatisfactory as the licence holder had already had a substantial time period to rectify the problem. Paragraph 11.10 was taken into account:-

"11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."

3. The panel understood that it was the licence holder's first business and that this could be demanding, however, ultimately, the responsibility for the premises was Mr Hidari's and he needed to be more proactive in understanding his obligations and meeting legal requirements.
4. Turning to the Syrian asylum seeker, the panel were not convinced with the licence holder's version of events. They found it extraordinary that an individual would leave London to come to Leyland of all places to find work. They were of the view that on balance the individual was more than likely working illegally at the premises, and had the CCTV footage been available this would have potentially been able to confirm this. The panel took into account Paragraph 11.27 and 11.28 of the S182 guidance which states:-

"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- for the sale and distribution of illegal firearms;*
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- for prostitution or the sale of unlawful pornography;*
- by organised groups of paedophiles to groom children;*
- as the base for the organisation of criminal activity, particularly by gangs;*
- for the organisation of racist activity or the promotion of racist attacks;*
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;***

- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. 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.”

5. The panel accepted that Mr Hidari had complied with issues in respect of gas safety which the Environmental Health Team had asked him to deal with, at a cost of £3,000. However, the panel were of the view that these kind of issues should have been dealt with by Mr Hidari when he first took over the business in January 2018. It was his responsibility as the person in charge of the business to ensure that he was complaint with any issues which may arise in respect of gas safety, as potentially this was a risk to not only to members of the public but also to him and his employees.
6. The panel considered the steps it could take to address the undermining of the licensing objectives. It was obvious that there was a training need required, as the licence holder did not fully understand his obligations and training was required to assist him with this.
7. The panel were of the view that a further warning would not assist in the circumstances. In order to address the fact that the licensing objectives had been undermined, by the employment of an illegal worker and the non-compliance of the CCTV conditions, revocation of the licence was seriously considered. However, it was apparent to the panel that there was a need for training together with a deterrent in respect of any future conduct. In the circumstances, revocation was not the answer, as the panel wished to assist the licence holder.
8. Taking everything into account, the panel were of the view that a suspension was justified as an appropriate and proportionate response to the promoting of the licensing objectives. In that regard the panel made the following decision:-
 - a) *To suspend the premises licence (which will remain suspended) for a period of 1 month following the successful upgrade of the CCTV system to the satisfaction of the Licensing Authority.*
 - b) *To add the following condition:-*

The PLH to attend training with the Licensing Manager to cover his obligations as a personal licence holder by the 30th June 2019.

9. The Panel were of the view that the above mentioned conditions and the suspension of the licence, would address the issues raised and promote the licensing objectives. The Panel felt that after careful consideration of the case before them, an appropriate and proportionate decision had been reached. The panel wished to remind the personal licence holder that if the above conditions

are not complied with, then this may lead to a further review hearing, at which point revocation of the licence would be a serious consideration.

10. Any party who is aggrieved by the decision, has a right to appeal the decision to the Magistrates Court within 21 days.

Chair

Date