

LICENSING SUB COMMITTEE A

A meeting of the Licensing Sub Committee A was held on Tuesday 7 January 2020.

PRESENT: Councillors R Adundale (Chair); A Bell and J Goodchild.

ALSO IN ATTENDANCE: On behalf of the Applicant (Cleveland Police)

Sergeant P Higgins; PC J Arbuckle, Cleveland Police
K Foreman, Environmental Health
N Williams, Licensing Dept
Y Loughran, Immigration Office
J Smith – Legal Counsel acting on behalf of the Responsible Authorities

SL – Premises Licence Holder's legal representative
FL - Premises Licence Holder

OFFICERS: J Dixon, C Cunningham and T Hodgkinson

19/5 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

19/6 **MINUTES- LICENSING SUB COMMITTEE A - 13 DECEMBER 2019**

The minutes of the Licensing Sub Committee A meeting held on 13 December 2019 were submitted and approved as a correct record.

19/7 **EXCLUSION OF PRESS AND PUBLIC**

ORDERED that pursuant to Paragraph 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005, the press and public be excluded from the meeting during consideration of the following item because the public interest in the exclusion outweighed the public interest in the hearing taking place in public. The information to be provided was part of an ongoing investigation and disclosure would risk future proceedings.

19/8 **LICENSING ACT 2003 - APPLICATION FOR REVIEW OF PREMISES LICENCE**

The Chair introduced those present and outlined the procedure to be followed at the meeting.

A report of the Head of Community Protection was presented in relation to two applications for a summary review of two premises made by Cleveland Police under Section 53A of the Licensing Act 2003.

A summary review hearing was held on 13 December 2019 when the Committee determined to impose interim steps, taking immediate effect, in respect of both premises. A copy of the minutes from that meeting were attached at agenda item 3.

The meeting was adjourned in order for the Committee and Parties to consider a further evidence bundle submitted at the meeting by the Premises Licence Holder.

At 11.25am, the meeting reconvened.

The legal representative acting on behalf of the applicant, Cleveland Police, presented the case in support of the application to review. This included statements, and verbal evidence at the meeting, from Cleveland Police; Middlesbrough Council's Licensing Authority; Environmental Health and Immigration Office.

Members of the Committee and the Premises Licence Holder had the opportunity to ask questions of the Responsible Authorities.

The legal representative acting on behalf of the Premises Licence Holder presented the case

in response to the application to review. Members of the Committee and the Responsible Authorities had the opportunity to ask questions of the Premises Licence Holder.

All parties were afforded the opportunity to sum up.

It was confirmed that there were no further questions and all interested parties other than the Officers of Legal and Democratic Services withdrew, whilst the Committee determined its decision. The parties were advised that the Committee's decision and reasons would be sent to them within five working days.

DECISION – APPLICATION TO REVIEW PREMISES LICENCES

Authority to Act

1. The Licensing Authority received an application from the Chief Officer of Police for a summary review of the Premises Licences in respect of the Banana Leaf, Linthorpe Road, Middlesbrough and I China Wholesale Greta Street Middlesbrough under Section 53A of the Licensing Act 2003 ("the Act").
2. The Licensing Sub Committee noted under Section 53A(2)(b) of the Act on receipt of such an application from the Police it must review the Premises Licences within a period of 28 days after the date the application was received.
3. The Licensing Committee noted under Section 53C of the Act it must hold a hearing to consider the application for the review and any relevant representations. It noted it must take such steps as it considers are appropriate for the promotion of the licensing objectives.
4. The steps were: to do nothing; modify the conditions on the licence; exclude a licensable activity (either permanently or temporarily up to a maximum of three months); suspend the Premises Licences for a period of up to three months; remove the Designated Premises Supervisor; or revoke the Premises Licences.
5. The Committee considered the Act, Government Guidance made under Section 182 of the Act and the Council's Statement of Licensing Policy. It also considered the reports and appendices, additional statements and information and the representations from the Parties to the hearing.
6. The Review was considered on its own merits.

Decision

7. The Licensing Sub Committee decided it was appropriate to revoke the Premises Licences in respect of the Banana Leaf and I China Wholesale Limited for the following reasons:-

Reasons

Control of the Premises

8. With regard to the Banana Leaf, the Premises Licence Holder had been in place since 12 December 2012. Their partner was the Designated Premises Supervisor ("DPS") from that date, however, the Premises Licence Holder was the current DPS.
9. With regard to IChina Wholesale Limited's Licence, the Premises Licence Holder was the sole director of the company from 23 February 2018. Prior to that, the Premise's Licence Holder's partner had been one of the directors of the company from 1 May 2016 to 23 February 2018.

Illegal Working and associated serious criminality

10. Illegal working had taken place at the Banana Leaf and IChina Wholesale Limited. This alone was considered very serious and sufficient and appropriate for the Licences to be revoked in order to promote the prevention of crime and disorder.

However, the seriousness of illegal working is greatly aggravated by other serious issues at the premises or linked with the management of the premises.

11. In July 2017, both the Fire Brigade and Environmental Health found evidence of people sleeping in the Banana Leaf. They witnessed three mattresses with bedding and toys in the upstairs area of the premises. The Police advised this was indicative of exploitation. A Prohibition Notice was served to stop any sleeping on the premises. In addition there were inadequate means of escape. Following an audit it was found that a number of fire regulation deficiencies required an enforcement notice. The Committee did not find the Premises Licence Holder's submissions that the mattresses were there simply so her employees could "nap" during breaks to be at all credible and contradicted the information from the Authorities.
12. On 17 November 2017, following a visit to IChina Wholesale Limited, a male attempted to run away but was apprehended. This male was an illegal worker. A civil penalty was raised. Employees at the premises told Officers that other illegal workers were engaged at the premises.
13. On 17 May 2019, following a visit to the Banana Leaf, a male attempted to run away but was apprehended. This male was an illegal worker. A civil penalty was raised. The Premises Licence Holder could not provide any employee documentation at the premises and Officers overheard that the Premises Licence Holder would often go to the airport to pick up people.
14. Earth Spa and Wellness Centre at 94 Newport Road was not licensed but was referred to in the Police evidence as linked to the issues, on the whole, of illegal working and exploitation. It was confirmed that on four separate occasions, different lone female foreign nationals in the UK illegally were found on the premises on 12 April, 2 May, 1 June and 9 December 2019. The Police informed the Committee it had intelligence the premises was being used as a brothel. It advised the set up was conducive to such use and when inspected they found durex lubricant near to the massage table. However, the Committee considered that in any event lone female foreign nationals in the UK illegally were found on the Premises.
15. The Premises Licence Holder denied any links to the premises, provided evidence of a lease, an unsigned statement from an individual who claimed to run the business legitimately and that the Premises Licence Holder was just a friend, together with utility bills in his name.
16. However, the Committee noted the lease was to the Premises Licence Holder's partner for 5 years from 14 February 2017 and gave their home address. The other male was one of the people arrested for involvement in the activities. It noted the Premises Licence Holder was recorded as the business owner in a statement of an officer from Revenue and Benefits. The business rates bill submitted by the Premises Licence Holder, addressed to the property, does not alter the information in the statement. There had been two deliveries on different dates of boxes containing disposable hand towels used for massage tables addressed to the Premises Licence Holder. The Committee did not consider that Amazon would make a mistake twice. The Premises Licence Holder's partner, although in prison and recently deported, was still named as responsible for the account for the premises from Northumbrian Water and a letter addressed to another name, but believed by the Police to be the Premises Licence Holder's partner, dated 19 April 2019, was found on the premises.
17. The Premises Licence Holder was arrested on 9 December 2019 following allegations of criminality linked to Earth Spa and Wellness Centre, 94 Newport Road Middlesbrough. At that time a female who was illegally in the UK was at her home address and also arrested. Also £16,000 of cash unaccounted for was found at the Premises Licence Holder's home. The Committee, in view of all of the information, did not accept that the Premises Licence Holder was simply giving hospitality to a friend, in any event a person not permitted to be in the UK was staying at her home.
18. After considering the matter on the whole, the Committee considered there was a pattern, evidence of people sleeping in the Banana Leaf which could be indicative of exploitation, illegal workers found in both premises, a person illegally in the UK being

found in the Premises Licence Holder's home and four people illegally in the UK being found at other premises which the Premises Licence Holder and her partner were linked to.

19. On 21 January 2018, the management, including two Directors of IChina Wholesale Limited, one being the Premises Licence Holder's partner, carried out a serious violent attack after the victim cancelled an order with the Company. The attack resulted in the Directors being imprisoned. The Premises Licence Holder's partner was given a three and a half year prison sentence. Shortly after the attack, the Premises Licence Holder became the sole Director and her partner and the other Director resigned on 23 February 2018. The Premises Licence Holder was not involved in the attack, however, the Committee considered that the attack was clearly linked to the operation of IChina Wholesale Limited and seriously undermined the promotion of the prevention of crime and disorder.
20. The Committee considered therefore, the Premises Licence Holder was linked to criminality at the Licensed Premises and wider criminality which was undermining the objective of the promotion of the prevention of crime and disorder.
21. In addition to involvement in illegal working and links to exploitation and criminality there had been other unlawful serious problems at both IChina Wholesale Limited and Banana Leaf.

Other Unlawful incidents

22. IChina Wholesale Limited - Licensing Officers discovered alcohol had been displayed for sale and unlawfully sold following a visit on 6 April 2018 as the Premises Licence permitting the sale had been suspended in 2015. This was despite the Premises Licence Holder being informed by officers on 3 April 2018 that it was unlawful to sell alcohol whilst the licence was suspended. In addition, licensing officers were informed that there had been no DPS in place for 12 months which also made it unlawful to sell alcohol. There were breaches of conditions whilst the alcohol was being displayed and sold, namely, no incident book, completed refusals records and no age verification policy displayed.
23. Banana Leaf – On 2 August 2017, unsafe work was being carried out at Banana leaf, it involved work at a height, use of dangerous equipment and risk of personal injury. The work was so unsafe a Prohibition Notice was required to prevent any further work. The Committee did not accept that burden of responsibility was on the builder, the Premises Licence Holder was responsible to ensure safety compliance and failed to take any steps to ensure this.
24. Banana Leaf – Following an application on 29 November 2019 for the third floor of the premises to have a Premises Licence for the sale of alcohol and regulated entertainment, on 7 December 2019, officers visited the premises at around 9.30pm. Officers found on the third floor a group of people dinking, numerous bottles of alcohol in the area and Karaoke being sung. Officers also confirmed that people had been smoking in the area and the evidence showed that smoking in the area had taken place for a longer period. The Premises Licence Holder claimed the people present were friends who had brought their own alcohol and none had been sold. A discussion took place in the Committee about a bill in which the items were identified as food and soft drinks. However, the Committee remained concerned that optics in the area were not full. It was seriously concerned that smoking had been permitted which in itself was a criminal offence. In addition, the fire doors were bolted shut whilst people were in the Premises. The Committee considered that allowing the area to be used in such a way, was indicative of continued clear failings in management and lack of regard to lawful and licensing requirements.

Conclusion

25. The Committee considered the operators of the premises had been engaged in serious criminality which, amongst other matters as set out above, involved the use of illegal workers. The actions of the operators of the premises had seriously undermined the promotion of the prevention of crime and disorder. In addition the

premises had breached health and safety, smoking and licensing laws, all of which were criminal matters further undermining the prevention of the crime and disorder objective and public safety. The Committee considered it must prevent premises licences from being used to further crime. Nothing else but revocation would be appropriate.

26. The decision to revoke was in accordance with Government Guidance and the Council's Policy and there were no good reasons to depart from it.

Appeal

27. The parties had the right to appeal the decision to the Teesside Justices Centre Teesside Magistrates Court, Victoria Square, Middlesbrough within 21 days from the date on which they were notified of this decision. However, if they did decide to appeal the decision and the appeal was dismissed, the Council would apply for its costs in defending its decision.

DECISION - REVIEW OF INTERIM STEPS

Authority to Act

1. The Licensing Authority received an application from the Chief Officer of Police for a summary review of the Premises Licences in respect of the Banana Leaf, Linthorpe Road, Middlesbrough and I China Wholesale Greta Street Middlesbrough ("the Premises") under Section 53A of the Licensing Act 2003 ("the Act").
2. On 13 December 2019 the Licensing Sub Committee took the interim steps to suspend the Premises Licences in respect of both Premises pending a full review for the reasons set out in the decision notice dated 13 December 2019.
3. The Committee held a hearing commencing on 7 January 2020 and decided to revoke both Premises Licences.
4. Under Section 53D of the Act, the Licensing Committee must review the Interim Steps imposed on 13 December 2019.
5. It must consider whether the interim steps were appropriate for the promotion of the licensing objectives; consider any relevant representations, and determine whether to withdraw or modify the interim steps taken S53 D (2).

Decision

6. After carefully considering all of the information and the matter on its own merits, the Committee decided it was appropriate that the interim steps of suspension of the Premises Licences remain in place in order to promote the prevention of crime and disorder. The reasons for this decision are as follows:-

Reasons

7. The Committee considered the operation of the premises continued to cause a serious risk to the objective of the promotion of the prevention of crime and disorder.
8. At different times, illegal workers were found on the Premises.
9. Prior to the illegal workers being found on the Premises, it appeared people had been sleeping in the Banana Leaf, indicative of exploitation.
10. The Police visited Earth Spa and Wellbeing on Newport Road on four separate occasions, each time a different lone foreign national female illegally in the UK was at the Premises. The Police believed the premises was operating as a brothel. The Police believed the management of the Premises was linked to Earth Spa.
11. The Premises Licence Holder's husband / partner who at the time was a Director of IChina Wholesale Limited in 2018 committed a serious violent attack on a customer.

12. When the Premises Licence Holder was arrested in relation to Earth Spa, a female, who was illegally in the UK, was found at the Premises Licence Holder's home together with unaccounted for cash in the sum of £16,000.
13. The matter continued to be investigated by the Police for serious criminality.
14. The Committee was wholly satisfied the Licences should remain suspended, for the reasons set out for the revocation of the Licences and to deter and prevent authorised licensable activities furthering crime and exploitation.

Appeal

15. If a party was aggrieved by the decision regarding the interim steps they may appeal the decision to the Teesside Justice Centre, Teesside Magistrates Court, Victoria Square Middlesbrough within 21 days from the date they were notified of this decision. An appeal against interim steps should be heard within 28 days from the date of application/complaint. However, the Council would claim its costs in defending its decision against any appeal.