

Determination Notice

Application to review a Premises Licence Licensing Act 2003, Section 51

Mr Paul Douglas
Douglas Licensing (NW) Ltd



On the 16th December 2014, Warrington Borough Council (“the Council”), being the relevant Licensing Authority received an application for a review, from Cheshire Constabulary, of the Premises Licence in respect of premises known as:

Shenanigans
116 Bridge Street
Warrington
WA1 2RU

Premises Licence Number: WBC\LP0611

On the 17th 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 28 consecutive days, which ended on 13th January 2015. During the 28 day representation period, the Council received representations from:

- (1) Dianne Shaughnessy on behalf of Trading Standards;
- (2) Kim Blondon on behalf of the Licensing Authority;
- (3) Fiona Cowan on behalf of Children's Services and
- (4) Paul Draycott on behalf of Cheshire Constabulary.

In accordance with Section 51 of the Licensing Act 2003, the Licensing Authority must hold a hearing to allow the application to be determined.

On the 9th February 2015, 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 Panel are mindful that it has to achieve a balanced approach to the difficult issues they have heard throughout the Review.

The Panel 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 Panel heard evidence from Mr Charambilides, on behalf of Cheshire Constabulary in support of the review, this related to:

- Concerns with the conduct of the management.
- An incident occurring in the beer garden and the Designated Premises Supervisor (DPS) not being present at the time and stating that the incident should not count as it took place in the garden.
- DPS being the cause of the problems associated with the premises.
- .The current DPS being an unsuitable person to hold that position.
- Wider community interest invested in members of the Committee.
- The question was put to members” were they happy for patrons to be ejected from premises and to then be seen vomiting and urinating on a bridge in the town centre”.
- This was not the first review in relation to these premises.
- DPS was present at this review and had said he would turn it around, less than 6 months later now having another review.
- DPS seen pushing patron to the floor and was directly responsible for resulting head injury.
- 3 sexual assault incidents. One of these incidents involved an 18 year old with the mental age of 14 who had been forced to have oral sex.
- Cheshire Constabulary alarmed at the escalation and seriousness of the incidents.
- 10 clear days before CCTV provided due to girlfriend of DPS changing the code, which led to delays in gathering evidence.

Mr Charambilides directed the Panel to paragraph 11.20 of the Guidance issued under Section 182 of the Licensing Act 2003 which reads as follows:

“In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response”.

The Panel were also directed to 11.26 of the Guidance which states:

“Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder”.

Mr Charambilides placed emphasis on the last paragraph regarding a licensing authority’s duty.

It was argued on behalf of Cheshire Constabulary that bringing down the hours is a more traditional stance. The Panel were directed to the conditions on page 14 of the Report which Cheshire Constabulary felt were relevant.

In closing Mr Charambilides asked that the conditions as requested by Cheshire Constabulary, be imposed on the licence. The suspension put in place which would allow for these conditions to be implemented and to replace the current DPS.

The Panel then heard from K Blondon licensing enforcement officer on behalf of the Licensing Authority and also on behalf of D Shaughnessy the trading standards officer.

The Panel heard that Mrs Blondon and Mrs Shaughnessy had visited the premises and had observed young children running around and small babies in buggies.

A Panel member inquired as to whether it was in the Act that children were not allowed in licensed premises?

Mr Douglas confirmed that children were allowed in licensed premises if accompanied by an adult. Mr Douglas referred to the condition as put forward by Mrs Shaughnessy in relation to no children being allowed on the premises. Mr Douglas stated that his client would have no objection to such a condition if the Panel were minded to impose it on the licence.

The Panel whilst taking this representation into account were mindful of the fact that the Licensing Act does not prevent children being on licensed premises whilst accompanied by an Adult. The Panel felt that the condition offered up and accepted by the Licence Holder to be sufficient to deal with this issue.

The Panel were notified that a representation had been submitted by Ms Cowan on behalf of Children's Services however, due to other constraints Ms Cowan had had to leave but had requested that the Panel take the representation into account. The Panel did take this into account when determining the application.

Mr Douglas highlighted the fact that at page 106 of Ms Cowan's representation she had stated "I support the recommendation made by the Police". Mr Douglas pointed out that the Police had not made representations regarding children.

Mr Douglas then continued with his evidence on behalf of the premises:

Mr Douglas inquired why after viewing the CCTV footage was the first incident shown when the DPS had been exonerated of this and no further action had been taken.

Mr Charambilides challenged as to whether or not this was an appropriate response to the incident as the footage was crucial.

Mr Douglas responded by stating that the DPS was upholding the licensing objectives when restraining the patron who was the cause of complaints.

Further points put forward by Mr Douglas were as follows:

- The Panel had been presented with a review but had only been provided with half of the information from Cheshire Constabulary.
- Incident logs missing, in particular the incident which happened on 11.11.14.
- Logs that had been provided differed from the information in the Agenda.
- The premises had been praised by Mrs Blondon in relation to the training that had been undertaken.

Mr Douglas then took the Panel through all of the incidents as listed in the application and made several references to those incidents, comparing them to individual police officer statements, highlighting a number of discrepancies and contradictions in relation to that evidence as follows:

01.08.14 – Example of drunkenness and violence:

DPS refutes not present at time of incident as he was the one who provided CCTV.

01.08.14 – Example of violence:

Correct procedure was followed. Staff called mother to come and get her daughter. Staff acting responsibly in doing this.

02.08.14 – Example of Licence Condition Breach:

This had been dealt with and the DPS had taken prompt action to remedy this via training.

13.09.14 – Example of violence, incorrect CCTV footage provided and failure to notify the incident:

Cheshire Constabulary state that ambulance control was not contacted by staff and that staff had not contacted the police.

It was argued that staff acted responsibly and the Panel were directed to page 44 of the evidence which was the Atlas report of PC Gee whereupon it was recorded that “staff on the night of the incident requested an ambulance via the town link and it was some minutes before police attended....”

19.09.14 – Example of not using the Town Link Radio – Breach of Licence Condition:

The Panel were directed to page 46 of the evidence, an Atlas report logged by S/Insp Mills. It was stated that the door staff had replied to CCTV operators with a broken response. S/Insp Mills then drove onto Bridge Street and observed staff stood outside the premises and stated they did not respond when four attempts to raise them on the Town Link had not been responded to.

Mr Douglas criticised this action as it was obvious that there was a problem with the premises radio link and asked why S/Insp Mills did not approach the staff rather than sitting outside the premises. Had he done so he would have been able to establish that there was a problem with the radio link.

05.10.14 – Example of violence and a breach of Licence Conditions:

Alleged that DPS in breach of licence conditions. No personal licence holders present. DPS was asleep upstairs in the premises. S19 Notice issued.

It was argued that whilst it was accepted that the DPS was not in the bar he was not asleep upstairs, he had been having a sandwich. Again it was accepted that there were no personal licence holders however, this had now been rectified and five members of staff had obtained their personal licence and been trained to level 2. DPS was in attendance when the Notice had been issued and had closed the premises voluntarily. Question posed as to how it could be a breach when it was staff at the premises that had made the call.

11.10.14 – Example of violence, drunkenness and failure to report an incident:

Panel directed to page 14 of the additional evidence, in particular the comment of the complainant “She was in my face I can’t remember exactly but I remember throwing a punch and then being on the floor, I think I was assaulted”.

18.10.14 – Example of violence:

Not as described. The DPS had not been playing pool. No further action taken in relation to this matter.

18.10.14 – Example of sexual violence:

This matter is not being treated as such by the police. No Niche/Atlas report in relation to the incident.

10.11.14 – Example of violence:

Statement made that there were no door supervisors on duty at the time of the incident. Licence conditions state only required to have them on a Friday and Saturday. This incident happened on a Sunday.

11.11.14 – Example of poor management and lack of a duty of care:

Very drunk male seen to enter premises. Two minutes later came out backwards and fell banging his head, rendered unconscious. Call made from premises to Town Centre radio link requesting CCTV operator to call for an ambulance. Advised they would have to make the call themselves, but apparently none was subsequently made.

The male was refused entry to the premises and was not served alcohol due to his drunken state. Call was made to ambulance service and the police in their Atlas report confirm this. Mr Douglas voiced his concerns that the town centre CCTV had been focused on this person for 45 minutes yet had not contacted the police. Man eventually arrested but no police log of this incident.

14.11.14 – Example of breach of licence conditions:

This was accepted by the DPS and it was stated that door supervisors from other venues assist at other premises. This was something that was being looked into with the S.I.A and the services of this particular door supervisor not being used whilst the query is dealt with by the S.I.A.

06.12.14 – Example of Sexual Violence:

Cheshire Constabulary failed to mention that the DPS immediately closed the premises and preserved the crime scene. Panel were informed that there was CCTV evidence which purported to show the male and female dancing together, entering and later exiting the toilets. The same couple were then observed engaged in conversation outside.

06.12.14 – Example of Sexual Violence and drunkenness:

No further action was being taken by the police in relation to this incident.

All of the above evidence was considered by the Panel with care and it was established that following the evidence of all parties, having understood the application and equally understanding the representations made, the Panel determined:

- Not to suspend the licence
- Not to alter the terminal hour of licensable activities

The panel did however, make the following decision in relation to the application:

1. Modify the Conditions of the Licence:

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

Amendment of Conditions:

Door Supervisors :-

Amendment of 1st paragraph from:

“One door supervisor shall be on duty on Friday & Saturday nights from 20.00 until the premises close”.

To:

“One door supervisor shall be on duty every Friday, Saturday & Sunday night from 20.00 until the premises closes to the public”.

Personal Licence Holder:-

Amendment of whole condition from:

“A Personal Licence Holder shall be on duty at all times the premises supplies alcohol”.

To:

“A Personal Licence Holder shall be on duty during all times the premises are open for licensable activities.”

Training:-

Amendment of whole condition from:

“The Premises Licence Holder/DPS shall conduct three monthly reviews with each person authorised to sell, serve or deliver alcohol in order to reinforce the training and to promote best practice. A written record shall be made of the content of such reviews which will be kept for a minimum of 12 months and to be made available to a Police Officer of Licensing Authority Officer on request”.

To:

“All staff to be suitably trained/re-trained and have knowledge of the Licensing Objectives and a written record to be kept of training which is readily available for inspection by Cheshire Constabulary, the Licensing Authority and Trading Standards Officers”.

Addition of Conditions:

The Panel felt it was appropriate for the purposes of the promotion of the licensing objectives to impose the following conditions:

Incident Register

There shall be a register kept for the purpose of recording all incidents that take place at the premises. The register shall be made available for inspections by a Police Officer, or warranted Licensing Authority official upon request.

Toilet Checks

Regular checks of the toilets to be carried out hourly.

Conditions agreed by all parties in the hearing:

Under 18's

Persons under the age of 18 years shall not be permitted to enter or remain on the premises during the hours when licensable activity is taking place.

The Panel accept the additional condition as set out above and agreed by all parties.

For clarification the above conditions will now form part of the licence.

Reasons

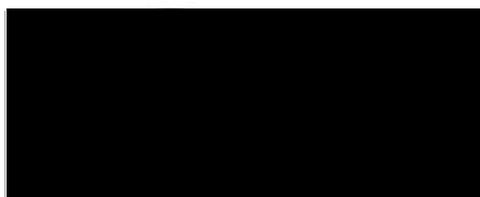
These remedial actions are directed at the causes of the concerns which the Committee has heard throughout the review. The Panel determined that the amended licence does address the concerns raised by the representations and are considered proportionate to deal with those representations.

The Panel had concerns regarding the evidence not being entirely clear with respect to the discrepancies/contradictions as highlighted throughout the hearing.

Although the Panel felt that the premises, Cheshire Constabulary and the Health Service were at fault regarding the patron who was left on the pavement outside the premises, they accept that staff did call the ambulance service and he was put in the recovery position. The Panel were very concerned regarding this incident however, accepted that there was no condition that could be imposed that would be appropriate for the purposes of the promotion of the licensing objectives.

Dated: 13th February 2015

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.