

WESTERN AREA LICENSING SUB COMMITTEE

MINUTES OF THE WESTERN AREA LICENSING SUB COMMITTEE MEETING HELD ON 24 MARCH 2015 AT KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN IN RESPECT OF AN REVIEW OF A PREMISES LICENCE - BEST FAVOURITE CHICKEN, 3 MARKET STREET, TROWBRIDGE

Present:

Cllr Desna Allen (Chairman), Cllr Trevor Cabin, Cllr Sue Evans

Also Present:

Teresa Bray (Public Protection Officer), Linda Holland (Public Protection Team Leader-Review Applicant), Hannah Hould (Public Protection Officer-Licensing), Lisa Pullin (Democratic Services Officer), Elizabeth Beale (Senior Democratic Services Officer), Paul Taylor (Senior Solicitor), Mr Kenan Olmez (Premises License Holder), Duncan Craig (Legal representative), Alastair Erdozain, Mahir Kilic (Licensing agent), Jacqueline Gallimore (Wiltshire Police Licensing Officer), Dave Bennett (Force Licensing Manager), Sgt Jim Suter (Wiltshire Police).

1 **Election of Chairman**

Nominations for a Chairman of the Licensing Sub Committee were sought.

Resolved:

To elect Councillor Desna Allen as Chairman for this meeting only.

2 **Procedure for the Meeting**

The Chairman explained the procedure to be followed at the hearing, as contained within the "Wiltshire Licensing Committee Procedural Rules for the Hearing of Licensing Act 2003 Applications" (Pages 5-11 of the Agenda refers).

3 **Chairman's Announcements**

The Chairman gave details of the exits to be used in the event of an emergency.

4 **Declarations of Interest**

There were no interests declared.

5 Licensing Application

The Licensing Officer presented the Committee Report outlining the licensing objectives and options the Committee could take to meet these objectives. The history of the premises licence and the current licence was described alongside the grounds for its review. The officer advised that one relevant representation had been received from Wiltshire Police.

In accordance with the procedure detailed in the agenda, the Review Applicant, the authority that had made the Relevant Representation and the Premises Licence Holder were given the opportunity to address the Sub Committee.

Key points raised by Linda Holland, Review Applicant, were that:

- The Premises License Holder had repeatedly failed to comply with conditions attached to the licence and the licensing objective of the prevention of crime and disorder, as such the only option would be to revoke the license. Evidence of the failure to prevent crime and disorder had been shared by Wiltshire Police and was in the agenda pack. Particular attention was drawn to an incident on 9 February 2014 when a female was assaulted at the premises and the shop window was smashed.
- A Magistrates Court decision maintained the need for the Premises License Holder to employ door staff;
- Mr Olmez had been warned in writing on many occasions, in addition to verbal warnings given by Police, that he was breaching the conditions of his licence. Attention was drawn to evidence of these warnings;
- At the Western Area Licensing Sub Committee in January 2014, Mr Olmez suggested that door staff would help him to meet the licensing objectives and suggested that a third member of door staff be introduced. At that Hearing, Mr Olmez' representative advised the Sub Committee that the licence holder now fully understood the requirements of the licence and was determined to meet them;
- There had been 38 witnessed breaches of the licence 19 January 2014 until 28 February 2015 mainly centring on the non-provision of door staff, and Police evidence demonstrated that Mr Olmez appeared un-concerned by this non-compliance;
- Police logs demonstrated that when door stewards were present they were able to assist the Police;
- A review application was submitted in January 2015, however Police logs since this date indicated that Mr Olmez continued to show a disregard for the conditions of his licence;

- Mr Olmez showed little concern for public safety, for instance he had let members of the public go behind the food counter and had left a broken window of the property insecure for 12 months;
- The Licensing Authority, as the Responsible Authority, had no confidence that Mr Olmez would comply with the conditions attached to his licence and felt all existing conditions were necessary.

Questions were asked of the Review Applicant and it was confirmed that all visits to the premises had been recorded, therefore any instances of compliance with the licence would have been included in the written evidence. The Licensing Authority had decided that a review of the licence with a recommendation to revoke was needed over the Christmas 2014-15 period when there was a catalogue of offences at the premises. However this decision was the result of an accumulation of previous offences. It was confirmed that the finances of the business could not be an acceptable reason for non-compliance with conditions and the premises had to be managed taking into consideration its location near to a taxi rank. Additionally, the area immediately outside the premises was considered within the responsibility of the licence holder. The Licensing officer advised that correspondence from Mr Erdozain, acting on behalf of Mr Olmez, requesting a variation of licence conditions in October 2014 was not a formal application to vary the condition. It was highlighted that licensing conditions are accessible and licence holders do not require legal support to understand them. A new application to vary the licence conditions in relation to the provision of door stewards was currently live.

Key points raised by the Relevant Representative, Jacqueline Gallimore of Wiltshire Police were that:

- The Police fully supported the evidence and arguments made by the Review Applicant;
- Since 2010, the premises had been a cause for concern for the Police. Incidents of crime and disorder were evidenced in the agenda pack;
- If door staff had been present when required, incidents of crime and disorder could have been defused and the stewards could have assisted Police;
- Mr Olmez had shown no respect for the licensing objectives and had ample opportunity to meet them.

CCTV from the 31 January 2015 was shown, to illustrate what was stated to be a typical Friday night outside of the takeaway.

Questions were asked of the Police and it was confirmed that Wiltshire Police agreed that the role of the door staff was first to monitor the inside of the premises, however the frontage of the premises was large and to the advantage

of the licence holder therefore his door staff should also monitor this area as necessary. It was noted that most incidents of crime and disorder occurred immediately outside of the premises. Mr Olmez' representative advised that he had not repaired a broken window since the defendant had not yet paid the compensation.

Key points made by Duncan Craig, Mr Olmez' representative, were that:

- Although Mr Olmez accepted that he had not complied with the conditions of his licence this did not undermine the licensing objectives in such a significant way as to warrant revoking the licence. He did not consider the events at the premises sufficiently serious according to the Wiltshire Council Licensing Policy to warrant revocation;
- Revocation of the licence would be neither proportionate nor appropriate;
- Police CCTV demonstrated that the level of disorder associated with the premises was not excessive;
- The vast majority of incidents happened outside of the premises and so were not under the responsibility of the licence holder.
- A sanction against Mr Olmez was necessary. The suspension of the licence and appropriate training of the licence holder was offered by Mr Craig as a suitable sanction.
- Mr Olmez's application to vary the conditions of his license via a letter in October was an attempt to take steps to better manage his business

Questions were asked of Mr Craig and it was confirmed that the licence holder was formally offering a 4 week suspension of his licence and, if the licence was not revoked, he would use the opportunity to correct mistakes made. Mr Craig advised that the provision of three doorstaff was excessive and it would be more manageable for the premises to employ fewer. The Sub Committee questioned what constructive changes would occur if the licence was suspended and was advised that an application to vary the licence would be part of this. It was confirmed that the window of the premises was smashed by a customer who had also assaulted a female inside the shop.

Linda Holland made the following points in summation:

- According to the Statement of Licensing Policy significant or repeated breaches of licensing law and failure to comply with warnings were considered very serious;
- Mr Olmez had ample opportunity to address his non-compliance and showed no willingness to comply;

- Revocation was the only adequate step given the number of offences and breaches of licensing objectives at the premises.

Jacqueline Gallimore made the following points in summation:

- Wiltshire Police fully supported the case put forward by Linda Holland on behalf of the Local Authority;
- Wiltshire Police considered revocation of the licence the only appropriate action;
- The premises had a history of breaching its license conditions and the licensing objectives;
- Crime and disorder could have been prevented if the licence holder had the necessary door staff in place.

Duncan Craig made the following points in summation:

- The licensing authority had only recently decided to review the license;
- The premises licence holder wanted the opportunity to manage the premises appropriately;
- Breaches of the licence were minimal in relation to the premises itself and insufficient to warrant revocation.

The Sub Committee retired to consider the review application at 1:05pm and were accompanied by the Solicitor for Wiltshire Council and representatives from Democratic Services.

The Hearing reconvened at 2:30pm.

The Sub Committee considered all of the submissions made to it and the written representations together with the Licensing Act 2003, Statutory Guidance and Regulations and the Licensing Policy of the Council

Resolved:

The Western Area Licensing Sub Committee resolved to revoke the premises license for Best Favourite Chicken, 3 Market Street, Trowbridge for the reasons detailed below:

Reasons:

The Sub Committee accepted the evidence presented by the Licensing Authority and Wiltshire Police that there had been numerous recorded incidents when the Licence holder had been found to be in breach of his premises licence conditions. In the main, these related to the provision of the required number of door supervisors. The Sub Committee also accepted the evidence of the police that many of the incidents of crime and disorder that had occurred and which were associated with the premises, may well have not taken place, or may have been defused at an early stage, had the required number of door staff been present at the relevant time. The Sub Committee therefore considered that the failure to comply with those conditions did undermine the licensing objectives of preventing crime and disorder and public safety.

The Sub Committee accepted that some of the incidents referred to by the police and the Licensing Authority in their evidence had occurred outside the premises. However, they were satisfied that many of these incidents were nevertheless connected with the licensable activities taking place on the premises.

In his submissions at the hearing, Mr. Olmez's representative referred to the fact that the incidents related to these premises were not included in the list of criminal activities set out in paragraph 11.27 of the S.182 Guidance, which were ones that should be taken seriously by licensing authorities and which could justify revocation of a premises licence, even in the first instance. However, the Sub Committee noted that this part of the Guidance primarily related to crime that was not directly connected with licensable activities, so was not directly relevant in this case. It also noted that Wiltshire Council's Statement of Licensing policy did identify that cases where the police were frequently called to incidents of crime and disorder; where there were repetitive breaches of conditions and/or where there was a failure to act on previous warnings were matters that could be considered as serious shortcomings.

The Sub Committee considered the suspension of the licence, as offered by the licence holder. However it concluded it would not be appropriate to do so, because, given the history of these premises, it did not have confidence that there would be any improvement in the management of the premises or compliance with existing conditions.

The possible amendment of conditions was considered. However, it was agreed that the existing conditions were appropriate to meet the licensing objectives and the main issue was a failure to comply with those conditions. Therefore there would be no benefit in adding or amending conditions.

The Sub-Committee therefore felt that revocation was the only appropriate option, given the persistent breaches of licence conditions and the clear failure by the licence holder to recognise and comply with his obligations under the licensing objectives.

In reaching its decision the Sub-committee took into account all of the written representations in addition to oral arguments presented at the hearing by all parties.

The Sub Committee also considered the relevant provisions of the Licensing Act 2003 (in particular Sections 4 and 52); the guidance issued under Section 182 of the Act and the Licensing Policy of Wiltshire Council.

Right to Appeal

All parties have the right to appeal to the Magistrates Court within 21 days of receipt of this decision. The decision of the Licensing Sub Committee does not take effect until the end of the period for appealing against that decision. In the event of an appeal being lodged, the decision made by the Licensing Sub Committee does not take effect until any appeal is heard and finally determined.

(Duration of meeting: 10.40 am - 2.28 pm)

The Officer who has produced these minutes is Libby Beale (Senior Democratic Services Officer) 01225 718214/ Elizabeth.beale@wiltshire.gov.uk

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