

Licensing Sub-Committee

Minutes - 13 January 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Bishan Dass

Conservative

Cllr Patricia Patten

Employees

Linda Banbury

Rob Edge

Sarah Hardwick

Democratic Support Officer

Section Leader - Licensing

Solicitor

Item No. Title

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application to vary a premises licence to specify an individual as Designated Premises Supervisor for Malones Bar (10 am)

In Attendance

For the Premises

P Adams – Premises Licence Holder

D Craig – Legal Advisor

M A Madani – Applicant

T Madani – Brother of Applicant

Responsible Authority

PC M Harvey – West Midlands Police

The meeting was opened at 10 am and adjourned for six minutes to enable the Legal Advisor to consult with his client.

The Chair introduced the parties and outlined the procedure to be followed at the hearing.

The Section Leader (Licensing) outlined the report circulated to all parties in advance of the meeting. In addition to the report, the following was circulated:

- On behalf of West Midlands Police – information request to Home Office Immigration Command and Control Unit and follow up email
- On behalf of applicant – correspondence received from the Home Office via Kingswood Solicitors

At this juncture, Mr Craig outlined the application to vary the premises licence to specify Mr M A Madani as the Designated Premises Supervisor (DPS) for Malones Bar and, in so doing, drew attention to Sections 4.26 to 4.28 of the Section 182 guidance whereby the Police may only object to a person proposed as a DPS where, in exceptional circumstances, it is believed granting will undermine the crime prevention objective. He advised that Mr Madani had legally resided in the UK since 2004, was a Personal Licence Holder and was currently awaiting confirmation from the Home office of a legal right to remain pending the outcome of an on-going application. He further stated that there was no evidence of criminality in respect of the applicant.

Responding to questions, Mr Craig stated that the definition of working related to a person receiving remuneration, i.e. cash changing hands. Mr T Madani advised that his brother had come into the country to assist him when he had been diagnosed with Cancer and had three businesses at the time. Mr M Madani had applied to the Home Office to leave the UK in order to attend his daughter's wedding. Mr Craig advised that the applicant's immigration status was currently pending and therefore not allowed to work. Should he be granted DPS status, there would be little change to the time he would spend at the premises (approximately three times per week), although his responsibilities in regard to compliance with the licence conditions would be onerous, but did not necessitate him being on the premises at all times.

At this juncture PC Harvey outlined the objection to the application on behalf of the West Midlands Police and, in so doing, advised that Home Office guidance defined a DPS as the person with day to day responsibility for a licensed premises. He had liaised with the UK Border Agency and the applicant had been served papers as an 'over stayer' and was not allowed to work in the UK. He stated that the Home Office definition of employment was 'any work that could be paid or unpaid which can only be undertaken by express permission of the Secretary of State'. He drew attention to evidence of serious criminal activity at the premises and reiterated that the Police, as a responsible Authority, had a duty to ensure that the prevention of crime and disorder licensing objective was upheld.

Responding to questions, PC Harvey advised that guidance from the UK Border Agency had been introduced to tackle the issue of voluntary work. The previous DPS, Mr McDonald, had indicated in his statement to the Police that Mr M Madani had been employed at Malones pre 2013, and if employed contrary to his status this would be classed as serious crime and that exceptional circumstances existed in this case meaning that the granting of the licence would undermine the prevention of crime and disorder licensing objective. The statement had not been produced in regard to these proceedings however. He confirmed that Mr M Madani had been viewed by the Police working behind the bar at Malones. PC Harvey accepted that

the application for a Personal Licence made to Sandwell Council had been correctly made.

All parties were afforded the opportunity to make a closing statement.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

5 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during the hearing and the Solicitor advised them of the options open to them in determining the matter.

6 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows:

7 Announcement of decision

The Sub-Committee has taken note of all the written concerns in respect of the application to vary a premises licence to specify an individual as Designated Premises Supervisor for Malones Bar, 35a Lichfield Street, Bilston and has listened to the arguments of those who have spoken at this hearing, both for and against the application.

Section 39 of the Licensing Act 2003 provides that applications to vary a person specified as a Designated Premises Supervisor may only be rejected if it is considered appropriate for the promotion of the prevention of crime and disorder licensing objective.

The Sub-Committee has heard from the applicant, via his legal representative, that:

1. at Sections 4.26 to 4.28 of the Section 182 guidance, the Police may only object to a person proposed as a Designated Premises Supervisor where, in exceptional circumstances, it is believed granting will undermine the crime prevention objective. 'Exceptional circumstances' is given its ordinary meaning and the applicant's representative went on to summarise why the applicant was suitable. This included confirmation that there was no evidence of criminality relating to this individual and Home Office papers confirm he had a legal right to remain in the UK pending the outcome of an on-going application.
2. he concedes that the immigration reporting restrictions include a restriction preventing him from working in the UK. It is also confirmed that the proposed Designated Premises Supervisor already undertakes unpaid duties at the

premises and it is not envisaged these will increase considerably if this application is granted, even though the applicant will then be required to undertake the role of Designated Premises Supervisor.

The Sub-Committee has heard from the West Midlands Police that:

1. a Designated Premises Supervisor has day to day responsibility for running the business;
2. the applicant has no permission to work in the UK;
3. the Home Office has confirmed verbally to them that the Border Agency guidance provides that employment is any work paid or unpaid undertaken without permission of the Secretary of State;
4. Section 182 guidance provides that to knowingly employ persons who should not be employed in the UK is an offence, and
5. Therefore, to grant this application would allow the applicant to work in the UK undermining the prevention of crime and disorder licensing objective.

In the absence of any statutory definition, the dictionary definition of work is – ‘activity involving mental or physical effort, done in order to achieve a result’.

The Licensing Sub-Committee is satisfied that the applicant undertakes work at the premises and will do so if this application is granted.

The Sub-Committee is further satisfied that Home Office guidance provides that work can be paid or unpaid and therefore exceptional circumstances exist which mean the granting would undermine the prevention of crime and disorder licensing objective. The application is therefore refused.

All parties have a right of appeal to the Magistrates’ Court within 21 days of receipt of this decision.

8 **Licensing Act 2003 - Application for a review of a premises licence in respect of Malones Bar, 35a Lichfield Street, Bilston (10.45 am)**

In Attendance

For the Premises

P Adams – Premises Licence Holder

D Craig – Legal Advisor

M A Madani – Applicant

T Madani – Brother of Applicant

Responsible Authorities

PC M Harvey – West Midlands Police

E Moreton – Licensing Authority

The Section Leader (Licensing) outlined the report circulated to all parties in advance and, in so doing, drew attention to the hearing held on 17 December 2015 at which the Sub-Committee had resolved to suspend the premises licence as an interim step.

At this juncture, PC Harvey outlined the review application attached as Appendix 3 to the report. He advised that he intended to show CCTV footage obtained from the premises. However, the Legal Advisor to the Premises Licence Holder expressed

concern that the footage had not been provided in advance of the hearing. The meeting was adjourned to enable the Sub-Committee to consider the matter and the Solicitor advised them of the courses of action available in moving the matter forward. The parties returned to the meeting and Mr Craig, having consulted with his clients, agreed to proceed with the hearing subject to being allowed to view the footage prior to continuing with the hearing. The meeting was therefore adjourned for approximately 30 minutes and re-convened at 1.22 pm.

PC Harvey continued with his submission and played the CCTV footage relating to the early hours of 7 November 2015, showing people being allowed into the premises by Mr T Madani outside the licensed hours. Mr M Madani is seen serving behind the bar, customers are smoking and there are ashtrays on all the tables. The footage shows the assault inside the premises, the victim being let out closely followed by the offender and two others. The victim is assaulted again and the offender is let back into the premises appearing very animated, goes behind the bar and is given a pint. PC Harvey continues to show snapshots of footage within the busy venue, showing people entering and exiting via the rear entrance and what he believes to be the taking of Class A Drugs. PC Harvey advised that this was the only CCTV footage he had seen, the assault would have been clearly viewed from behind the bar, there was no evidence of the use of Class A drugs other than what was viewed on the CCTV footage and that he had been advised that on the night of the private party (7 November 2015) Mr Garfield McDonald was registered as the Designated Premises Supervisor. PC Harvey indicated that it was clear that none of the staff had any regard for the licensing objectives and no Temporary Event Notice had been submitted for the private party. He added that no attempt had been made to contact the emergency services following the unprovoked assault. PC Harvey stated that an application to transfer the premises licence had been refused in 2013 due to incidents of crime and disorder and trading outside the licensed hours. The Police interview statement attached to the review application confirmed that Mr T Madani and Mr M Madani were both on the payroll. Mr Garfield McDonald had indicated that he was not at the premises on the night of the private party and had subsequently resigned from his position as Designated Premises Supervisor. Mr T Madani was unable to quote the licensing objectives and Mr M Madani's current permission to remain in the UK does not allow him to work. A serious assault and robbery had taken place, which could lead to a long term prison sentence and, in view of the above PC Harvey requested that the Sub-Committee consider revocation of the premises licence.

Responding to questions, PC Harvey stated that he would have been unlikely to object to the TEN application had there had been no evidence of recent problems with the premises. He was unable to comment on an operation set up to tackle the premises which had not in the event gone ahead and was not aware that there had been any previous review proceedings against the premises. With regard to the witness statement at page 27 of the papers circulated in advance of the hearing, no CCTV footage had been sought but the Police Officer had witnessed people walking into the rear of the premises. He accepted that there had been no clear evidence of drug dealing, but there was clear evidence of an assault, with the injuries listed by the victim carrying a maximum prison sentence of five years.

At this juncture, Mr Craig requested that the CCTV footage be replayed in order for him to question his clients about it. Responding to Mr Craig's questions, Mr T

Madani stated that he did not know the victim or his father, but he did know the girl accompanying them, but was unable to provide her surname. He had not viewed the assault inside the premises or outside the premises as it had taken place outside the post office. He did question the assailant when he returned to the premises. He stated that the incident of suspected drug exchange viewed on the CCTV footage was actually peanuts which he had sold to the customer. He stated that he was not aware of any drug taking on the premises, but accepted customers were smoking cigarettes.

Responding to questions, Mr T Madani advised that there were seven screens linked to the CCTV system which were located behind the bar. Mr M Madani confirmed that he routinely viewed the screens, quoting approximately fifty times per day. Mr T Madani stated that Mr Garfield McDonald had not been at the premises for three years and had resigned because he had been threatened by PC Harvey. He stated that the private party had commenced between 10 and 11 pm following a request from a friend, who worked at the Greyhound, earlier in the evening. Ashtrays had been put out after midnight and the doors closed at 0030 hours. He added that the party ceased at approximately 3 am. Mr T Madani stated that private parties took place approximately once per month, or once every three months. He stated that there was no private party on 28 November, although Police had viewed people entering the premises after the licensed hours. He stated that the incorrect time on the CCTV footage was his fault as he had failed to change the time when the clocks changed. He stated that he had not called the police as the incident inside the premises was minor and related to just one punch and had let the attacker back into the premises as he knew him and he called he and Mr M Madani 'Unc'. He had been unable to apply for a Temporary Event Notice as the Council Offices would have been closed at the time of the request and it was a mistake to allow the event to go ahead. Responding to a question regarding the licensing objectives, Mr T Madani stated they were crime and disorder, public nuisance, and protection of children from harmony and more. Mr M Madani confirmed there were many more objectives. Mr T Madani stated that if the premises were allowed to continue, he would consult the authorities regarding private parties and would not allow customers to smoke.

Responding to questions, Mr P Adams confirmed he was the Premises Licence Holder but, due to his medical condition having suffered a stroke, could not remember what detail was included on the licence in respect of Temporary Event Notices.

Mr T Madani, responding to further questions, indicated that he felt he would have more control over customers if he allowed them to smoke inside rather than outside the premises. He indicated that attendees at the private party had been made aware of the event via word of mouth and that in Bilston everyone knew each other. He did not ask people already on the premises to leave when the private party commenced. Mr M Madani confirmed he had seen the incident inside the premises and had passed the victim's hat to the assailant. Mr T Madani confirmed that the incident had not been recorded in the premises log book, contrary to the conditions of the premises licence.

Mr Craig pointed out that whilst one might speculate that after hours drinking had taken place on a regular basis, there was only evidence of one occurrence.

All parties were afforded the opportunity to make a closing statement.

9 **Exclusion of press and public**

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

10 **Deliberations and decision**

The Sub-Committee discussed the issues which had been raised during the hearing and the Solicitor advised them of the options open to them in determining the matter.

11 **Re-admission of press and public**

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows:

12 **Announcement of decision**

An application has been made by the West Midlands Police for a review of the premises licence in respect of Malones Bar, 35a Lichfield Street, Bilston.

At this hearing to review the Premises Licence, the Licensing Sub-Committee has listened carefully to all representations made by the persons who have spoken at this hearing, has considered all the evidence presented and has found the following facts:

The Sub-Committee has heard from the West Midlands Police that:

1. following a serious crime relating to a serious incident which began inside and then moved outside the premises on 7 November 2015, the West Midlands Police applied to the Licensing Authority for an expedited summary review of the premises licence. The hearing took place on 17 December 2015. Due to the serious nature of the incident, the Licensing Sub-Committee determined to suspend the premises licence pending a full review of the licence, in accordance with Section 53 of the Licensing Act 2003. This is the reason the Sub-Committee has been convened today;
2. CCTV footage was shown of the incident on 7 November 2015. This related to the assault which began on the premises, when a man was punched twice. He then ran from the premises. PC Harvey confirmed that, whilst it was not evident from the CCTV footage outside the premises, the victim of the assault was attacked again outside the bank a short distance from the premises and

was also robbed. Outside the premises the victim was attacked and robbed by the same person who assaulted him inside the premises moments before:

3. the CCTV footage also shows that the premises were selling alcohol on this occasion outside the hours permitted on the licence. Staff at the premises would have witnessed the incident, but chose to ignore it and did not call the emergency services. There is also a suggestion from the footage that drugs are used on the premises. Also, patrons are allowed to smoke on the premises and ashtrays are provided. The West Midlands Police have also confirmed that, on 7 November 2015, the premises had not applied for a Temporary Event Notice (TEN) in order to sell alcohol outside the hours permitted on their licence;
4. there have been several licence breaches and wounding on the premises. This and the offence of robbery could attract a custodial sentence, and
5. there is no confidence in the management structure at the premises and, in the circumstances, it is only a matter of time before a similar or worse incident occurs. Therefore, revocation of the licence is appropriate.

The Sub-Committee has heard from Elaine Moreton, Licensing Authority (as Responsible Authority), that she has attended this hearing to support the application made by the West Midlands Police.

The Sub-Committee has heard from the Premises Licence Holder, via his partner and legal representative, that suspension of the licence is appropriate and have confirmed that:

1. staff did not witness the incident on 7 November 2015 or notify the Police or other emergency services;
2. the reason for operating outside the hours of the licence was to facilitate a private party which had been arranged at short notice and therefore the premises had failed to serve a Temporary Event Notice (TEN) and at the time had not appreciated the significance of this. Private parties occur approximately once a month and TENs are not applied for;
3. patrons were smoking at the premises, and
4. they would struggle to name all four licensing objectives.

The Licensing Sub-Committee is satisfied on the evidence that:

1. there have been significant breaches of licence conditions and failure to comply with provisions of the Licensing Act in relation to temporary events;
2. there has been serious crime on and related to the premises (robbery and wounding), and
3. it is likely other criminal activity has occurred on the premises to include allowing patrons to smoke and use drugs.

Further, these actions do not promote the licensing objectives.

Therefore, based upon the above and having regard to the application and relevant representations made, the Sub-Committee has decided to revoke the licence in accordance with Section 53C of the Licensing Act 2003.

In accordance with Section 53C (2) (c) of the Licensing Act 2003, the interim steps put in place following the hearing on 17 December 2015 will cease to have effect from the coming into effect of the decision on review today.

The above action is considered appropriate and proportionate action for the promotion of the prevention of crime and disorder and public safety licensing objectives.

An appeal may be made by the Magistrates' Court against the decision, by the applicant, the holder of the premises licence, or any other person who made a relevant representation, within 21 days from the date of receipt of written notice of this decision.