

CITY OF
WOLVERHAMPTON
COUNCIL

Statutory Licensing Sub-Committee

Minutes - 2 April 2019

Attendance

Members of the Licensing Sub-Committee

Cllr Alan Bolshaw (Chair)

Cllr Wendy Thompson

Cllr Rita Potter

Premises Licence Holder

Ed Passey

Joanna Lake

Donna Gracey

Mathew Phipps

Punch Taverns Limited

Punch Taverns Limited

Punch Taverns Limited

Solicitor on behalf of the Premises Licence Holder

Applicant

Stephanie Swann

West Midlands Immigration Enforcement (Home Office)

Responsible Authorities

Sgt Steph Reynolds

West Midlands Police

Officers

Michelle James

Leonie Woodward

Donna Cope

Kirsty Tuffin

Licensing Policy Manager

Lead Lawyer

Democratic Services Officer

Democratic Services Officer

Item No. *Title*

1 Apologies for absence

Apologies for absence were received from Chris Howell, Licensing Manager and Christian Gregory, Regional Business Manager for Punch Taverns Limited.

2 Declarations of interest

There were no declarations of interest submitted.

3 Licensing Act 2003 – Application for a Review of a Premises Licence in respect of The Swan Hotel, 17 Lower Street, Wolverhampton, WV6 9AA

An application for a Review of a Premises Licence in respect of The Swan Hotel, 17 Lower Street, Wolverhampton, WV6 9AA, had been received from West Midlands Immigration Enforcement (Home Office) on 6 February 2019.

The Chair led round-table introductions and outlined the review hearing procedure to be followed.

Michelle James, Licensing Policy Manager, provided an outline of the application. Stephanie Swann, Immigration Officer, West Midlands Immigration Enforcement, (Home Office), confirmed that the summary was accurate.

The Chair invited West Midlands Immigration Enforcement to present their application.

Stephanie Swann, Immigration Officer, did so as per Appendix 3 of the report. She stated that an intelligence led operation on 11 December 2018 had discovered that a member of staff at The Swan Hotel did not have the right to work in the UK. The worker was found to have been working for the company for 3 months on £200 a week, cash in hand, working 5-6 hours a day. She advised that this would be below minimum wage.

The Immigration Officer requested revocation of the premises licence and if revocation was not deemed appropriate, then she requested that a number of conditions were added to the licence. The conditions requested were as follows:

- Removal of the DPS;
- Suspension of the Premises Licence whilst a new DPS was appointed;
- Right to work checks be carried out on all employees before employment;
- All documentation regarding these checks would be kept (hard copy or digital) and must be available on demand to any Responsible Authority when requested.

The Immigration Officer advised the Sub-Committee that a fine of 15,000 pounds had been served upon the PLH by the Civil Penalty Team.

The Chair afforded all parties present the opportunity to question the applicant in relation to her submission. Stephanie Swann, Immigration Officer, provided responses to questions asked.

Michelle James, Licensing Policy Manager advised the Sub-Committee that the condition requesting that right to work checks were made before employment as suggested by the Home Office could not be added as it would replicate existing legislation.

The Chair invited Matthew Phipps, Solicitor representing the Premises Licence Holder, to make representations. Mr Phipps stated the following:

- Punch Taverns were the Premises Licence Holder (PLH). The tenant, Russel Moreton, rented the premises from them and had his own company called Spirit Pubs Wolverhampton Ltd.
- The fine of 15,000 pounds from the Civil Penalty team had now been reduced to 7,000 pound and had not been issued to Punch Taverns Limited but to Spirit Pubs Wolverhampton Ltd.
- Punch Taverns currently had 1,300 pubs in the UK and this was the first review the PLH had received from Immigration Enforcement.
- Punch Taverns would consider removing Russel Moreton's tenancy agreement if the Sub-Committee deemed it necessary, but Punch Taverns did not have this view.
- That the worker found to have no right to work in the UK had been working at the company since the Summer, for roughly 6 months and received £330 a week before tax.

The Chair afforded all parties present the opportunity to question the Solicitor representing the Premises Licence Holder, in relation to his submission. Matthew Phipps provided responses to questions asked.

*The Sub-Committee adjourned at 11.45 hours.
The Hearing reconvened at 11.55 hours.*

The Chair invited West Midlands Police to make their representations.

Sgt Steph Reynolds did so as per appendix 4 of the report. She advised the Sub-Committee that WMP were satisfied with the evidence that illegal activity had occurred at the premises and that without the intelligence being given to the Home Office the situation would still be on-going; therefore, WMP were seeking to revoke the Licence.

The Chair afforded all parties present the opportunity to question West Midlands Police, in relation to her submission. Sgt Steph Reynolds provided responses to questions asked.

The Chair invited all parties present to make their final address.

Sgt Steph Reynolds, Matthew Phipps, representing the Premises Licence Holder and Stephanie Swann, West Midlands Immigration Enforcement, made closing statements.

All interested parties, with the exception of the Solicitor and the Democratic

Services Officers withdrew from the meeting to enable the Sub-Committee to determine the matter.

All interested parties were invited back to the meeting and the Chair advised them of the decision of the Sub-Committee, which was read out in full by Leonie Woodward, Lead Lawyer Litigation.

Resolved:

An Application was made by the Home Office (West Midlands Immigration Enforcement) on 6 February 2019 for a review of the Premises Licence in respect of The Swan Hotel, 17 Lower Street, Wolverhampton WV6 9AA, on the grounds that actions of the premises undermine the prevention of crime and disorder Licensing Objective. Representations were received from the West Midlands Police and the Licensing Authority as Responsible Authorities.

At the hearing to review the premises licence, members of the Licensing Sub-Committee considered all written evidence and listened carefully to all representations made by persons who have spoken at this hearing.

They considered all the evidence presented and found the following facts:

They heard from Representatives of the Home Office, the applicant:

1. Their role in immigration enforcement;
2. Details of their visit of 11 December 2018; that 4 people, including the owner of the premises were present and one interviewed;
3. That they arrested and interviewed one member of staff, who was found not to have the right to work in the UK;
4. That the matter was then passed to their Civil Penalty Team and a penalty of £15,000 was issued against Spirit Pubs Wolverhampton Ltd, of which Mr Moreton is the sole Director;
5. That revocation of the licence was appropriate;
6. That if not minded to revoke, a number of conditions were suggested to be added to the licence;
7. That employing illegal immigrants has damaging social & economic consequences for the UK, under-cutting British workers and businesses operating within the law, participating in tax evasion and exploiting migrant workers, which in turn allows the UK to still be an attractive place for illegal migrants.

They heard from Mr Phipps, on behalf of Punch Tavern, the Licence Holder:

1. The relationship between Punch Tavern and their tenants
2. That the Civil Penalty was against Spirit Pubs Wolverhampton Ltd, tenant of Punch Tavern, not Punch Tavern itself;
3. That Punch Tavern has some 1,300 pubs across the UK, and that this was the first occasion they have had immigration issues;
4. That Punch Tavern take this issue very seriously, shown by the fact that two members of their legal team were present at the hearing today, and that they have considered forfeiting Mr Morton's tenancy;

5. That the Financial Penalty had been reduced from £15,000 to £10,000 then £7,000, showing cooperation with the Immigration Services;
6. That Mr Moreton had asked for the worker's passport and had been provided with a UK provisional driving licence and British bank cards;
7. That the worker had been employed by the pub since the summer, and in December, Mr Moreton was still awaiting information from his Accountants for confirmation of the worker's taxation status; no evidence was provided that Mr Moreton had chased for this information or immigration information;
8. That all employees were paid cash and had payslips, although no payslips were provided to the Committee; this particular worker received £330 per week before tax, and the accounts department deducted the employee's tax directly from this amount, giving a net pay of £200 per week for 6 days' work, 7 hours per day;
9. That an application to change the DPS was received the day following the Home Office visit to the premises, ie on 12 December 2018;
10. That an external firm was now instructed to make the rights to work checks for all employees going forward; current employees were in the process of being reviewed; no evidence was provided that staff would not be employed in the future before checks had been completed;
11. That Punch Tavern would need to go through their board to include immigration checks requirements within their tenancy / licence agreement and spot checks, process which would take some time to be completed;
12. That although the Police and Licensing Authority supported the Home Office application, neither provided other issues, such as anti-social behaviour, concerning these premises and no representations were received from residents or other LA departments;
13. That they agreed something had gone wrong, but taking everything into account, this should not be a case of revocation of the licence.

They heard from West Midlands Police that:

1. The police authority supports the Home Office application;
2. It was clear to them the law had been breached;
3. That Mr Moreton, as an experienced pub owner, was aware of the legislation;
4. That additional conditions would only be duplication of the law;
5. That this breach had only been highlighted due to an anonymous tip-off, without which the situation would probably be continuing;
6. That they would seek revocation of the licence as no reasonable explanation had been heard.

The Licensing Authority was not present but had provided a statement as part of the report.

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

Paragraphs 11.27 and 11.28 of the revised Guidance under s182 of the Licensing Act 2003 provides that, premises that have been used for criminal activity, here the employment of illegal immigrants, when it is determined that the prevention of crime and disorder licensing objective is being undermined through the premises being

used to further crime, it is expected that revocation of the premises licence should be seriously considered, even in the first instance.

The Sub-Committee were satisfied that criminal activity has taken place at the premises and that the prevention of crime and disorder licensing objective was being undermined through the premises being used to further crime.

Based upon the evidence presented and having 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 have on the balance of probabilities, found that in order to promote the prevention of crime and disorder the premises licence of The Swan Hotel should be revoked in accordance with Section 52 of the Licensing Act 2003.

This action was considered appropriate and proportionate for the promotion of the Crime & Disorder licensing objectives.

Written notice of the determination would be given to the holder of the licence, the applicant, and any other person who made relevant representations.

An appeal may be made against the decision by the applicant, the holder of the Premises Licence or any other person who made a relevant representation to the application, within 21 days from the day on which notice of the decision was given.