

Determination Notice

Application to review a Premises Licence Licensing Act 2003, Section 167

Mr Paul Draycott
Force Licensing Officer
Cheshire Constabulary
55 Museum Street
Warrington
WA1 1NE

On the 10th December 2014, Warrington Borough Council (“the Council”), being the relevant Licensing Authority, initiated an application for a review, following receipt of a Magistrates Closure Order under Section 80 of the Anti-Social Behaviour Crime & Policing Act 2014, of the Premises Licence in respect of premises known as:

Fusion Sports Bar & Grill
122-126 Bridge Street
Warrington
Cheshire
WA1 2RU

Premises Licence Number: WBC\LP0475

On the 10th December 2014, the Council advertised the application on the above premises and at the Council’s Office and on its website for a period of 7 consecutive days, which ended on 19th December 2014. During the 7-day representation period, the Council received representation from:

- (a) Kim Blondon, Licensing Officer on behalf of the Licensing Authority on Thursday 11th December 2014.
- (b) Paul Draycott, Force Licensing Officer on behalf of Cheshire Constabulary on Monday 15th December 2014.
- (c) Anthony Horne (Licensing Legal Solicitors) on behalf of the owners of the premises on 16th December 2014.
- (d) Paul Douglas (Douglas Licensing NW) on behalf of the Premises Licence Holder on 18th December 2014.

In accordance with Section 167 of the Licensing Act 2003, the Licensing Authority must hold a hearing within 10 working days of initiating the review of the licence.

On the 23rd December 2014, a hearing was held to consider the application.

The Sub-Committee determined the application with a view to promoting the four licensing objectives. In reaching its determination the Sub-Committee had regard to the following matters:

- (1) the relevant parts of the written and oral evidence before them;
- (2) the relevant parts of the Licensing Authority's Statement of Licensing Policy 2011-2014; and
- (3) the relevant parts of the Guidance issued under Section 182 of the Licensing Act 2003 by the Home Office.

In determining this application members of the Licensing Sub-Committee considered all of the relevant evidence and information presented to it, both written and oral and took account of all the matters it is bound to take into account.

Members of the Licensing Sub-Committee ignored those representations made to it which were not relevant to any of the licensing objectives.

The Committee are mindful that it has to achieve a balanced approach to those difficult issues it has heard throughout the Review and has considered carefully all of the written and verbal representations submitted by and on behalf of the Premises Licence Holder and Cheshire Constabulary and any other person.

The Committee are aware that the Licensing Authority do not have the power to judge the criminality or otherwise of any issue. The role of the licensing authority, when determining such a review, is not therefore to establish the guilt or innocence of any individual, but to ensure that the licensing objectives are promoted.

The Committee received evidence from the Licensing Authority which related to:

- A number of breaches in relation to conditions imposed on the licence;
- Door Supervisors – Discrepancies in working patterns;
- Pool cues being used as weapons;
- Problems with collection of trade waste which could be used as weapons; and
- High risk assessment in relation to the premises.

The Committee heard evidence from Cheshire Constabulary in support of the review this related to:

- Breach of CCTV which hinders the detection of crime;
- Excessive drunkenness within the premises;
- Breach of conditions in relation to door staff;
- Failure to show premises licence when requested by authorised officer;
- Excessive force being used which was disproportionate;
- Incident log not being completed;

- Door staff instigating fights at other premises;
- Persons holding themselves out to be associated with door staff;
- Persons identifying themselves as manager of the premises who were not associated with the premises;
- Not providing CCTV footage when requested by an authorised office;
- Lack of staff training;
- Sheer intensity of violence and number of incidents which had taken place in such a short period of time;
- Premises in disarray;
- No improvement despite police visits;
- The person designated as Premises Supervisor was not able to carry out the functions expected of a DPS;
- The DPS of Fusion was also the same person who had worked at another premises within the town centre were the same door company was employed;
- District Judge dealing with closure order had found test made out; and
- Due to the serious breaches of licence conditions and the nature of the incidents they would request that the licence be revoked.

Representations against the review were also submitted on behalf of the Premise Licence Holder which related to:

- Incidents listed on 31st October 2014 were not relevant due to the door staff not being on duty at the time of the incident. The DJ determined that they were not relevant when making her decision;
- None of incidents listed within review evidence were ever brought to the Premise Licence Holders attention;
- Incidents listed did not warrant a request for closure order as this was disproportionate to the Act;
- Did not dispute that there were problems with the CCTV and that the door staff had acted inappropriately;
- Failure of police to mention to Premise Licence Holder any concerns regarding the management of the premises;
- Some of facts as put forward by Cheshire Constabulary not factually correct as the Premise Licence Holder had contacted the police for assistance;
- Accepted that the incidents happened but the Premise Licence Holder was not made aware of them;
- Door staff involved in incident now suspended and would never work at this premises again;
- If premises allowed to be open a new door company will be employed;
- Did not dispute that there have been technical difficulties with CCTV however, this has now been updated and staff have been trained. This was confirmed by the technical engineer who was in attendance;
- No prior warning of any incidents and no action plans had been put in place.
- The first time Premise Licence Holder was made aware that the police had concerns regarding the premises was at a Meeting instigated at the request of the Premise Licence Holder on 4th December 2014;

- Cheshire Constabulary did not take into account the Statutory Guidance in relation to the importance of the Premise Licence Holder being made aware of incidents at a premises prior to a review;
- Cheshire Constabulary made reference to breach of conditions regarding door staff and town centre radio scheme however, the licence conditions did not state who had to be in possession of the radio;
- The Premise Licence Holder was happy to take over as the Designated Premises Supervisor;
- Duty manager had now left the premises and would not be returning;
- Breaches were not as bad as made out by Cheshire Constabulary and therefore, did not feel they warranted revocation or suspension of the Licence.

The Committee noted the information put forward by Mr Flannagan on behalf of Cheshire Constabulary, Mr Douglas on behalf of the Premise Licence Holder and Mrs Blondon on behalf of the Licensing Authority. The Committee also noted the written representation from Mr Horne on behalf of the owners of the premises.

Regarding incidents that had taken place on the 31st October 2014, the Committee have decided not to take these incidents into account in reaching their decision, as the staff involved in the incidents were not on duty at the time those incidents took place.

Having examined the evidence and having had the opportunity of hearing the respective parties the Licensing Sub-Committee considered the merits of the case and have decided as follows:

1. Modify the Conditions of the Licence:

The following Licensable Activities to be amended:

Performance of a Play (Indoors)	Sunday to Saturday 12.00 to 02.30
Exhibition of films (Indoors)	Sunday to Saturday 10.00 to 02.30
Indoor Sporting Event	Sunday to Saturday 10.00 to 02.30
Live Music (Indoors)	Sunday to Saturday 12.00 to 02.30
Recorded Music (Indoors)	Sunday to Saturday 12.00 to 02.30
Dance (Indoors)	Sunday to Saturday 12.00 to 02.30
Entertainment similar to above	Sunday to Saturday 12.00 to 02.30
Late Night Refreshment (Indoors)	Sunday to Saturday 23.00 to 02.30
Supply of Alcohol (Consumption On & Off the Premises)	Sunday to Saturday 12.00 to 02.30

The opening hours of the premises to be amended:

Sunday to Saturday 12.00 to 03.00

Amendments to Annex 2 – Conditions consistent with the operating schedule:

Removal of conditions:

Drinks Promotions – this condition is now a Mandatory condition and as such appears in Annexe 1 of the licence.

PubWatch/Radio Scheme – Amend this condition to remove the requirement to attend PubWatch as this is not an enforceable condition.

CCTV – Removal of the 2nd Paragraph which read:

“A written record shall be kept of images that are recorded by CCTV and shall include details of the recording medium used, the time and date recording commenced and finished. The record shall identify the person responsible for the recording and shall be signed by him/her. Where the recording is on a removable medium (i.e. videotape, compact disc, flash card etc.) a secure storage system to store those recording mediums shall be provided”.

Removal of the 4th Paragraph which read:

“CCTV images shall be made available to the police or an authorised officer on request for crime prevention/detection purposes. The Premises Licence Holder or Designated Premises Supervisor shall ensure that there are sufficient staff trained on the premises who can download CCTV images at the time of a request to maximise the effectiveness of any police enquiry to detect and prosecute offenders”.

Door Supervisors: Removal of the 1st Paragraph which read:

“Where any Door Supervisors are used at the Premises they shall be registered with the Security Industry Authority”.

Amendment of conditions:

Town Centre Radio Link

The Premises Licence Holder shall be an active member of the Town Centre Radio Link scheme. Furthermore, at all times the premises are open to the public, one registered door supervisor must have the radio on their person and the radio must be switched on.

CCTV –4th paragraph to now read:

CCTV Images shall be made available to be viewed on the premises by a Police Officer or other authorised officer on immediate request, following any incident that has taken place on or at the premises.

Any request for a hard copy of CCTV images/footage, shall be made in writing by the Police or other authorised officer to the Premises Licence Holder, who must ensure that such footage is delivered within 2 working days of the request.

The Premises Licence Holder shall ensure that all Duty Managers, the Premises Licence Holder themselves, and the Designated Premises

Supervisors are trained on the full usage, including the downloading of images, of the CCTV system.

Door Supervisors: 1st Paragraph to now read:

Door Supervisors are to be used at all times that the premises are open to the public. All Door Supervisors shall be registered with the Security Industry Authority.

Amendments to Annex 3 – Conditions attached after a hearing by the Licensing Authority:

Removal of Conditions:

Door Security: Removal of the whole condition which read:

“A minimum of 3 door staff shall be employed at the premises from 10pm till closure on Friday & Saturday.

A minimum of 2 door staff shall be employed at the premises on a Tuesday from 10pm till midnight. Should the premises stay open past midnight on a Tuesday then a third member of door staff is to be in place by midnight”.

Amendment of conditions:

Door Staff

A minimum of 2 door staff to be employed at the premises from 8pm every day the premises are open to the public. One of which must be positioned within the inside of the premises.

A minimum of 4 door staff to be employed at the premises from 10pm every Tuesday, Thursday, Friday & Saturday. Two of which must be positioned within the inside of the premises.

The Committee considers that action, under its statutory powers are necessary and wish to add a further condition to the premises licence.

Addition of conditions:

Last Entry Policy

No person(s) to be allowed entry or re-entry into the premises after 2.00am.

2. To remove the Designated Premises Supervisor:

The current DPS Gillian Marie Worley to be removed from the licence and an application to Change the DPS to be submitted to the Licensing Authority.

3. To suspend the licence for a period not exceeding three months:

The Premises Licence is to be suspended beginning on Tuesday 23rd December 2014 and ending on Sunday 22nd March 2015.

Reasons

These remedial actions are directed at the causes of the concerns which the Committee has heard throughout the review and are no more than is necessary and proportionate for the following reasons:

Due to the serious nature of the incidents and the video evidence put forward the Committee were minded to revoke the licence however, in light of the arguments put forward by the respective parties felt that suspension was more appropriate to allow the Premise Licence Holder time to implement the new licensing conditions attached to the licence.

Concerns regarding lack of involvement of Premise Licence Holder.

Concerns regarding lack of involvement of DPS led the Committee to the decision to remove the current DPS. As it was offered up the Committee would expect the Premise Licence Holder to apply to become the DPS of the premises.

Whilst it was accepted that the CCTV had now been updated the Committee had concerns regarding the lack of training in the use of this and the lack of co-operation in providing footage to Cheshire Constabulary to assist in their investigations. This led to the Committee amending the conditions in relation to the CCTV.

Due to the seriousness of the incidents the Committee felt it appropriate to make amendments to the conditions covering door security.

The Committee had concerns that the door staff were unobtainable by the radio link or able to call for assistance in the event of incidents happening within the premises leading to the imposition of a revised condition.

The Committee expressed concerns regarding the lack of involvement by the Premise Licence Holder given his experience within the licensing trade.

Dated: 24th December 2014

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Signed: _____

Peter Astley MBE
Assistant Director – Regulation & Protection

Right of Appeal

There is a right of appeal against this decision to Warrington Magistrates' Court. An appeal must be commenced within 21-days beginning with the day on which you receive oral notification of the decision.