

**Decision of the Licensing Sub-Committee ("Committee")  
15 January 2009**

**Chicken Cottage, 148 Ladbroke Grove, W10 5NE (the "premises")**

The Committee has considered an application for the Review of a premises licence under the Licensing Act 2003 ("the Act").

The Committee has considered the committee papers and the submissions made by all of the parties, both orally and in writing.

In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State's Guidance ("Guidance") and the Authority's Statement of Licensing Policy ("SLP").

The Application for Review was made by Sergeant Trevor Lewis (Sgt Lewis) on behalf of the Metropolitan Police, a Responsible Authority (RA) under the Act. The Review was made on the grounds that the premises are undermining and failing to promote the prevention of crime and disorder and the prevention of public nuisance licensing objectives. Sgt Lewis called Inspector Andy Carter of the Police and Colin Hall, Licensing Officer as witnesses.

Mr Nik Mohammed Niazi, the Premises Licence Holder ("PLH") attended the Review hearing and was represented by Mr Dadds, a solicitor/barrister. The PLH was accompanied by Mr Mahir Kilic, his Licensing Agent and Mr Shirin Ahmad Nyazi so that he could consult them during the hearing. Mr Dadds advised that whilst the PLH could understand the English language, as this was a formal hearing the PLH would be assisted by an interpreter. The Committee advised that they would take the proceedings slower so that the Interpreter could interpret the proceedings for the PLH. The Committee advised the Interpreter to alert them at any time during the hearing if the parties were proceeding too quickly.

Mr Dadds advised that Mr Shirin Ahmad Nyazi was not a business partner of the PLH in the legal sense, but he and the PLH would buy shared orders as this would save costs and help each other if there was a problem at each others premises. Any references below to the PLH will generally relate to the submissions made by Mr Dadds on behalf of the PLH unless the decision indicates otherwise.

There were two issues to resolve before the application was considered. The first relating to additional documentation produced by the PLH and the second being an application for an adjournment made by the PLH. These issues are set out in the reasons section of this decision.

**Adjournment request**

Having carefully considered **the adjournment request the Committee has decided it was not in the public interest to adjourn the hearing** for the reasons set out below.

## **Substantive Review application**

**The Committee has decided**, after taking into account all the individual circumstances of this case, that it is necessary for the promotion of the licensing objectives, specifically the prevention of crime and disorder and the prevention of public nuisance objectives **to revoke the Premises Licence**.

### **Reasons**

In making its decision the Committee has taken into account all relevant sections of its SLP and the Guidance. The Committee considers the following paragraphs of the Guidance and its SLP are particularly important but it should be emphasised this is not an exhaustive list as the Committee has considered all relevant provisions of both documents. Relevant paragraphs are: - Legal Status, 1.9, 1.10, 1.17 to 1.19, 2.9 to 2.16, 2.32 to 2.39, 9.24, to 9.27, 10.13, 10.14, Section 11 (particularly 11.6 to 11.8, 11.14, 11.15 to 11.21, 11.22 to 11.26), 12.9, 13.14, 13.16 to 13.18 of the Guidance and paragraphs 2.1, 2.4, 2.7, 3.8, 6.3, 7.8, 7.9, 7.11, 8.1, 8.2, 8.3, 10.3, 10.4, 12.2, 12.4, 12.5 and 12.6 of the SLP.

The Committee recognises that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. Representations must relate to the particular premises in question and must be relevant to the promotion of the licensing objectives.

The Act provides the Licensing Authority with a range of powers on determining a Review that it may exercise where it considers them necessary for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns, which the representations identify. The action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

The Committee is entitled to and has taken into account local knowledge in reaching its decision. It has also recognised that other legislative procedures may be inadequate to overcome the concerns raised by those who have made representations.

### **Documentation**

The Legal Adviser to the Committee confirmed that a bundle of documentation had been delivered to the Licensing Department of the Council (as opposed to the Governance Services department) late in the afternoon on the day immediately preceding the hearing. This information had been forwarded to Governance Services and then despatched to members that night. The members confirmed that they were not able to read the documentation until the morning of the hearing and this, together with the fact that the Interpreter did not arrive on time, are the reasons why the hearing did not start until 10.20.am.

The Legal Adviser confirmed that the bundle of documents consisted of a document called "Case Summary Notes for Counsel"; 6 copy photographs (one including an extract of a menu); 2 copy notices in relation to the opening hours of the premises and a map. No other documents were included and Mr Dadds confirmed that the List of attachments referred to in those documents was incorrect and should be disregarded.

Sgt Lewis confirmed that he had received the documentation and he had no objection to the documents being referred to. He did however ask for additional time to rebut this evidence. The Committee confirmed that both parties would be allowed extra and equal time to present their respective case and to respond to issues.

### **Application for an adjournment on behalf of the PLH**

After the additional documentation was clarified Mr Dadds made an application to adjourn the review hearing on the grounds of public interest. He wanted the Police to disclose further information and data concerning the 71 alleged incidents referred to in the application, together with a map showing crime call outs to other similar licensed premises in and around the premises. Mr Dadds advised that a Freedom of Information Request had been made by the Licensing Agent of the PLH to another division of the Police and he contended that the PLH should be entitled to consider that evidence before proceeding with the review hearing. Mr Dadds advised the Committee that he was put on notice to attend the hearing either on Friday 9 January 2009 or the beginning of the week commencing 12 January 2009, and that he took formal instructions the afternoon of the 14 January 2009. The Licensing Agent confirmed that he had been instructed by the PLH to deal with the Review shortly after the application had been served. He believed he received the application on 24 November 2008.

Sgt Lewis opposed the application for an adjournment. He stated that neither the PLH nor his representatives had requested any information directly from him in relation to this Review before today's hearing. Mr Dadds confirmed this was correct. Sgt Lewis felt this was unacceptable as the Review application had been made on 17 November 2008. He contended that in his view there was sufficient information in the application to enable the PLH to respond to the concerns raised. He did not propose to produce any further raw data. However, he could amplify the information if this is considered necessary. Furthermore, he contended that it was entirely a matter for him to decide as to what information he wished to produce or include in his application.

The Committee adjourned to determine the request. Once the hearing resumed the Committee advised that they are most concerned that neither the PLH nor the Licensing Agent representing the PLH had sought to contact Sgt Lewis earlier if they felt more information was needed, in relation to the review. This was particularly concerning having regard to the serious nature of the problems alleged and because the review application had been made over 8 weeks prior to the hearing. The Committee felt that any responsible PLH would want to make contact with Sgt Lewis as soon as possible after the application had been made, especially in a case of this nature where serious criminal incidents were alleged to be occurring and particularly if the PLH had felt he

needed further information. The Committee agreed that it could not require any party to produce evidence for the hearing if they were not proposing to produce that documentation but it would be for the Committee to decide if the Police had substantiated their allegations.

The Committee were aware that the Guidance at paragraphs 11.22 and 11.24, states that Licensing Authorities do not have the power to assess or judge the criminality of any issue as that is a matter for a court. In determining a Review the Committee are not required to establish the guilt or innocence of any individual but ensure that the licensing objectives are promoted. The Committee recognise that the Review is part of the regulatory process introduced by the Act. It is not part of the criminal law or its procedure and it is for them to determine the Review on the basis of the application and any relevant representations made.

Having carefully considered the submissions made by both parties the Committee refused the request for the adjournment as they did not consider it was in the public interest to adjourn the Review. Serious issues relating to crime and disorder have been raised in the Review application, going back over a 12 month period and these allegations needed to be determined promptly. The Committee considered that there were sufficient details in the Review application to enable the PLH to respond to these issues. The Police are entitled to amplify the concerns raised in accordance with paragraphs 9.24 and 11.7 of the Guidance. The Committee and the PLH would be able to ask questions to test the issues raised. It is then a matter for the Committee to decide as to what weight (if any) should be attached to that evidence and what steps (if any) should be taken. For all these reasons the adjournment request was refused.

### **Substantive Review Application**

Sgt Lewis started by rebutting the late evidence produced by the PLH. He confirmed that all the 71 incidents referred to in the application related to specific incidents occurring either in the premises or immediately outside the premises, as opposed to other licensed premises in the area surrounding the premises. However, he confirmed that the police had recorded 25 separate criminal incidents against Red Planet Pizza situated at 167 Ladbroke Grove. Another premises situated at 151 Ladbroke Grove (Pricecheck) has had its licence reviewed, but that review concerned underage sales rather than crime and disorder incidents.

The Committee asked Sgt Lewis to give the time and details of each of the 14 incidents referred to on page 15 of the committee papers. The Committee were very concerned to learn that many of the criminal call outs to incidents occurred inside the premises such as on 16/9/08, 6/8/08, 22/6/08, 12/6/08, 9/4/08, 18/1/08, 7/12/07 and 20/11/07. Some of the times could not be confirmed. Apart from the incidents inside the premises there were a number of other incidents which occurred directly outside the premises by patrons either leaving or entering the premises. Further the 14 incidents only represent a sample of the 71 incidents referred to in the application. The incidents include, criminal damage in the premises, thefts, intimidation, physical violence, assaults, disturbance in a public place, crime and disorder and anti-social

behaviour. These incidents were committed against staff and customers of the premises, as well as against persons walking past the premises by groups of youths hanging around immediately outside the premises.

Sgt Lewis recognised that some of the 14 incidents occurred before the late night refreshment licence came into operation in the evenings (i.e. before 23:00 hours). However at least 4 of the 14 incidents and some of the remaining 71 incidents occurred during the operation of the licence. He pointed out that the previous operator of the premises (the North Kensington Tandoori) did not cause any of crime and disorder problems which are now occurring at this premises since the new operators took over the licence. In his view, this premises has become a focal point for a gang of youths who call themselves the Chicken Cottage Crew who cause crime and disorder inside and immediately outside the premises. This evidence was corroborated by Inspector Carter who is the Local Safer Neighbourhood Team inspector. He confirmed that since this premises opened there has been a marked increase of crime and disorder inside and immediately outside the premises. He described it as a "honeypot" for gangs of youths hanging around in and outside the premises. He accepted that crime and disorder also occurs in other areas in and around Ladbroke Grove, particularly near the station but he advised that the 71 crimes referred to in this application have a direct causal link to this premises. The Committee recognised that this is in line with paragraph 11.6 of the Guidance. It was clear from the evidence that the incidents occurred on every day of the week, not just at weekends.

Sgt Lewis advised the Committee that he was not overly surprised that no other representations had been made by Interested Parties, such as local residents and businesses because of fear of intimidation.

Prior to the lunchtime recess Mr Dadds asked the police to show him the raw data for the 71 incidents. Sgt Lewis was happy to produce this and provided a copy to the Committee so that all parties could consider the information during the lunch break. When Mr Dadds presented his case he did not dispute that the 14 or indeed 71 incidents had occurred and moreover confirmed that in a number of cases, the staff of the premises had called the police to the premises. Mr Dadds accepted that the premises were having difficulties with youths, particularly in the early hours of the evening, between 17:00 and 23:00 hours. He did question whether a couple of the incidents could be said to be the responsibility of the PLH. He also questioned whether there was a direct causal link in line with paragraph 1.7 of the Guidance, in relation to the incidents occurring during the licensing hours. In particular, Mr Dadds questioned the relevance of the incidents on 12 July 2008, 9 April 2008 and 2 February 2008. The 12 July was an incident when a 13 year old was arrested for breaching bail conditions by attempting to enter the premises at 00:10 hours in the morning. The Committee felt that on the one hand this incident might initially be thought to be irrelevant as the PLH might not have known about the bail restriction in relation to this individual. However, on the other hand there was some sort of link between the premises and this individual because the restriction prevented him specifically from going into this premises. It is possible that the premises had asked for the restriction or were aware of the restriction. The PLH did not clarify this issue.

The Committee accepted that a criminal incident did occur in the premises at 23.10 hours on 9 April 2008. Further, if youths or members of a gang were basing themselves in the premises in relation to the incident on 2 February 2008 at 00.05 hours then this could indeed be relevant as it would show that the premises is used as a base for gangs or a group of youths who are carrying out criminal activities in and around the premises.

The Committee were deeply concerned that so many incidents of crime and disorder had occurred both inside and outside the premises during a relatively short period since the licence had been granted on 25 June 2007. The Committee accepted the evidence of the Police that they also considered the number of call outs to this premises was both serious and excessive, especially when one takes into account the fact that the previous operator did not have these types of criminal incidents, especially in these numbers. In one incident on 18 January 2008 a group of at least 20 youths were involved in crime and disorder inside the premises which led to a fight breaking out outside the premises when the staff were trying to get them out of the premises. At least one person in the premises was hit with a plastic tube and some youths attempted to damage the premises itself. Two individuals were arrested. This incident occurred at 22:00 hours but the Committee were satisfied that there were more than enough criminal incidents which occurred during the licensing hours. Inspector Carter also confirmed that two police officers had been badly injured responding to a call at the premises.

The Committee recognises that Paragraph 11.25 of the Guidance confirms that certain criminal activity should be treated particularly seriously and this includes where the premises is used as a base for gangs. Paragraph 11.26 of the Guidance advises that the review procedure can be used to deter such criminal activities from occurring. Where reviews arise and the Licensing Authorities determine that the crime and disorder licensing objective is being undermined through the premises being used to further crimes, it is expected that the revocation of the licence will be considered even in the first instance.

In this case, the Committee heard and accepted the evidence of the Police that this premises was being used as a focal point for youths, particularly a gang called the "Chicken Cottage Crew", which is advertised on YouTube and who use the premises to carry out crimes on customers and staff of the premises and generally against passers by immediately outside the premises. The Committee were extremely concerned that the PLH or his representatives had done nothing prior to the hearing to address these issues. They had not contacted Sgt Lewis or indeed the Police for help generally even though there was evidence that the Police had been monitoring and trying to address the gang problems in the Ladbroke Grove area through PCSO community policing.

At the hearing Mr Dadds accepted that it could be said that the PLH should have been more proactive but he also argued that the Police should have done more. He particularly mentioned paragraph 11.8 of the Guidance which he contended advises that the promotion of the licensing objectives relies heavily on a partnership between the licence holders and responsible authorities to work in partnership to resolve issues. In his view the Police should have given early warning of their concerns and for the need for improvement. However, the Committee did not accept that the Police had done nothing to raise their

concerns. Concerns were raised by the Police through their PCSO work and Sgt Lewis confirmed that he had tried to discuss this matter with the Licensing Agent of the PLH before the hearing but he was advised that the PLH would deal with the matter at the hearing. Moreover, the Committee concluded that paragraph 11.8 did not absolve the PLH from taking proactive action himself much sooner, rather than simply waiting for a review to be issued. The Committee regards the level and type of crime and disorder occurring at this premises as unacceptable, especially within a 12 month period.

Mr Dadds advised that the PLH now wanted to work with the Police to address these problems. However having heard the submissions of the PLH the Committee had no confidence in the PLH or the management of the premises that these matters would be addressed.

The Committee also recognised that whilst the main emphasis of the review related to the crime and disorder licensing objective, there were also concerns that the public nuisance objective was being undermined. It was alleged that the people walking past the premises are being hindered, intimidated and at worst targeted by groups of youths and/or the chicken Cottage Gang loitering directly outside the premises. This evidence was not disputed by the PLH. The Committee accepted the evidence of the Police and conclude that the prevention of public nuisance is not being promoted by these premises.

Having considered the case carefully the Committee concluded that it had no doubt that the crime and disorder licensing objective was being undermined by the activities occurring both inside and immediately outside the premises. It is therefore appropriate to go on to consider what steps should be taken to promote the crime and disorder and public nuisance licensing objectives.

The Committee have considered whether conditions could be imposed on the licence to address these problems and to promote the two licensing objectives. Sgt Lewis initially advised whilst giving his evidence that he did not consider there were any additional conditions which could be attached to the licence to prevent these licensing objectives from being undermined. He had considered whether the following conditions might help, namely, a door supervisor condition; whether off sales late night refreshment should be curtailed; whether there should be a restriction of the number of customers in the premises at any one time or whether a CCTV condition would be appropriate. In his view this is a very difficult case because whilst problems occur during the licensing hours, they also occur outside these hours between 17:00 hours and 23:00 hours, so any conditions attached to the licence would not tackle problems occurring during these times.

Sgt Lewis felt a possible suspension of the licence for a period up to 3 months would not overcome the problems, because even if the licence were suspended for 3 months, in his view this period was too short to curtail the gang culture which had developed in and around the premises. He also referred the Committee to the High Court decision of *Bassetlaw District Council v Workshop Magistrates' Court* in 2007 which confirmed that deterrence was a legitimate matter to consider when trying to prevent crime and disorder. Consequently, in his view revocation was the only answer.

However, Mr Dadds suggested that whilst one or two conditions might not help in themselves, if a "pool" of conditions were to be attached to the licence, these might together address the problems. The Committee was very concerned that prior to the hearing, the PLH had not suggested any "pool" of possible conditions to allow the Police to consider and comment on them. This is contrary to the principle laid down in the High Court case of Westminster City Council v Metropolitan Stipendiary magistrate and Marc Merran in 2008. The PLH advised that he was intending to provide this information as part of his case. The Committee advised it wanted to see any proposed conditions and therefore the PLH confirmed he would sort these out over the lunch break and circulate them to the Police for consideration. Extra time was given for the recess to allow this matter to be dealt with.

After considering the proposed conditions suggested by the PLH the Police advised they were not sure if the conditions would overcome the problems but if the Committee was minded to impose them the Police would accept them. The Committee had to test whether the conditions would indeed promote the licensing objectives in relation to crime and disorder and public nuisance. The Committee recognised that the PLH was willing to undertake that any conditions imposed on the licence in relation to this review would be complied with from 17:00 hours until the premises closed to the public. However, as a matter of law any undertakings would not be enforceable by the Licensing Authority, if they were not being complied with. Mr Dadds accepted this view, but emphasised that the PLH and his staff would comply with the undertakings.

The Committee considered whether, notwithstanding the law, it was confident that the conditions would be complied with. Unfortunately, having taken into account the lack of effective proactive management in the past the Committee concluded that it had no confidence that these undertakings or indeed the conditions (which would only operate within the licensable hours commencing from 23:00 hours) would be complied with. This is of particular concern bearing in mind that the PLH and his staff have had obvious problems in the past of trying to control their customers where they themselves, were subjected to threats and violence. This significantly diminishes the weight which could be attached to the suggested conditions or the undertakings.

Further, the Committee had concerns about a number of the proposed conditions. In particular, the Committee did not consider it was appropriate to use a mosquito device either inside or outside the premises because this is an indiscriminate tool which could potentially affect any young person entering the premises, walking outside the premises or indeed living in one of the residential properties surrounding the premises. The Committee felt that it could not endorse the installation of this device given that there are potential health and safety implications. Sgt Lewis confirmed that the absence of the mosquito device would weaken the weight to be attached to the conditions as a whole.

Whilst the committee recognised that having a proper CCTV system might help the detection of crime they did not consider it would prevent crime and disorder from happening in the first place because the Police explained that gangs are not deterred by the presence of CCTV. Moreover, the Committee noted that the premises already had CCTV installed in some form and this had not prevented the problems occurring or deterred the youths. The PLH and his staff have



already demonstrated that they are not able to stop groups of youths barging in to the premises if they are intent on causing trouble, so the Committee consider proposed conditions 2 and 6 would in reality be ineffective. Proposed condition 2 states that the Licensee shall take all reasonably practicable steps to ensure that patrons entering into and departing from the licensed premises do not cause nuisance or annoyance to adjoining residents or passers by. Proposed condition 6 states the Licensee shall display notices requesting departing patrons to have regard to their neighbours. Moreover, a form of proposed condition 6 is already on the licence and had not curtailed the problem. Similarly, condition 4 of the current licence requires a notice to be displayed asking patrons to respect the needs of local residents and to leave the premises quietly. It is clear from the evidence that this notice is being disregarded by the youths. Having regard to all the submissions made in relation to the conditions the Committee considers the proposed conditions would not overcome the crime and disorder and public nuisance problems occurring at the premises.

The Committee agrees with the Police view that a suspension of the licence would not overcome the gang and youth culture which has developed at these premises.

This premises has clearly become a focal point for groups of youths or gangs who consistently cause crime and disorder to customers and staff at the premises. These youths have been congregating on the pavement immediately outside the premises, intimidating passers by, causing public nuisance and committing crimes of varying degrees. It was acknowledged by the Parties and accepted by the Committee that these problems were taking place before the licensing hours came into operation and during the licensing hours. The Committee concluded that there is a direct causal link between the premises and these problems. These are serious problems which as the Guidance advises in paragraphs 11.25 and 11.26 should be treated particularly seriously. The Committee has therefore concluded that the Premises Licence should be revoked. This decision promotes the two relevant licensing objectives, by ensuring that the premises are prohibited from operating after 23:00 hours. This will stop this premises being a focal point for gangs and youths during these licensing hours and might possibly deter youths and gangs from using the premises as a focal point earlier in the evening.

The revocation of the licence will not have a significant effect on the business of the premises because the late night refreshment licence only allows the premises to sell late night refreshment for an extra 9 hours a week, which is minimal in relation to the hours the premises, is open.

The Committee concluded that the revocation of the Premises Licence is necessary and appropriate in order to promote the crime and disorder and public nuisance licensing objectives.

If any of the parties are unhappy with the decision they are entitled to appeal to the magistrates' court within 21 days from the date of notification of the full decision. Any appeal against the decision must be sent to West London Magistrates' Court, 181 Talgarth Road, London, W6, telephone 020 8700 9356/9360. Further details of the Rights of Appeal can be found in Section 181

and Schedule 5 to the Licensing Act 2003.

This determination does not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

**Licensing Sub-Committee 15 January 2009**