

LICENSING SUB-COMMITTEE No. 1

Thursday 12 September 2013

Membership: Councillors: Audrey Lewis (Chairman), Michael Brahams and Ahmed Abdel-Hamid

Legal Adviser: Harjinder Bhela
Policy Officer: Chris Wroe
Committee Officer: Naomi Stauber

Present: Mr Glyn Franks (Westminster City Council Licensing Inspector and Applicant), Mr Vimal Budhia (Director of the Company which holds the licence), Mr David Dadds (Solicitor representing the licence holder), Mr Dave Nevitt (Environmental Health Services), PS Peter Chamberlain (Metropolitan Police Service) and PC Earnshaw (Covent Garden Safer Neighbourhood Team).

Review Application for Covent Garden Food and Wine, 20 Wellington Street, London, WC2E 7DD

An application by the Licensing Authority for a review of the premises licence for Covent Garden Food and Wine, 20 Wellington Street, London, WC2E 7DD was received on 4th July 2013 on the grounds of the Prevention of Crime and Disorder and Public Nuisance and the Protection of Children from Harm.

The premise is a small family-run shop and off licence.

Guidance issued under section 182 of the Licensing Act 2003 (paragraph 11.2) states that at any stage following the grant of a premises licence, a responsible authority, such as the Police or the Environmental Health Service, or any other person who can seek a review, may ask the Licensing Authority to review the premises licence because of a matter arising at the premises in connection with any of the four licensing objectives. As such, in accordance with section 52(2) of the above-mentioned Act, the Licensing Authority must hold a hearing to consider the application and any relevant representations.

The premises currently benefits from a premises licence that permits:

Sale by Retail of Alcohol

Monday to Saturday:	08:00 to 23:00
Sunday:	10:00 to 22:30

The opening hours of the premises:

Monday to Saturday:	08:00 to 23:00
Sunday:	10:00 to 22:30

OPTIONS:

The Authority must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence; and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.

In accordance with section 52(6) of the 2003 Act, if the authority takes measures to modify conditions or exclude licensable activities from the licence, it may stipulate that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

The licensing authority's determination of this application does not have effect until the 21 day appeal period has expired or if the decision is appealed the date the appeal is determined and / or disposed of.

Mr Glyn Franks (WCC Licensing Inspector and Applicant) addressed the Sub-Committee and explained in detail the following timeline of events which evidenced a number of breaches of the terms of the premises licence by selling alcohol beyond the terminal hour on 3 separate occasions and, in one case, selling alcohol to a minor.

On Sunday 15 July 2012 at 23:15 a Council Officer purchased a bottle of wine from Mr K.K Budhia (Father of the Designated Premises Supervisor, Mr Ravi Budhia) beyond the terminal hour of 22:30 hours.

On Monday 30 July 2012 at 23:49 a Council Officer purchased two bottles of lager from Ms Bhavi Budhia (Director of the Company and sister of the DPS) beyond the terminal hour of 23:00 hours.

Following the first aforementioned offence on 15 July 2012 a meeting took place on 31 July 2012 between Mr K.K Budhia and Council Officers, at which it was established and understood by Mr K.K Budhia that a breach had taken place. The decision was taken by Mr Franks to issue a Warning only at this stage.

Following the second incident on 30th July 2012 of after hours sale of alcohol, a meeting took place with Mr Ravi Budhia (the Designated Premises Supervisor) , at the premises. Mr Budhia was advised that any future breach would almost certainly lead to a prosecution, a review of the licence, or both.

On 2 August 2012 a purchase request for alcohol beyond the terminal hour, from a Council Officer, was refused by Ms Bhavi Budhia.

On 27 September 2012 Mr Franks met with both Mr Ravi Budhia and his brother and

fellow company Director and DPS, Mr Vimal Budhia to discuss a number of outstanding matters relating to non-compliance with the premises licence. Mr Franks informed the two gentlemen that a number of the conditions of the licence had not been adhered to – such as the requirement to ensure that all alcohol within the trading area is behind locked grills (condition 7) and the requirement for till prompts to remind staff at the point of sale of alcohol to ensure the purchaser is over 18 years of age (condition 17). Mr Franks subsequently agreed interim and long-term rectification actions to ensure the premise was fully compliant.

On 3 November 2012 an offence of selling alcohol to a young person (aged 15 years) was detected by a police officer – PS Peter Chamberlain. PS Chamberlain, who managed the police operation, addressed the Sub-Committee and explained in detail the actions which took place on 3 November which led to this detection of breach. Members noted that a Fixed Penalty Notice was issued in relation to this matter.

In December 2013 the premise was re-tested by PS Chamberlain, assisted by two Police Cadet minors, and on this occasion the sale of alcohol was refused. No recurrence of this offence had been detected to date.

On 2 June 2013 at 00:43am a Council Officer purchased 4 cans of lager from Mr K.K Budhia beyond the terminal hour of 23:00.

Mr Franks concluded that these events and repeated serious breaches of the licence represented a course of conduct which undermines the Licensing Objectives: Prevention of Crime and Disorder and Public Nuisance and the Protection of Children from Harm. He therefore requested that the Sub-Committee resolve to revoke the licence on those grounds.

PC Earnshaw, Covent Garden Safer Neighbourhood Team, addressed Sub-Committee to verbally support the written statement provided by PS Diana Hurd (Covent Garden Safer Neighbourhood Team) regarding the general problems in the Covent Garden area connected to alcohol related incidents of crime and disorder. PC Earnshaw confirmed that there is a high volume of street drinking activity among the homeless community in the area, in addition to customers and students who consume alcohol purchased from local shops prior to entering the bars and night clubs of the West End. PC Earnshaw did not directly connect any specific activity to the conduct of the premises in question, but confirmed that, in general, premises which sell alcohol late in the evening and in the early hours of the morning, in breach of the terminal hour of their licence, exacerbate these problems and fuel alcohol related disorder in the area.

Mr Dave Nevitt, representing the Environmental Health Service, confirmed that the service supported the review application.

Mr David Dadds, Solicitor representing the company, informed Members that the breaches of the licence detailed by Mr Franks were accepted by Mr Vimal Budhia (company Director present at the hearing). However, Mr Dadds asked the Sub-Committee to not only have regard to the instances of breach but to also note the occasions where the premise had been 're-tested' by Council Officers and staff members (who had previously been responsible for breaching the licence) had

complied with the terms of their licence – thereby signifying due regard for the promotion of the Licensing Objectives.

Mr Dadds informed Members that Secretary of State Guidance detailed a number of actions which should result in the revocation of a premises licence. He acknowledged that the sale of alcohol to a minor was one of these offences. However, the sale of alcohol after the terminal hour, whilst serious, was not listed in this category. Mr Dadds therefore suggested the Sub-Committee give consideration to the following options which could be enforced as an alternative to full revocation of the licence:

- That Mr K.K Budhia – the Father of the DPS who works at the premise and had been responsible for two breaches relating to the sale of alcohol after the terminal hour – be removed from late night shifts at the business;
- That a condition be added to ensure that the personal Licence Holder be present at all times that the business is open to the public; and
- That the tills be upgraded to allow for time controlled selling of items and age restricted product prompts.

Mr Dadds argued that a period of suspension, in addition to any or all of the above-cited actions, would be an appropriate and proportional step to deter all individuals involved in the company from breaching the terms of the licence. He further argued that, on the basis that no evidence had been presented of a causal link between the premises and the alcohol related crime and disorder in the area and, with due regard to the instances where the Council's 'test purchases' had been refused, revocation of the licence would be too severe an action.

Decision:

The Sub-Committee considered that this was a serious matter. Substantial evidence had been brought before them of persistent breaches of the conditions of the licence relating to the sale of alcohol after the permitted terminal hour and one instance of selling alcohol to a minor. It was noted that, in accordance with Secretary of State Guidance, the latter offence needs to be treated as a serious matter.

The Sub-Committee also noted that a number of other conditions of the licence (i.e. ensuring alcohol remains behind locked grills, till prompts to prevent the sale of alcohol to under 18s and the availability of CCTV footage) had failed to be complied with or addressed following specific requests to do so from Council Officers. The operator's conduct in this respect further damaged the Sub-Committee's confidence in the Licence Holders' regard for the conditions of their licence or the Licensing Objectives.

The Sub-Committee had regard to the fact that breaches of the licence had taken place in an area where there were existing issues with street drinking and alcohol related crime and disorder. The Sub-Committee were clear that the premise in question did not need to be linked with specific instances of alcohol fuelled crime and

disorder for the conclusion to be drawn that the act of supplying alcohol beyond the terminal hour in the area was a likely contributor to these alcohol related issues.

The Sub-Committee carefully considered all the options available to them to address the breaches of the licence, including those suggested by the operator's Solicitor. However, in light of the evidence brought before them, Members did not consider those options appropriate or sufficient to ensure the promotion of the Licensing Objectives.

After careful consideration and having regard to all of the evidence detailed above and the submissions of all interested parties, the Sub-Committee considered it appropriate and proportionate objectives to revoke the licence.