

## **Determination Notice**

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

Mr Paul Douglas  
Douglas Licensing (NW) Ltd  
3 Malika Place  
Wigan  
WN4 0JP

On the 23rd 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:

Voodoo Lounge  
10 Friars Gate  
Warrington  
WA1 2RW

#### **Premises Licence Number: WBC\LP0457**

On the 24<sup>th</sup> 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 20<sup>th</sup> January 2015. During the 28 day representation period, the Council received no representations.

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 16<sup>th</sup> 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 carefully the written and verbal representations submitted by the Licence Holder and Cheshire Constabulary together with video footage submitted by Cheshire Constabulary, the applicant for the review.

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

The Sub-Committee are mindful that it has to achieve a balanced approach to the difficult issues they have heard throughout the Review.

The Sub-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.

Having considered all of the papers before them and having heard from those present at the hearing the Licensing Sub-Committee decided not to hand down a decision immediately but to advise parties of the decision in writing within five days.

The Sub-Committee heard from Mr Charalambides who was acting on behalf of Cheshire Constabulary that he wished to submit further evidence in the form of a statement from PC Jukes.

Ms Clover who was acting on behalf of the licensee Mr Sparkes objected to this evidence and drew the Panel's attention to Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005.

Advice was given to the Sub-Committee by the legal advisor, confirming that the regulations precluded the admission of evidence immediately prior to the start of the hearing unless all parties were in agreement. The Panel determined that the additional evidence would not be admitted in light of the fact that the legal representative acting on behalf of the licensee objected to the admission of the evidence.

Ms Clover addressed the Sub-Committee in relation to CCTV which had not been provided by Cheshire Constabulary regarding an incident on 25<sup>th</sup> July 2014.

Mr Charalambides stated that he would not be relying upon this.

The Sub-Committee viewed CCTV footage submitted by Cheshire Constabulary.

Hearing adjourned at 11.40 a.m. to allow the legal representatives to view the CCTV together so that Mr Charalambides could highlight the relevant parts to Ms Clover, that were to be relied upon by Cheshire Constabulary, when they presented their evidence.

Hearing reconvened at 12.15.

The Panel were advised that whilst the relevant parts of the CCTV had not been highlighted to Ms Clover, she would nevertheless continue to put her client's case forward.

Mr Charalambides addressed the Sub-Committee and advised whilst he intended to refer to incidents in his evidence; he would not be providing commentary on the CCTV footage.

The Chair raised concerns regarding this and was given advice in open hearing that, if the Panel felt it would assist in their determination to have commentary whilst watching CCTV footage, it was for the Panel to give a ruling on that.

The Sub-Committee ruled that it would assist in their determination to hear commentary alongside the showing of the CCTV footage.

The Sub-Committee heard representations in support of the review from Mr Charalambides. The case put forward by Mr Charalambides can be summarised as follows:

- Paragraph 11.20 of 'the Guidance' which states: "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."
- When looking at evidence, the Sub-Committee are looking at causes that lead to incidents. Are they more likely than not going to lead to crime?
- The Sub-Committee needs to take steps in relation to licensing objectives and the wider community.
- Would remind the Sub-Committee of their own policy and s17 of the Crime and Disorder Act. The Sub-Committee have a general duty in carrying out their functions.
- Paragraph 1.5 of 'the Guidance' – legislation supports a number of other key aims and purposes.
- Letter at page 48 of Bundle A, 3<sup>rd</sup> paragraph goes to the heart of this case.
- Cheshire Constabulary looking at a systemic background.
- Is this operator doing what he can to deal with the licensing objectives?
- Refers to incident on 18.08.14 which involved 3 drunken males.
- Directs Panel to page 17. Bundle C where door staff congratulated for assistance in this matter.
- Concern with badly run premises that undermine the licensing objectives.
- Page 18, Bundle C again the role of the door staff being commented on.
- Premises now closing voluntarily on a Sunday evening.
- Refers page 53 licensee being thanked for his co-operation.
- 8.09.14 – incident involving female with bottle simulating sex act. Two males involved, one being the premises manager and the other the promotions officer, who were both 'egging' her on. Door staff never

intervened, never attempted to put her in a taxi. Points out distance to taxi rank.

- Although number of people in town centre decrease after 3am, crime increases.
- Partnership relationship breaking down.
- CCTV provided in relation to an incident on 29.9.14 however, this was after the fact.
- Refers to incident involving female in a cupboard, head butting incident and failed test purchase.
- Cumulative Impact Area.

Mr Charalambides went over the incidents as detailed in Agenda A in more detail and asked that the Sub-Committee determine that drastic action be taken. Mr Charalambides further asked that the Sub-Committee impose the conditions as put forward by Cheshire Constabulary.

Ms Clover then proceeded to address the Sub-Committee in support of the review application. Firstly, Ms Clover requested clarification from Mr Charalambides as to whether or not the application was for revocation.

Mr Charalambides confirmed that it was.

The Sub-Committee then heard from Ms Clover in objection to the review application. The case put forward by Ms Clover is summarised as follows:

- CCTV was provided by the licensee in relation to incident on 25.07.14 however, Cheshire Constabulary chose not to show this. Queries where statement; 'dance off' came from?
- Questions where the evidence is that shows persons involved in the incident consumed alcohol at these premises or indeed how long they had been in the premises.
- Evidence before the Sub-Committee does not substantiate claim.
- Mr Charalambides agrees that evidence does not show alcohol was consumed on the premises.
- Incident on 18.09.14 - Men never in the premises they were refused entry. Door staff doing their job is this wrong?
- CCTV footage of this incident used as training for other door staff to show exemplary way of dealing with such issues.
- Premises sent commendation as to how they handled this situation. Door staff praised. Is this evidence now being used against the premises?
- Incident on 08.09.14 – Manager was sacked for this.
- Police were called on four occasions regarding this incident yet log incomplete as it does not show these calls.
- Suggested that door staff did not do enough – Powers are limited in relation to moving persons off the highway. Female was on highway, staff unable to force her into a taxi.
- Door staff never been charged with anything in relation to the incident.
- No investigation carried out regarding female in cupboard.

- Cheshire Constabulary claims female stated she was hit over the head by the bouncer yet not evident after viewing CCTV footage.
- Issue re: lock on the door. No investigation to clarify that there is such a lock.
- Mr Sparkes never notified of this incident before this review called.
- Cheshire Constabulary never had a problem with the way Mr Sparkes ran the premises prior to July 2014.
- Fail to bring evidence that shows a link.
- Mr Sparkes pleasant and helpful.
- Never been problem with him before.
- Mr Sparkes has 4 other premises within town centre.
- Cheshire Constabulary saying Mr Sparkes is incompetent yet they do not have issues with the other premises he runs. Does not make sense.
- Mr Sparkes not taking this lightly.
- Not logical approach by Cheshire Constabulary.
- Incidents by no means of highest level.
- Eleven allegations since July 2014 which is a little over six months.
- Need to look at incidents.
- Did the premises do anything to cause them?
- Where they dealt with properly?
- Where they served whilst drunk?
- Cheshire Constabulary raises hypothesis and speculation.
- Mr Sparkes submitted a variation in 2014 to have his hours reinstated and was successful in that application.
- Cheshire Constabulary not saying he was a bad licensee just that they did not want these hours.
- Mr Sparkes has been a licensee for 15 years. Cheshire Constabulary happy with him for 14 and a half years but in the last 6/7 months saying he has become an unacceptable licensee.
- Summaries produced in evidence not factually correct.
- Information missing.
- Contradictions with incident summaries and officer reports.
- No criticism of door staff by Cheshire Constabulary.
- Premises only been open on a Sunday evening 5 times. As result of incidents Mr Sparkes has voluntarily closed these premises on Sundays.
- Has never failed to provide CCTV when requested.
- Incident Sunday 14.09.14 - Investigating officer states he spoke with the complainant the following day and she did not appear to have any injuries.
- Mr Sparkes has never failed a test purchase in the 15 years he has been a licensee.
- No incidents since December 2014
- Sub-Committee has factual dispute to resolve or they could determine not enough evidence.
- For Cheshire Constabulary to determine allegations put forward.
- Has to be evidentially based.

- Refers to paragraph 9.12 of 'the Guidance' which states "it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing".
- Within 3 weeks of re-instated hours e-mails started regarding Mr Sparkes no longer being able to run the premises.
- Cheshire Constabulary claim partnership broken down as licensee would not provide CCTV footage. Police asked for 88 hours of footage.
- Mr Sparkes explained given the amount of footage requested a data request would be required.

The Sub-Committee then heard evidence from Mr Sparkes and Paul Douglas, Licensing Consultant, in relation to the incidents listed in Agenda 'A'. Both confirmed the account as put forward by Ms Clover in relation to those incidents.

In closing Mr Charalambides referred to the Guidance and the night time economy. States that "it is right for the police to say they are concerned with this premise". However, he did agree that there are no problems with Mr Sparkes or his other premises. Mr Charalambides then referred to the incidents submitted in evidence and asks if this is what the Sub-Committee want for their town. Notes that not one bystander was observed in the CCTV footage stopping to assist. Asks is this what the Sub-Committee want in Warrington? Urges the Sub-Committee to follow what had been requested in Cheshire Constabulary's application.

In closing Ms Clover suggested that Cheshire Constabulary needed to go back to the drawing board in relation to reviews as they are tainting their applications and the licensing authority's process. Ms Clover highlights the fact that Cheshire Constabulary brought this application therefore, the burden is on them to persuade the Sub-Committee, of the causes relative to these premises. The incident in relation to the female with the bottle could have happened anywhere. Did the premises cause this? No. When Mr Sparkes had all the evidence to hand regarding this incident, he took action and sacked those members of staff that were involved in inappropriate behaviour.

Ms Clover points out that the Sub-Committee are people of the world and able to put these matters into context. Ms Clover directs the Sub-Committee to the fact that there have been no incidents at the premises since December 2014, which took in the Christmas period. Ms Clover highlights the fact that this is one of the worst periods for premises as there are lots of people going out who are unable to hold their drink.

The Sub-Committee has to look at where we are now and what has happened since. What steps could Mr Sparkes have taken to stop this incident from happening? The Sub-Committee have heard no explanation as to why the police evidence is inaccurately summarised. On the one hand criticising door staff and on the other saying they are exemplary.

Do the incidents not warrant the police speaking with Mr Sparkes to highlight any issues with the premises? Allegations people must have been extremely

drunk in the premises yet no evidence of this. Cheshire Constabulary seeking to subvert the Act and you can't do that. Removal of hours is tantamount to revocation. There have been no drugs, stabbings or failed test purchases. Police asking for revocation, talk of removing Mr Sparkes as Designated Premises Supervisor (DPS) yet not making it an issue regarding his being the DPS at 4 other premises.

Ms Clover invites the Sub-Committee to reject the submissions to discredit Mr Sparkes and Mr Douglas during this hearing. No grounds to take action against this licensee.

In assessing all of the evidence the Sub-Committee gave careful consideration to the proposals as put forward by all parties. It was noted that Cheshire Constabulary were seeking the following:

- The removal of the current Designated Premises Supervisor);
- That any replacement DPS to be interviewed and found suitable by the police before appointment, this condition to remain in force for 6 months only;
- To reduce the terminal hour for alcohol to 3:00am and all other licensable activities accordingly;
- All staff to be trained/retrained as appropriate to their role. This is to include inputs on aspects of public safety which will be provided by Warrington Community Safety Partnership; and
- A suspension of the licence for a period of three months to allow for the above conditions to be put into place and to offer a clear break so that the existing culture is eradicated.

The Sub-Committee were not satisfied based on the evidence that there was justification to remove the current DPS.

The Sub-Committee after taking legal advice accepted that the condition in relation to any replacement DPS being interviewed by the police could not legally be imposed. However, this was obsolete in view of the action taken above.

Whilst the Sub-Committee **did not** agree that the terminal hour for all licensable activities should be reduced to 3:00 am they did determine that the terminal hour for all licensable activities be brought back to 4:00 am with a premise closing time of 4:30.

The Sub-Committee determined this measure to be appropriate and sufficiently proportionate to deal with the matters of concern, as after careful consideration of the incidents put before the Panel, it was noted that there were a number of incidents that had occurred after 4 a.m.

The Sub-Committee determined that the condition in relation to staff training be imposed on the licence as the Sub-Committee felt that staff would benefit from further training, in order for them to deal more efficiently and be able to

recognise situations, where it is appropriate to call for assistance in circumstances involving disturbances at the entrance to the premises and on the highway immediately outside the premises.

The Sub-Committee determined that it was not appropriate to suspend the licence for 3 months as any conditions imposed would not require the premises to be closed for any length of time.

In addition to the above the Sub-Committee determined that it was appropriate to amend the current condition regarding door supervisors.

Nothing was disclosed in evidence to convince the Sub-Committee that the licence should be revoked.

For clarification the following conditions will now form part of the licence:

### **Door Supervisors**

The number of door staff shall be determined by the DPS following a full risk assessment for the premises and shall be assessed on a dynamic basis. A copy of the assessment shall be made available to the police and council licensing officers at any reasonable time. At least one of the door supervisors must be female.

### **Staff Training**

All staff to be trained/retrained as appropriate to their role. This is to include inputs on aspects of public safety which will be provided by Warrington Community Safety Partnership

### **Reasons**

The above remedial actions are directed at the causes of the concerns which the Sub-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 and the licensing objectives.

The Sub-Committee expressed concerns regarding the lack of involvement/action by the door supervisors in relation to the incident on 8<sup>th</sup> September 2014. The Sub-Committee would recommend that the premises licence holder review their current security arrangements.

The applicant for the review, the holder of the premises licence and any party who made a relevant representations in respect of the application for a review and who is aggrieved by a decision of the Sub-Committee have a right of appeal against this decision, which must be commenced by notice of appeal given to the Magistrates Court within the period of 21 days beginning with the day on which they were notified

Dated: 23<sup>rd</sup> 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.