

Statutory Licensing Sub-Committee

Minutes - 23 June 2022

Attendance

Members of the Statutory Licensing Sub-Committee

Councillor Phil Page (Chair)

Councillor Wendy Dalton

Councillor Rita Potter

Applicant for Review

Gary Grant

Aimee Taylor

Stephanie Reynolds

Alison Oldfield

Barrister for the Applicant

West Midlands Police

West Midlands Police

West Midlands Police

Premises Licence Holder

Geoff Parry

Mohammed Ali

Solicitor for the Premises Licence Holder

Premises Licence Holder

Responsible Authorities

Dianne Slack

Amitabh Singh

Michael Tudor

Trading Standards

Licensing Authority

Home Office

Employees

David Abel

Debra Craner

Jacob Stokes

Jas Kaur

Senior Solicitor

Section Leader - Licensing

Democratic Services Assistant

Democratic Services Manager

Observers

Sarah Carpenter

Councillor Rashpal Kaur

Ei Group Ltd

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 for a Review of a Premises Licence in respect of The Pendulum, Blaydon Road, Wolverhampton, West Midlands, WV9 5NP

An application for a review of a Premises Licence by West Midlands Police in respect of The Pendulum, Blaydon Road, Wolverhampton, West Midlands, WV9 5NP was considered following representations received from Licensing, the Home Office, Trading Standards and Other Persons.

The Chair advised all parties that the previous hearing had been adjourned to allow additional documentation to be redacted if necessary and circulated to all parties.

Jaswinder Kaur, Democratic Services Manager, confirmed that all parties were given the opportunity to submit additional documentation by 20 June 2022 and that all information submitted by that date had been circulated to all parties.

After discussion, it was confirmed that an exempt document submitted by West Midlands Police was a matter of public record and the Sub-Committee would not need to enter exempt session to discuss it.

The Chair welcomed all parties to the hearing and invited all those present to introduce themselves. All parties did so. He outlined the procedure to be followed and all parties confirmed that they understood the procedure.

The Sub-Committee's statutory duty was to consider the application and any representations, and to take such steps as contained in the Licensing Act 2003 as it considered appropriate for the promotion of the licensing objectives.

After consideration, the Sub-Committee determined that late documentation, which had been submitted by the Premises Licence Holder after 20 June 2022, would be excluded from the hearing.

Debra Craner, Section Leader Licensing, provided an outline of the application. Mr Gary Grant, Barrister representing the Applicant, confirmed that the summary was accurate. Mr Geoff Parry, Solicitor for the Premises Licence Holder, confirmed that the summary was accurate.

The Chair invited the Applicant to present the application. Mr Gary Grant, Barrister representing the Applicant, did so as per Appendices 3 and 12 of the report. He stated the following:

1. The Pendulum pub operated as a hub for criminal activity and a base for human trafficking and was operated by both Mr Ali, and his father Khalil Ali.

2. On 15 October 2021, Khalil Ali had been arrested in Poland on human trafficking offences and had since been convicted of those criminal offences.
3. It was clear that the pub, the car wash that operated from the pub car park and the residences above the pub were one operation, albeit split into different corporate entities.
4. On 25 February 2022, a multi-agency visit found three illegal workers at the car wash. They confirmed that they lived above the pub and were employed and paid by Mr Ali. An error in Home Office procedure had prevented the usual Fixed Penalty Notice from being issued on this occasion.
5. On 25 February 2022, a Licensing Compliance Check found that 15 conditions had been breached. A visit on 18 March 2022 found 16 breaches and a visit on 25 March 2022 found 17 breaches. Khalil Ali had been in charge on both visits made by officers in March.
6. The premises licence had been revoked in May 2020 under the previous Premises Licence Holder, Soran Rostam, for serious breaches of COVID lockdown restrictions. The pub was allowed to re-open following appeal on the condition that Mr Rostam had no involvement in the operation.
7. On 1 April 2022, Mr Ali submitted an application to vary the conditions of the licence in order to allow Mr Rostam to return to the premises to work there. That application had been rejected by the Statutory Licensing Sub-Committee. An email sent to Licensing alleged that Mr Rostam had been in the Pendulum pub despite the ruling of the Sub-Committee.
8. Local residents had made complaints about the pub and the landlord of the premises had lost all faith in the management. Comments from Mr Ali also suggested he was incapable of running the pub and upholding the Licensing Objectives.
9. The new Designated Premises Supervisor proposed by Mr Ali was a beautician with no obvious experience of managing licensed premises.

The Chair afforded all parties present the opportunity to question Mr Grant and his client in relation to its submission. Mr Grant and his client responded to questions asked.

The Chair invited the Premises Licence Holder to make representations. Mr Geoff Parry, Solicitor for the Premises Licence Holder, did so as per Appendix 11 of the report. He stated the following:

1. This was Mr Ali's first enterprise in the Licensing Sector and he had found it hard to balance generating trade and upholding the Licensing Objectives since taking over in September 2021. He had made the application in April 2022 to address this.
2. Mr Rostam was not involved in the business and there was no evidence to suggest otherwise.
3. In December 2021, West Midlands Police and Immigration Enforcement were satisfied following a visit to the premises.
4. Mr Ali had not been involved in human trafficking and had never been convicted of an offence.
5. The three people found working illegally at the car wash were engaged by a third-party company that Mr Ali had no involvement in. Mr Ali had made prudent enquiries on their status to work to the third-party.
6. The lease of the premises was in Mr Ali's name and had nothing to do with his father.

7. The pub was not a cash-only business as there was a card machine on site.
8. Mr Ali was sorry for the breaches found and they had since been rectified.
9. The running of the pub was beyond Mr Ali's confidence and the new management team that had been appointed would take over the premises, should the licence be preserved. They would re-establish the pub as a family environment, cut down on parties and hope to engage with the local community.
10. The appointment of a new Designated Premises Supervisor would be a proportionate response in this case.

Mr Ali offered his apologies to the Sub-Committee for his inability to manage the premises and stated that he was willing to pass the premises onto the new management team as they would be better placed as Premises Licence Holders.

The Chair afforded all parties present the opportunity to question Mr Parry and his client in relation to his submission. Mr Parry and his client responded to questions asked.

The Chair invited the Home Office to make representations. Michael Tudor did so as per Appendix 5 of the report. He stated the following:

1. Home Office Immigration Enforcement supported the application for review.
2. On 25 February 2022, a multi-agency visit involving West Midlands Police, the Licensing Authority and Gangmaster Labour Abuse Authority found three people who were present in the UK illegally, with no right to work.
3. It was confirmed that all three had claimed asylum upon their arrival into the UK. All three confirmed that they were still living in the accommodation allocated to them by the Home Office, but that they stayed above the Pendulum pub from time to time.
4. A Civil Penalty Notice was served on site to the employer.

The Chair afforded all parties present the opportunity to question the Home Office in relation to its submission. Mr Tudor responded to questions asked.

The Chair invited Trading Standards to make representations. Dianne Slack, Tobacco Control Officer, did so as per Appendix 6 of the report. She stated the following:

1. Trading Standards supported the application for review.
2. The Premises Licence Holder had failed to uphold the Licensing Objectives and had repeatedly ignored advice given by Licensing Officers.

The Chair afforded all parties present the opportunity to question Trading Standards in relation to its submission. The Tobacco Control Officer responded to questions asked.

The Chair invited the Licensing Authority to make representations. Amitabh Singh, Section Leader Licensing, did so as per Appendix 4 of the report and Supplementary Agenda Pack 3. He stated the following:

1. The Licensing Authority supported the application for review.
2. There had been a continued failure to uphold the Licensing Objectives and at least 15 serious breaches of licensing conditions had been attributed to Mr Ali.

3. Additional information suggested that Mr Rostam was still involved in the running of The Pendulum and that this was another serious breach of conditions placed on the licence.
4. In order to promote the Licensing Objectives, it would not be suitable to simply replace the management team and the licence should instead be revoked.

The Chair afforded all parties present the opportunity to question the Licensing Authority in relation to its submission. The Section Leader Licensing and Debra Craner, Section Leader Licensing, responded to questions asked.

The Chair invited West Midlands Police to address the issue of illegal workers living above The Pendulum pub and the issue of the business operating as cash-only. Miss Aimee Taylor, West Midlands Police, stated the following:

1. On 25 February 2022, a number of locked doors were encountered above The Pendulum pub.
2. An employee from the car wash stated that they lived there and that they had paid Mr Ali rent.
3. Upon gaining entry to one room, it was clear that it had been lived in.
4. On 25 February 2022, employees stated that it was a cash-only business, there weren't any card machines and that the tills were not in use.

The Chair afforded all parties present the opportunity to question Miss Taylor. She responded to questions asked.

The Chair invited all parties to present their final address.

The Solicitor for the Premises Licence Holder, the Premises Licence Holder and the Barrister representing the Applicant made a final statement.

David Abel, Senior Solicitor, provided legal advice to the Sub-Committee.

Councillor Page, Councillor Dalton, Councillor Potter, the Senior Solicitor and Democratic Services Manager withdrew from the meeting to allow the Sub-Committee to determine the matter.

The Sub-Committee adjourned at 11.57 hours.

The Hearing reconvened at 14.28 hours.

Councillor Page, Councillor Dalton, Councillor Potter, the Senior Solicitor and Democratic Services Manager re-joined the meeting.

The Chair advised all parties of the decision of the Sub-Committee, which was read out by the Senior Solicitor.

Resolved:

An application was made by West Midlands Police (WMP) as a Responsible Authority on 26 April 2022 for a review of the Premises Licence in respect of The Pendulum, Blaydon Road, Pendeford, Wolverhampton WV9 5NP, on the grounds that actions at the premises undermined the Licensing Objectives. Representations were received from WMP, Licensing, Trading Standards and The Home Office as

Responsible Authorities and from the Freehold Owner of the premises and from local residents.

The initial hearing of the Application to Review the Premises Licence took place on 8 June 2022 and was adjourned to 23 June 2022 for documents which had only recently been submitted to be considered, redacted if necessary and to be distributed to all parties.

The Premises Licence Holder (PLH) asked the Sub-Committee to allow three payslips from employees at the car wash which operated from the car park of the premises and which he had obtained from his Accountant to be included in the bundle of papers before the Sub-Committee. After due consideration, the Chair determined that he would not allow their inclusion, having been very clear on the deadline set for receipt of paperwork on the last occasion.

At the hearing on 23 June 2022 to review the Premises Licence, members of the Statutory Licensing Sub-Committee considered all written evidence and listened carefully to all representations made by persons who had spoken at the hearing. They considered all the evidence presented and found the following facts:

The Licensing Sub-Committee heard from Gary Grant, Barrister representing WMP, the Applicant for review, that:

1. On Friday 25 February 2022, a multi-agency visit took place at the premises involving Police Licensing, Local Authority Licensing, the Gangmaster Labour Abuse Authority and Home Office Immigration. This visit was arranged by WMP's Serious and Organised Crime Exploitation Department due to intelligence around Human Trafficking at a number of premises in which Mr Mohammed Khalil Ali (the Designated Premises Supervisor (DPS) and PLH) and his family are involved in, including The Pendulum Public House and the car wash which is based on the Pub's car park.
2. A Licensing compliance check was conducted during this visit by Police Licensing and Regulatory Officer Aimee Taylor and Section Lead Licensing and Compliance Officer Debra Craner. Mr Ali subsequently received a traders notice due to a substantial number of conditions being breached. The premises were given until 11 March (two weeks) to correct these breaches.

A further follow up visit was conducted on 18 March 2022, (giving the premises one additional week to address the breaches raised) by Section Leader, Licensing and Compliance Debra Craner. A number of breaches were again identified, resulting in Mr Ali receiving another traders notice. After three weeks there had been no effort to rectify the number of licence breaches by the PLH/DPS.

Following the previous visits on 25 February 2022 and 18 March 2022 where several breaches were identified and subsequently a number of traders notices were issued. A month later, on 25 March 2022, another follow-up visit was conducted by Police Licensing and Local Authority Licensing. This gave the premise an extra two weeks on top of what was agreed with the PLH to rectify the breaches. During the visit it was evident that no further attempts had been made to correct any of the breaches and the following were still in breach:

During the visits on 25 February 2022 and 18 March 2022 the PLH Mohammed Khalil Ali was not present at the Premises. He was present on 25 March 2022 and disclosed that he does not spend time at the premises and is only there for two hours a week as he spends his time at the car wash and not at the pub.

During the visit on 25 February 2022, three males were identified at the premises as working illegally. They explained that they had arrived in the UK by boat and lived at the Pub, paying rent to the PLH.

The PLH confirmed to the Police that he owns and runs both the car wash and the Pub but on other occasions told the Police that his father runs the pub and the car wash. It is uncertain who actually runs the premises and given that workers were found to be working illegally at the Premises, WMP are concerned that it is being used to facilitate Serious Crime, namely Human Trafficking, as well as repeated breaches of Licence Conditions and that the Premises Licence should therefore be revoked.

The premises has a history of complaints and the Licence was revoked previously but an accommodation was reached where the previous PLH, Mr Soram Rostam, has no involvement with the premises. Despite this, Mr Ali applied to have Mr Rostam reinstated as the PLH. Mr Grant told the Committee that Mr Ali's father, Khalil Ali had been convicted in Poland of Human Trafficking after attempting to bring 45 migrants to the UK. Mr Grant said that the Pub, car wash and the accommodation above the Pub were part of a Human Trafficking operation. On 25 February 2022, a multi-agency raid found three illegal workers at the car wash who stated to Police that they were employed at the car wash, lived above the Pub and paid rent to the PLH, Mr Ali. They said they were employed and paid by the PLH, Mr Ali. He believed that Soram Rostam was still involved in the business and that it operated as a cash only business. Both Mr Ali and the Freehold Owners of the premises admit that he is incapable of running the business or upholding the Licensing Objectives. He has proposed a new management team and DPS be allowed to run the premises for him, but as the PLH he is ultimately in charge - a role that he admits that he is incapable of fulfilling.

The Licensing Sub-Committee heard from the Licensing Authority that:

1. The Licensing Authority supports the application of West Midlands Police.
2. Following a licensing and multi-agency compliance visit on the 25 February and subsequent licensing compliance follow up visits on the 18 and 25 March, breaches of the Licence Conditions were identified and on the later visits, remained outstanding.
3. That the previous Premises Licence Holder, Mr Soram Rostam was still concerned in the running of the premises in breach of a previously imposed condition.
4. In light of these breaches of conditions, revocation of the Premises Licence is recommended.

The Licensing Sub-Committee heard from Trading Standards that:

1. The PLH and DPS had agreed in his original licence application to robust Licensing Conditions which he had not subsequently complied with.
2. The advice given to those responsible by Licensing Officers had been ignored.

3. The Premises Licence Holder and Management had failed to uphold the Licensing Objectives.

The Licensing Sub-Committee heard from Mr Mohamed Khalil Ali, Premises Licence Holder and Designated Premises Supervisor and from his Representative, Mr Parry, that:

1. He has now rectified all matters relating to breaches of Licence Conditions.
2. It was accepted there had been problems previously.
3. He had not complied with conditions of licence previously due his inexperience and staffing problems.
4. He has adopted all relevant practices from Staffordshire Council's Licensing Training Booklet.
5. He has employed a manager at the Pub.
6. He has confirmed that Immigration Enforcement are not taking any action in relation to Illegal Working at the Premises.
7. That he has applied to change the DPS to Mrs Kushwant Kaur and intends to sell the premises to her partner and herself. It was not a cash only business.
8. The employees at the car wash were employed by a separate Ltd company with which he was not involved.
9. Mr Ali had made enquiries of this Company to check that its employees were entitled to work in the UK.
10. PC Mountford of WMP visited in 2021 and confirmed that all was in order.
11. Mr Rostam had no involvement with the Premises and Mr Ali was not involved in Human Trafficking. Mr Ali was foolish in trying to get Mr Rostam back running the Pub.
12. The Lease of the Premises was in Mr Ali's sole name and he sub-let to the Car Wash Company.
13. Mr Ali visited the car wash regularly (at least four times a week). He did not rent the rooms above the Pub.
14. Mr Ali admitted that he was not capable of running the Pub or of upholding the Licensing Objectives.

The Home Office Immigration Enforcement Department were represented by Mike Tudor at the hearing.

He told the Sub-Committee that the Home Office Immigration Enforcement Department supported the application made by the Licensing Authority.

On Friday 25 February 2022, a multi-agency visit took place at Pendulum, Blaydon Road, Pendeford, Wolverhampton, WV9 5NP involving West Midlands Police, Local Authority Licensing and Gangmaster Labour Abuse Authority.

Three persons were encountered and found to be present in the UK illegally with no right to work and were arrested.

Home Office checks confirmed all three subjects entered the UK illegally in 2021 by small boat and had claimed asylum on their arrival. All three subjects confirmed they were still living in the accommodation in which they had been allocated to. All three subjects were de-arrested and set up on reporting authorised by CIO Atkar.

A Civil Penalty Referral notice was served on site to the employer. No action is being pursued under the Civil Penalty due to problems with the Warrant of Entry, but the offences of Illegal Working still occurred.

Given these circumstances, there is a concern that the continuation of the Licence is prejudicial to the prevention of Immigration Crime including Illegal Working and that the current Premises Licence Holder breaches the Licensing Objective of the Prevention of Crime and Disorder.

The Sub-Committee heard from Aimee Taylor of West Midlands Police that on the multi- agency visit to the premises which took place on 25 February 2022, she had gone to the rooms above the Pub with employees of the car wash who had their own keys to the rooms there. The rooms were lived in and had post delivered there. The employees said that they paid rent to the PLH, Mr Ali, and one of these employees was an illegal immigrant. Mr Ali confirmed to Police that it was a cash only business.

Local Residents who had raised objections regarding Noise Nuisance and Anti-Social Behaviour at the premises were not in attendance at the hearing and so parties were not given the opportunity to question their evidence. Therefore, appropriate, limited weight was given to the written evidence submitted.

The Sub-Committee may take such steps as it considers appropriate for the promotion of the Licensing Objectives.

The Sub-Committee is satisfied that a significant number of Licence Conditions have been breached and that the four Licensing Objectives, outlined in the LA 2003 have been undermined.

There has been a flagrant disregard for the law. Officers gave repeated warnings of breaches of Licensing Conditions and left traders notices but Mr Ali ignored the advice and took no action.

WMP has brought this Review in regard to the Prevention of Crime and Disorder Licensing Objective and the Review is supported by the other Responsible Authorities attending.

The options available to the Sub-Committee are:

- (a) Modify the conditions of the licence;
- (b) Exclude a licensable activity from the scope of the licence;
- (c) Remove the designated premises supervisor;
- (d) Suspend the licence for a period not exceeding 3 months;
- (e) Revoke the licence;
- (f) to do nothing

On this occasion the Sub-Committee has resolved to Revoke the Premise Licence.

The DPS by his own admission accepts that he is not capable of running the pub or upholding the Licensing Objectives. A stepped approach has already been taken by Responsible Authorities to address concerns and this has not worked.

The Sub-Committee has established that the cause of the problems at the premises is the poor management practices and the involvement of other individuals at the car

wash. Whilst the PLH contends that it would be proportionate and responsible to remove the DPS and install a new Management Team at the pub to address these concerns, the Sub-Committee determined that Mr Ali still retains the Lease of the premises and sub-lets to the car wash. He regularly attends the car wash which is run by his father and is fully aware of what goes on at the premises. He did not make sufficient enquiries to prevent illegal working and acted to reinstate the previous PLH despite his ban. The Sub-Committee felt that the mere replacement of the DPS would be an inadequate response to the concerns which were identified as there are clearly deeper problems which indicate that the Licensing Objectives are not being upheld.

The Sub-Committee has been concerned with the Prevention rather than the Fact of Crime at the premises and it is clear to the Sub-Committee that Mr Ali had knowledge of what was occurring at the premises. He should have been vigilant to the issue of Illegal Working at the car wash which he sub-let and visited regularly. The Sub-Committee has acted with a view to prevention and deterrence and to prevent further criminal activity.

The Statutory Guidance at para 11.23 states “from a Licensing Authority’s decision should be appropriate and proportionate to the promotion of the Licensing Objectives and for the prevention of Illegal Working in Licensed Premises. But where premises are found to be trading irresponsibly, the Licensing Authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.”

The Sub-Committee has followed this Guidance in these circumstances and decided that it is reasonable and proportionate to Revoke the Licence.

The Guidance at Para 11.26 states: Where the Licensing Authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the Premises Licence, for the promotion of the crime prevention objective. In such circumstances, the Licensing Authority is still empowered to take any appropriate steps to remedy the problems. The Licensing Authority’s duty is to take steps with a view to the promotion of the Licensing Objectives and the prevention of Illegal Working in the interests of the wider community and not those of the individual Licence Holder.

It was deemed inappropriate to modify conditions and suspend the licence as clearly the Premises Licence Holder appears not able to comply with conditions of licence and the Sub-Committee do not believe that suspension for a limited period would assist in mending the behaviour already witnessed.

The Sub-Committee considered the evidence presented and had regard to the Application, representations made, guidance issued under section 182 of the Licensing Act 2003 and the Council’s own licensing policy. The Sub-Committee on the balance of probabilities, found that in order to promote the Licensing Objectives, the Premises Licence of The Pendulum should be revoked in accordance with s52 LA 2003.

This action is considered appropriate and proportionate action for the promotion of the four Licensing Objectives.

Written notice of the determination will be given to the Holder of the Licence, the Applicant, and any other person who made relevant representations.

An appeal may be made to 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.