

CITY OF
WOLVERHAMPTON
COUNCIL

Statutory Licensing Sub-Committee

Minutes - 20 May 2020

Attendance

Members of the Statutory Licensing Sub-Committee

Cllr Alan Bolshaw
Cllr Jonathan Crofts
Cllr Keith Inston

Premises Licence Holder

Duncan Craig	Barrister
Soran Rostam	Premises Licence Holder

Review applicant

Sgt Steph Reynolds	West Midlands Police
Gary Grant	Barrister for West Midlands Police
Jonathan Welch	Barrister for West Midlands Police
Jennifer Downing	Solicitor for West Midlands Police

Responsible Authorities

Elaine Moreton	Section Leader - Licensing
Michelle Marie-Smith	Principal Public Health Specialist

Officers

Debra Craner	Section Leader Licensing
Richard Phillips	Senior Solicitor
Kirsty Tuffin	Democratic Service Officer
Jaswinder Kaur	Democratic Service Manager (Host)

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, WV9 5NP

An application for a review of a Premises Licence in respect of The Pendulum, Blaydon Road, Wolverhampton, WV9 5NP, had been received from West Midlands Police.

Jaswinder Kaur, Democratic Services Manager, welcomed all parties to the hearing and explained that the meeting would be conducted in line with The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020. She invited all parties to introduce themselves and all parties did so.

The Chair welcomed all parties to the hearing and outlined the procedure to be followed. All parties confirmed that they understood the procedure.

Mr Duncan Craig, Solicitor representing the Premises Licence Holder, asked if Members had a copy of the proposed conditions on behalf of the Premises Licence Holder. The Chair confirmed that all Members had received the document.

Debra Craner, Section Leader - Licensing, provided an outline of the report. She advised that an Expedited hearing had taken place on Friday 24 April 2020 and the Committee resolved to suspend the Premises Licence pending a full review hearing. Additional information had been submitted by West Midlands Police and could be found in the Supplementary Agenda Pack. She advised that the Other Persons who had put in representations, as per appendix 6 of the agenda pack, wished to remain anonymous and must not be named throughout the hearing.

The Chair afforded all parties present the opportunity to question the report content. No questions were asked.

The Chair invited West Midlands Police to present their application.

Mr Gary Grant, Counsel representing West Midlands Police, did so as per appendix 2 of the agenda pack and the supplementary pack. He advised that:

1. Central Government had provided a direction for all public houses to close from midnight on 20 March 2020;
2. Followed by the bringing into force of The Health Protections (Coronavirus, Business Closure) (England) Regulations 2020 on the 21 March 2020.

3. The Coronavirus Health Protection Regulations ('the Regulations') 2020 then came into place on 26 March 2020. The Regulations mandate the closure of all businesses falling within certain categories, one of which, included public houses;
4. On 20 March 2020, Officers from West Midlands Police had visited the Premises at around 9pm in the evening and a discussion was had regarding the closure of the premises from midnight;
5. On 23 March 2020, West Midlands Police received intelligence that the Premises had intended to open to regulars;
6. On 28 March 2020, West Midlands Police received intelligence to state that the Pendulum had been open and serving alcohol, with the lights on and TVs inside along with 7-10 customers inside. When the Police had attended later on in the evening, no-one had been seen inside;
7. On 6 April 2020, Police Officers on regular patrol had driven past the Pendulum and saw a TV on in the bar area. Three people had been inside, one male behind the bar serving drinks to another male and female sat at the bar. West Midlands Police had knocked on the window and Officers entered the public house and found the Designated Premises Supervisor and Premises Licence Holder behind the bar. He had denied serving anyone alcohol and after he said nobody else had been in the pub, said a cleaner and a friend had been let out the back door. The Officers provided him with advice in regard to his actions;
8. On 14 April 2020, Environmental Health Officers from the City of Wolverhampton Council had emailed the Designated Premises Supervisor and Premises Licence Holder to inform him that the premises had to remain closed.
9. On 15 April 2020, Officers attended the Pendulum where the DPS and PLH had been present. They had requested to view the CCTV from 27 March 2020 until 6 April 2020, but he had been unable, after several attempts, to show them the footage. The Officers seized the hard drive;
10. The hard drive had 12 days footage and screenshots from the CCTV footage from 6 April 2020 could be found in the supplementary agenda pack.
11. There had been a breach of the premises licence conditions as only 12 days of footage had been recorded, along with the lack of someone on the premises at all times to operate the CCTV and the CCTV itself had not been downloadable;
12. On 17 April 2020, the Police had attended the Pendulum and served the Designated Premises Supervisor and Premises Licence Holder with a Coronavirus Prohibition Notice that required him to immediately cease operation of the business for consumption on the premises;
13. On 19 April 2020, West Midlands Police received a call from a member of the Public to say that the Pendulum had opened every day from 17:00 hours and that people had been going into the premises via the back door to consume alcohol;
14. West Midlands Policed requested revocation of the premises licence.

The Chair afforded all parties present the opportunity to question the review applicant in relation to its submission.

Mr Gary Grant and Sgt Steph Reynolds provided responses to questions asked.

*The Sub-Committee adjourned for a short break at 11:15 hours.
The Hearing reconvened at 11:30 hours.*

The Chair invited the Premises Licence Holder to make representations.

Mr Duncan Craig, Solicitor, representing the Premises Licence Holder, made representations. He advised that:

1. The Premises Licence Holder and Designated Premises Supervisor had entirely refuted breaching the regulations;
2. On 6 April 2020, he had been present with a friend who had been kin to his family and a cleaner from the pub. Both had been present to wind-down the pub operations;
3. 12 days of footage had been as a result of the way the system captured 30 days footage in deletable blocks rather than on a rolling 30-day basis;
4. A list of proposed conditions had been submitted that he believed would address the concerns of Other Persons however, if Committee did not agree with just the modification of the licence conditions, they should at worst considered the removal of the Designated Premises Supervisor and a suspension of up to three months to commence at the end of the lockdown period.

The Chair invited all parties present to question Mr Duncan Craig in relation to his submission.

Mr Duncan Craig provided responses to all questions asked.

The Chair invited Licensing Authority to present their representations.

Mrs Elaine Moreton, Section Leader Licensing, did so as per Appendix 5 of the report.

The Chair invited all parties present to question Mrs Elaine Moreton in relation to her submission.

Mrs Elaine Moreton provided responses to all questions asked.

The Chair invited Public Health to present their representations.

Michelle-Marie Smith, Principal Public Health Specialist, did so as per appendix 4 of the report.

The Chair invited all parties present to question Michelle-Marie Smith in relation to her submission.

No questions were asked.

The chair invited all parties to make their final submissions.

Mr Duncan Craig, on behalf of the Premises Licence Holder, presented their final submissions.

Mr Gary Grant, on behalf of West Midlands Police made their final submissions.

Councillor Bolshaw, Councillor Crofts, Councillor Inston, the Senior Solicitor and Democratic Services Officer, withdrew from the meeting to enable the Sub-Committee to determine the matter.

*The Sub-Committee adjourned at 13:15 hours.
The Hearing reconvened at 14:05 hours.*

Councillor Bolshaw, Councillor Crofts, Councillor Inston, the Senior Solicitor and Democratic Services Officer 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 the West Midlands Police for a review of the premises licence in respect of The Pendulum, Blaydon Road, Pendeford, Wolverhampton, WV9 5NP.

At the hearing to review the Premises Licence, the Licensing Sub-Committee carefully considered all representations made including those made by in writing by Other Persons and listened to those who spoke at the hearing and considered all the evidence presented.

The Sub-Committee heard from Gary Grant, Counsel for West Midlands Police, that:

1. Central Government gave a direction for all public houses to close from midnight on 20 March 2020;
2. This was followed by the bringing into force of The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 on the 21 March 2020.
3. The Coronavirus Health Protection Regulations ('the Regulations') 2020 then came into place on 26 March 2020. The Regulations mandate the closure of all businesses falling within certain categories, one of which, includes public houses;
4. The reason being that the severe health implications of Coronavirus meant everyone was under an obligation to ensure it was not recklessly spread more widely amongst the community;
5. Any public houses remaining open and serving customers on the premises will likely have committed criminal offences;
6. On 20 March 2020, Officers from West Midlands Police visited the Premises at around 9pm in the evening and a discussion was had regarding the closure of the premises from midnight;
7. On 23 March 2020, West Midlands Police received intelligence that the Premises intended to open to regulars;
8. On 28 March 2020, West Midlands Police received intelligence to state that the Pendulum was open and serving alcohol, with the lights on and TVs inside along with 7-10 customers inside. When the Police attended later on in the evening, no-one was seen inside;
9. On 6 April 2020, Police Officers on regular patrol drove past the Pendulum and saw a TV on in the bar area. They saw three people inside, one male behind the bar serving drinks to another male and female sat at the bar. They knocked on the window and the lights in the premises were turned down. The Officers

- entered the public house and found the Designated Premises Supervisor and Premises Licence Holder behind the bar. He denied serving anyone alcohol and after initially saying nobody else was in the pub, later that family had been in the pub, said a cleaner and a friend had been let out the back door. The Officers gave him advice regarding his actions;
10. On 14 April 2020, Environmental Health Officers from the City of Wolverhampton Council emailed the Designated Premises Supervisor and Premises Licence Holder to inform him that the premises must remain closed. He replied that he attended the public house daily but monitors CCTV remotely;
 11. On 15 April 2020, Officers again attended the Pendulum where the DPS and PLH was present. They requested to view the CCTV from 27 March 2020 until 6 April 2020 but he was unable, after several attempts, to show them the footage. The Officers seized the hard drive;
 12. The hard drive was subsequently interrogated and only 12 days footage remained but the footage from 6 April 2020, corroborates what the Police Officers saw – the DPS and PLH served customers alcohol and placed money into the till on more than one occasion. The customers can be seen leaving the premises from the rear when the Police officers knock on the window.;
 13. The fact that only 12 days' worth of CCTV is viewable is a breach of the premises licence conditions, along with the lack of someone on the premises at all times to operate the CCTV and the CCTV itself was not downloadable;
 14. On 17 April 2020, the Police attended the Pendulum and served the DPS and PLH with a Coronavirus Prohibition Notice requiring him to immediately cease operation of the business for consumption on the premises;
 15. On 19 April 2020, West Midlands Police received a call from a member of the Public to say that the Pendulum is open every day from 17:00 hours and that people were going into the premises via the back door to consume alcohol;
 16. In determining how to proceed with the review today, it is open to the Licensing Sub-Committee to consider deterrence when reaching a determination as to how to proceed;
 17. That any challenge to validity of the certification provided by the Superintendent of Police which triggered the initial summary review is not a matter for members to consider;
 18. That the Premises Licence Holder had repeatedly lied to the Officers who visited the premises in terms of his explanations, and he had done so again today at the Licensing Sub-Committee hearing;
 19. That the incidents demonstrated that three licensing objectives were not being upheld; and
 20. In the circumstances they request revocation of the premises licence because the Premises Licence Holder has failed to tell the truth and that there can be no confidence in his ability to uphold both the licensing objectives and the conditions of licence in the future.

The Sub-Committee heard from Duncan Craig, Counsel for the Premises Licence Holder that:

1. The Premises Licence Holder and Designated Premises Supervisor entirely refuted breaching the regulations;
2. He was sorry for the misunderstanding and denies telling the Police different stories;

3. That the incident occurred during the early days of the lockdown and as such, the Premises Licence Holder was not fully aware as to what he could and could not do;
4. On 6 April, he was present with a friend who was kin to his family and a cleaner from the pub;
5. They were present as part of the wind-down of the pub's operations, for example, the Premises Licence Holder felt the pub needed a thorough clean;
6. That he had believed them being present was not a breach of the regulations;
7. Some of the representations received from members of the public related to a few local residents who had issues with the Premises Licence Holder, following the removal of car wash privileges and that generally the premises has good relations within its local community;
8. He had only erred on one occasion owing to a misunderstanding as to what he could and could not do in terms of allowing people into the public house;
9. Since that time he has fully complied with the relevant regulations and the public house has remained closed;
10. The CCTV only having 12 days' worth of footage was as a result of the way the system captured 30 days footage in deletable blocks rather than it working on a rolling 30 day basis;
11. That the Sub-Committee when taking note of the s182 Guidance should only take those steps which are, in the circumstances, proportionate;
12. And the same point was equally true when decisions were made to deter others;
13. It would be most prudent to address the failings and other concerns aired in the review process with the adoption of more stringent licence conditions concerning CCTV, Challenge 25, Staff Training, Refusals, Noise nuisance and an Incident Book; and
14. That if the Sub Committee did not agree with just the modification of the licence conditions, they should at worst consider the removal of the Designated Premises Supervisor and a suspension of up to three months to commence at the end of the lockdown period.

The Sub-Committee heard from Elaine Moreton, Licensing Authority (as Responsible Authority), that she had attended this hearing to support the application made by the West Midlands Police and submitted that the most appropriate course of action would be the removal of the Designated Premises Supervisor.

The Sub-Committee heard from Michelle Marie-Smith, Public Health (as Responsible Authority), that what occurred was a clear disregard for the law and that they supported the Police in their request for revocation of the licence with a suspension being the minimum they felt could reflect the seriousness of what had occurred.

The Licensing Sub-Committee was satisfied on the evidence that there had been breaches of licence conditions and a serious failure to comply with requirements of the Regulations. These actions did not promote the licensing objectives.

Therefore, based upon the above and having regard to the application, the relevant representations made and the s182 guidance, the Sub-Committee decided to revoke the licence in accordance with Section 53C of the Licensing Act 2003.

The above action was considered an appropriate and proportionate action for the promotion of the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives.

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.

Section 53D makes provision for the review of interim steps that have been taken by the relevant licensing authority under section 53B, before a decision under section 53C comes into effect. Having considered whether interim steps were appropriate for the promotion of the Licensing Objectives and any relevant representations, the Licensing Authority have determined that the current interim steps should remain, that being suspension of the premises licence.

In accordance with Section 53D(5) of the Licensing Act 2003, the interim steps put in place following the hearing on 24 April 2020 will cease to have effect from the coming into effect of the decision on review today. A decision under section 53D may also be appealed.