

Minutes of the meeting of Licensing sub-committee held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Friday 16 June 2017 at 10.00 am

Present: Councillor DW Greenow (Chairman), PGH Cutter and FM Norman

Officers: Kevin Price, Chris Jenner, Ariz Trezins, Fred Spriggs

47. APOLOGIES FOR ABSENCE

No apologies for absence were received.

48. NAMED SUBSTITUTES (IF ANY)

There were no substitutes present at the hearing.

49. DECLARATIONS OF INTEREST

There were no declarations of interest made.

50. STREET TRADING APPEAL: SITE AT UNIT 19 LOWER ROAD INDUSTRIAL ESTATE, LEDBURY, HR8 2DJ

Members of the licensing sub committee of the council's planning and regulatory committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

The committee noted the apologies of the applicant who for urgent personal reasons could not attend and further noted that the applicant's agents were present.

Prior to making their decision the members heard from:

- Kevin Price, street trading officer
- Chris Jenner, head of technical and parking services
- Ariz Trezins, environmental health officer
- Sergeant Nicholas Green, West Mercia Police
- Roman Jerabek, current vendor on the site
- Dennis Davies, former vendor on the site
- Richard Barnett, One Licensing, applicant's agents
- Paul Jennings, One Licensing, applicant's agents

The committee noted that the head of technical and parking services had taken the original decision to refuse the application based on the recommendations of the street trading panel and professional advice. This advice included:

- if there were any anti-social behaviour arising from the granting of the application, then this could only be dealt with by the police or the licensing department which would have resource implications for both organisations.

- A 3 month trial period was not viable; and
- Planning permission would be required for the site.

The environmental health officer's concerns were primarily about noise nuisance in the evening due to the proximity to a residential area. Noise in the street was not classed as a statutory nuisance and this would mean that the environmental health department would not be able to take action.

Sergeant Green outlined the concerns of West Mercia Police which were based on the knowledge and understanding that similar sites attract anti-social behaviour and the proximity to a residential area. It was noted that the majority of the business on the industrial estate operated standard working hours but one factory did operate a shift pattern and had a canteen and vending machines which served hot and cold snacks.

The committee heard from Mr Roman Jerabek who was operated a similar business to the applicant on the site and Mr Dennis Davies who had previously operated a similar business. Both Mr Davies and Mr Jerabek indicated that they had both operated in the same area being requested by the applicant but had had to move location due to traffic problems. Mr Jerabek also informed the committee that currently he closes his unit at 1500 hrs but in the next year would be moving to a closure time of 1700 hrs which was already included on his licence.

The committee then heard from the applicant's agents who indicated:

- That there were no historical crime issues in relation to the site;
- The applicant would be using electricity from the car wash business on the site so there would be no generator noise
- That whilst the site would not be a busy location, the applicant wished to proceed.
- The applicant had offered CCTV as a condition and was willing to work with the police in connection with anti-social behaviour.
- That the applicant would have no jurisdiction over customers sitting in their cars to eat the snacks purchased.
- There would be momentary issues of car exhaust noise which could potentially affect residents.
- The applicant was willing to change the licensed hours from 2300 hrs to 2200 hrs and to reduce the length of any trial period.
- It is anticipated that customers will be from Ledbury residents.

RESOLVED

That the application should be granted subject to following conditions:

Duration of licence: 9 months
Hours of operation: 1600 hrs to 2230 hrs

CCTV to be provided of evidential quality which would have a 28 days storage capability. The CCTV footage to be available to any police or council officer on request.

In addition, the street trading consent standard condition at 4.8 to be amended to add "litter will be picked up which is 25 metres in every direction from the site of the unit."

The meeting adjourned at 1105 hrs.

51. REVIEW OF A PREMISES LICENCE FOLLOWING AN EXPEDITED / SUMMARY LICENCE REVIEW IN RESPECT OF: JALSAGAR RESTAURANT, 60 ST OWENS STREET, HEREFORD, HR1 2PU - LICENSING ACT 2003

The meeting re-convened at 11.15 am.

As the premises licence holder's solicitor had submitted a significant amount of paperwork the previous day, the meeting was adjourned until 12.15 pm to enable the members to read the papers.

It was noted that no intention to attend had been submitted in respect of Patricia Marleau. However, the committee agreed that Ms Marleau would be able to answer queries which may occur as a result of her witness statement.

The meeting re-convened at 12.15 pm

Members of the licensing sub committee of the council's planning and regulatory committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Under paragraph 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the meeting was closed.

The meeting was re-opened for the purposes of the decision.

Prior to making their decision the members heard from Fred Spriggs, Licensing Authority, Sergeant Duncan Reynolds and Jim Mooney, West Mercia Police. Members also heard from the applicant's solicitor, Heath Thomas, Harrison, Clark, Rickerbys.

The committee have carefully considered all the representations, including a public representation, reports and evidence before them today and have also had regard to their duties under S4 of the Licensing Act and have considered S182 guidance and Herefordshire's statement of licensing policy. They also had regard to the relevant sections of the Licensing Act.

DECISION

This is the decision of the regulatory sub-committee in respect of a review of premises licence pursuant to Section 53C following the summary licence review of a premises licence concerning Jalsagar Restaurant, 60 St Owens Street, Hereford. HR1 2PU.

The decision of the committee is that the licence shall be suspended for a period of three (3) months and the following condition shall be placed on the premises licence.

"The premises licence holder shall permanently engage the services of an immigration advisor, as agreed in writing with the licensing authority, who shall undertake a review of all existing employees at the premises and to check entitlement to live and work in the UK and thereafter independently verify prospective employees' right to live and work in the UK prior to the employee being engaged to work at the premises".

REASONS

The committee heard from West Mercia Police as regards the events of 19 May 2017 and made reference to the review in 2011 as set out in the witness statement of Sergeant Duncan Reynolds and that they were seeking revocation of the premises licence on the basis that the premises licence holder had admitted to employing a person in contravention of immigration law and this was a serious crime. The police made reference to paragraph 11.28 of the S182 guidance. In addition, they went through statements provided by the Immigration Officer. In addition they made reference to East Lindsay case and said crime and disorder objective was engaged. Sergeant Duncan Reynolds clarified that he had been present during the visit but had not been present at the time the various individuals detained had been interviewed by the immigration officers and therefore could not comment on whether they had asked for an interpreter or give a view of the apparent understanding of English given by the individuals concerned.

The premises licence holder representative fully outlined his client's case and that they acknowledged the premises licence holder had made a mistake in allowing a new member of staff (M X) to start on the basis of photocopy documents. This was a mistake. The premises licence holder had a generally good record of compliance and made reference to the statements in the information provided to the committee. The 2011 incident was some six (6) years ago and it could not be said this indicated continual non-compliance. The representative made reference to the comparable position of individuals under the Rehabilitation of Offenders Act.

Reference was made to discussions that had taken place between the two (2) individuals held in the detention centre and a Bengali speaking solicitor acting on behalf of the Premises Licence Holder and to the statement provided. It stated that both individuals claimed to have asked for an interpreter as they had not understood questions. Their respective requests to immigration officers for an interpreter had been declined. The Premise Licence Holders solicitor further outlined likely impacts on the financial circumstances of the applicant and made reference to the S182 guidance paragraph 11.23. Mr Thomas also referred to para 11.28 of the statutory guidance and stated that the reference to "revocation" meant that while it should be considered it would not necessarily be the only outcome the licensing sub-committee could arrive at, having regard to "appropriate and proportionate" actions.

In coming to their decision the committee recognised the seriousness with which the premises licence holder had taken this matter and steps taken and proposed to ensure this state of affairs would not occur again. The committee were aware of the previous history of the premises but accepted there was no evidence of persistent failure to comply with licensing law and the premises general compliance with regulatory requirements seemed acceptable based on the evidence before them.

The committee carefully considered whether, in addition to the member of staff who had been allowed to initially work on the basis of false copy documents (M X), one other of the individuals in question was in fact working at the premises (M A) and considered the immigration statement and the statement of Bengali speaking solicitor who had spoken to him. On balance, in view of the evidence before them, namely that given that the police officer, who was in attendance at the time, could not offer any clarification as to whether an interpreter had been requested by (M A) and the request declined or in a position provide a view on their observation of the individuals ability to speak or understand English, they could not conclude that (M A) was employed at the premises. This was because they could not certain that (M A) had clearly understood the questions he had been asked. They noted, there was no other evidence available that (M A) was working at the premises. They were satisfied that (A M) had been visiting his friend and found no evidence he was working at the premises.

Therefore while the committee considers the breach of immigration law serious, they considered it did not warrant revocation on this occasion and a suspension of three (3) months, which would give the premises licence holder the opportunity to get systems in place to ensure that an employee had the right to work in the UK, together with an additional condition (as outlined above) was an appropriate and proportionate to ensure the promotion of the licensing objectives and prevent the undermining of the crime and disorder objective

The Committee had regard to the likely financial impact as per paragraph 11.23 of the statutory guidance.

The committee also have to consider the issue of the interim steps which currently suspended the licence and having given this careful consideration and decided they should remain in place to promote the prevention of crime and disorder objectives, for the reasons outlined above.

RESOLVED

That

- (a) licence shall be suspended for a period of three (3) months and the following condition shall be placed on the premises licence:**

“The premises licence holder shall permanently engage the services of an immigration advisor, as agreed in writing with the licensing authority, who shall undertake a review of all existing employees at the premises and to check entitlement to live and work in the UK and thereafter independently verify prospective employees’ right to live and work in the UK prior to the employee being engaged to work at the premises”.

- (b) that the interim steps agreed at the licensing sub committee meeting held on 26 May 2017 remain in place.**

The meeting ended at 1615