

DECISION NOTICE

Southern Area Licensing Sub Committee Decision made on 31 May 2019

Application for a Review of a Premises Licence in respect of @Home, 5 Bridge Street, Salisbury made by Wiltshire Police

Date of Hearing 31 May 2019

Decision

The decision of the Southern Area Licensing Sub Committee is that the Premises Licence LN/000014727 in respect of @Home, 5 Bridge Street, Salisbury held by @Home Salisbury Limited be revoked.

Reasons for the Decision

The Sub Committee determined that the Licence Holder had consistently failed to comply with its obligations in respect of all of the licensing objectives. The Sub-Committee also had no confidence that the Licence Holder would comply in future with its licence conditions.

Evidence

The Review application was brought by Wiltshire Police who were represented at the Hearing by Mrs. Thurman-Newell, the Police Licensing Officer, supported by P.C. 2729 Billington. Representations in support of the review application were made by Wiltshire Council's Licensing Officer, Wiltshire Council's Public Protection Team and JD Wetherspoon PLC, all of whom were represented and gave evidence at the Hearing.

Miss Louella Adamson appeared at the Hearing as the Licence Holder and she was represented by Mr. Leo Charalambides of Counsel. In addition to the evidence presented by the parties, both in writing and orally at the hearing, the Sub-Committee also had before them 44 letters written in support of the Licence Holder.

Wiltshire Police

Following the exclusion of the public from this part of the hearing, the Police representatives presented detailed evidence of an incident at the beginning of March 2019, involving a female customer who had been present at the Premises with her young children. The Police claimed that the Premises Licence Holder had failed to take

steps to prevent the female from becoming excessively intoxicated and had failed to take action to protect the welfare of the female and her children. When investigating this incident further, the Police had identified a number of other breaches of Premises Licence conditions, including the following:-

- Supply of alcohol beyond the permitted hours
- Premises open to the public beyond the permitted hours
- Glass bottles being allowed to be taken out of the Premises
- Failure by staff to monitor the inside and outside of the Premises for any vulnerable persons who may need help and support
- Failure to conduct pre-opening safety checks
- Failure to provide adequate training for staff
- Allowing children into the lower part of the Premises when alcohol was being served
- Inadequate CCTV coverage

When investigating this incident, and the subsequent breaches of licence condition that had been identified, the Police had encountered a reluctance by the Licence Holder to engage constructively with them. They had also identified other issues of concern, including a drinks promotion advertising 15 shots for £20 over the Easter weekend.

As a result of the identified breaches of licence conditions and the uncooperative attitude of the Licence Holder, the Police had no confidence in the ability of the Licence Holder to manage the Premises in compliance with the Licence conditions or to promote the licensing objectives.

Licensing Authority

Mrs. Linda Holland, Licensing Manager for Wiltshire Council, gave evidence in support of the Review application. She told the hearing that, as a result of the dealings that her Team had had with the Licence Holder, she also had no confidence in the ability of Miss Adamson to promote the licensing objectives. She was concerned that Miss Adamson had little comprehension of the requirements of operating a licensed premises and that Miss Adamson had been reluctant to engage positively with Licensing Officers or to take sufficient steps to remedy the breaches of licence conditions that had been identified. She referred in particular to the formal warning letter that had been written to the Licence Holder in February 2019 regarding the lack of a noise limited at the Premises.

Public Protection

Mrs. Vicky Brown, Senior Environmental Health Officer, gave evidence to the Hearing on behalf of Wiltshire Council's Public Protection Team. She referred to the concerns that the Team had about the suitability of the Premises as a late-night music venue and about the cost-effectiveness of addressing those issues, particularly as the Premises were in a listed building, which may well limit the amount of structural alterations that could be carried out. She also referred to the lack of confidence that the Public Protection Team had in the way in which the Premises were managed and the attitude of the Licence Holder to their responsibilities to prevent public nuisance, particularly in

relation to the lack of a noise limiter, as required by the Licence conditions. In response to a question from Mr. Charalambides, Mrs. Brown confirmed that the only noise complaints that had been received had been from the adjacent Kings Head Inn. However, she did not accept that this necessarily meant that the issues could not be considered as public nuisance.

J.D. Wetherspoon PLC

Mr. Nigel Connor, Head of Legal and Company Secretary of JD Wetherspoon PLC, gave evidence regarding the noise problems that had been experienced by the Kings Head Inn, which was immediately adjacent to the Premises. This included a log of incidents where complaints had been received from guests at the Inn, which had, on occasions, led to those guests having to be refunded the cost of their overnight stay at the Inn. Mr. Connor referred to attempts that had been made to discuss these issues with the Premises Licence Holder, but that these had not led to any demonstrable improvements. He drew the Sub-Committee's attention to the powers in s.177A Licensing Act 2003, on a Review application, to enable conditions relating to live and recorded music to be effective throughout the licensing hours. He asked the Sub-Committee to consider using those powers, in the event that they decided not to revoke the Premises Licence.

Licence Holder

Mr. Charalambides, on behalf of the Premises Licence Holder, referred the Sub-Committee to paragraph 11.20 of the s.182 Guidance, which stated that, on a review, the Licensing Authority should seek to establish the causes of the concerns that have been raised and should take such remedial action as it directed at those causes and which is appropriate and proportionate. He highlighted the positive contribution that the Premises had made to the local community, as evidenced by the letters of support that had been received. In particular, the Premises had provided facilities and support for the LGBT community and those who had suffered with mental health problems. He accepted that there had been failings in the way in which the Premises had been operating. He believed that these could be addressed by changing the Designated Premises Supervisor and by suspending the Premises Licence for a short period of time, to enable appropriate training to be undertaken.

The suspension period would also allow all parties to review the wording of the licence conditions, which he considered, in some cases, to be confusing and inappropriate, particularly those dealing with noise and the presence of children on the Premises. Revised conditions could be presented to the hearing of the Variation Application, which had been made by the Premises Licence Holder, but which was currently on hold.

Mr. Charalambides confirmed that he would oppose the inclusion of a statement under s.177A extending the applicability of the noise conditions and also maintained that the concerns raised by JD Wetherspoon PLC did not amount to a public nuisance, but were rather a private law matter by way of a neighbour dispute.

Considerations

The Sub-Committee noted that there had been little dispute between the parties regarding the evidence that had been presented by the Police and the other Authorities and persons in support of the review. The principal issue was, therefore, what steps were appropriate and proportionate to address the concerns that had been raised and to secure the promotion of the licensing objectives.

The Sub-Committee considered whether additional conditions could be added to the Premises Licence to address the issues that had been raised. However, whilst accepting that some of the wording of the conditions could be improved, the Sub-committee felt that the existing conditions should be adequate to promote the licensing objectives. The problem was that those conditions were not being consistently complied with.

The Sub-Committee then considered the option, as proposed by the Licence Holder, that the Premises Licence be suspended for a period of time and that Miss Adamson be replaced as Designate Premises Supervisor. However, they did not feel that this would be sufficient to address the systemic failure of Miss Adamson to address her responsibilities as Premises Licence Holder. They noted that all of the parties bringing or supporting the Review had emphasised the lack of cooperation they had had with the Licence Holder and their concerns about her ability to manage the Premises in accordance with the terms of the Licence and the licensing objectives.

The Sub-Committee considered their Public Sector Equalities Duties under s.149 Equalities Act 2010, which required them to have due regard to the need to advance equality of opportunity for those with a protected characteristic and to eliminate discrimination, harassment and victimisation of such persons. The Sub-Committee acknowledged the good work that the Premises Licence Holder was doing to provide facilities and support for disadvantaged members of the local community, as explained at the Hearing and in the letters that had been submitted in support of the Licence Holder. However, they did not feel that this outweighed the failings that had occurred in complying with the licence conditions and in promoting the licensing objectives. They also noted that a number of the activities that took place at the Premises did not constitute licensable activities, so could still carry on even if no Premises Licence were in force.

Having considered all of the evidence presented at the Hearing and having taken into account 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, the Sub-Committee concluded that revocation of the Premises Licence for @Home was the appropriate and proportionate decision in this case, as none of the other options available to it would be sufficient to address the systemic management failings that had been identified in the evidence presented at the hearing.

Effective date of Decision

This decision will not take effect until the end of the period within which an appeal can be made or, if such an appeal is made, until that appeal has been finally determined.

Right to Appeal

The Premises Licence Holder, the party that applied for the review and any Responsible Authority person who have made representations may appeal the decision made by the Licensing Sub Committee to the Magistrates Court. The appeal must be lodged with the Magistrates Court within 21 days of the notification of the 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.

Date: 06/06/2019