

LICENSING SUB-COMMITTEE

Minutes of the virtual meeting held at 2.00 pm on 24 June 2020

Present:

Councillor Pauline Tunnicliffe (Chairman)
Councillors Mary Cooke and Tony Owen

10 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Councillor Pauline Tunnicliffe was appointed as Chairman.

11 DECLARATIONS OF INTEREST

There were no declarations of interest.

12 REVIEW OF THE PREMISES LICENCE AT SHAMPAN, 4 GRAYS ROAD, WESTERHAM, TN16 2HX.

The Application

The application was made by the Council's Licensing Team as a Responsible Authority to review the premises licence of Shampan 4, Grays Road, Westerham, TN16 2HX. The application followed a joint Licensing, Immigration, Housing and Police operation which was undertaken at the premises on 13th March 2020.

The grounds were as stated in the relevant Agenda for the Review and at the Licensing Sub-Committee Hearing.

As a result of the joint operation, four individuals were arrested, but one was released on immigration bail; the other three remained in custody. Staff members were arrested for immigration offences and four staff members were suspected of working illegally in the UK. The employer was issued with a Civil Penalty Referral Notice. At the hearing, it was explained that this matter was under investigation at the Home Office. It was found that the certificates for the Gas and Electrical Appliances were not up to date or readily available. No evidence of a thorough examination of the electrical installation could be located.

The ventilation extraction system had not being properly maintained. The last cleaning certificate was dated October 2018. Some of the appliances at the premises should not have been used and would constitute a risk to public safety. There were no handrails on the staircase. There was evidence of smoking in the first floor of the premises. In respect of the Challenge 25 policy for the supply of alcohol, no records were being kept. The Acting Manager advised that the Designated Premises Supervisor had left a year ago.

Improvement Notices relating to public safety matters had been served as mentioned in the Review Bundle and apparently not complied with.

There was evidence of at least 25 sleeping locations in different rooms on the first floor of the premises, including wardrobes full of clothing, drawers with personal effects and at least 50 pairs of shoes. A separate room had a washing machine and dryer. Clothes found hanging in that room were personal clothing, not uniform for the restaurant. The premises accordingly should have been registered with the Council as a House in Multiple Occupation.

The Applicant asked the Sub-Committee 'to consider' all the evidence provided by the Licensing, Health and Safety, Environmental and Housing Teams and on behalf of the Immigration Service. In his submission, the evidence provided a clear indication of poor company management practises and policies and that the Premises Licence Holder was not promoting the Licensing Objectives positively and proactively. Members were asked to consider whether to revoke the licence or at least suspend it.

The Licence Holder's Response

The License Holder had presented additional written submissions. His legal representative, Mr. Whur advised that the Civil Penalty Referral Notice was being challenged and that the matter was currently being considered at the Home Office. A separate legal firm was dealing with those proceedings. At this stage there was no criminal conviction or recorded civil penalty, but only an on-going investigation. The matter could be distinguished from the recorded case of *East Lindsey District Council v Abu Hanif (2016) EWHC1265*.

With reference to the issues raised regarding Public Safety/ Health and Safety, the Sub-Committee was advised that it was the manager's responsibility to keep and check their records, but this would be overseen by the Licence Holder. The Electric Appliances certificates were not readily available on the day of the inspection due to a misunderstanding. The Electrical Installation Condition report dated 27th February 2020, (which was produced before the hearing), however, showed that the premises was currently, (and at the time of the inspection on 13th March 2020) rated satisfactory overall. With reference to the ventilation extraction system, it was disputed that the system was not being properly maintained. If there was anything further needed to meet the required standard it would be done.

The evidence of smoking in the first floor was admitted, but staff had since been informed in their employment contracts that smoking was prohibited anywhere in the premises. The installation of the handrails on the staircase would be done as part of the defects which needed to be rectified before the restaurant re-opened.

The Risk Assessment documents could not be found on the 13th March 2020 as it was a hectic day. Mr Whur also mentioned that he would assist his client

with the preparations before re-opening after the COVID-19 Pandemic lockdown on the 4th July 2020.

In response to the allegation that the premises should have been registered as a House in Multiple Occupation, it was explained that the beds and facilities were used for staff to rest, change for their shifts and not for residential purposes. Some of the staff had keys to let themselves in and out of the Premises. Management disputed that staff were living on the first floor of the Premises. It was further denied that the photographic evidence showed that staff were living there.

On the 13th March 2020 when the Acting Manager was asked where the Designated Premises Supervisor was, he responded that he had left a year ago. That was incorrect, as there was another member of staff who had a similar name to that of the DPS. That former staff member was the person who had left a year ago. The DPS who attended the hearing was the same person who was on the current licence. He also mentioned that he attended the premises in a management capacity on a frequent basis, but not for day to day matters which are delegated to the Manager. The DPS last visited the premises on the 13th March 2020.

With respect to the Challenge 25 records being not being available there was no clear explanation as to why the log book could not be produced.

Mr. Whur stated that the Sub-Committee required real evidence and should only take appropriate and proportionate remedial action and not for a punishment.

Reasons for the Decision of the Licensing Sub-Committee

The Licensing Sub-Committee noted pending immigration issues, the allegations of health and safety failings and breach of licence conditions at the premises on the date of the enforcement visit 13th March 2020. Whilst the premises had impressive restaurant ratings, Members agreed that shortfalls were noted at the inspection which could have been avoided. Members took into consideration all the evidence submitted in writing and at the hearing.

With reference to the Crime and Disorder Licensing Objective, Members noted the evidence that four individuals were present on 13th March 2020, apparently working in breach of their visa conditions or did not have a right to work in the UK. If proven, Members would regard this as a serious breach of the immigration regulations that could result in harm to that Licensing Objective. They noted, however, that the Civil Penalty Referral Notice was being challenged and at the time of the review, there was no criminal conviction or recorded civil penalty. Given that these matters were still under consideration by the appropriate authority, Members felt it would be premature for them to make findings at this stage.

In respect of the Public Safety Licensing Objective, Members found the evidence provided by the Health and Safety and Licensing Officer and the

Environmental Protection Officer, concerning the visit on the 13th March 2020 to be persuasive. Rooms 2, 5, 6 and 7 contained beds and wardrobes. Rooms 1, 3 and 4 contained beds. The Committee accepted the evidence that there were 25 beds in total that were clearly occupied overnight with suitcases, wardrobes and drawers full of clothes and toiletries in every shower room. The Committee accordingly did not accept the denial from the management to the effect no staff were living on the first floor of the Premises.

A number of Improvement Notices had been served by the Council subsequent to the visit on 13th March 2020. The Electric Appliances certificates were not available then, but an Electrical Installation Condition report dated 27th February 2020 was produced before the hearing. The Committee accepted the evidence from the Health and Safety and Licensing Inspector that the ventilation extraction system was not being properly cleaned. Management did not dispute the absence of a handrail to the stairs to the first floor or that smoking had taken place in bedroom 2.

It is a licence condition that the premises operate a Challenge 25 policy. A log could not be produced at the time of the Inspection to evidence the claim that such a policy was in use at the premises. The lack of a proper log evidencing compliance with the condition would result in harm to the Licensing Objective of protection of children from harm.

The findings made raised fundamental issues as to how the business was operated. Members were advised that it was an offence to operate a House in Multiple Occupation with five or more people from more than one household without a licence from the Council. The property did not meet the Council's Adopted Standards, and lacked adequate fire precautions for this use--posing a risk to the safety of all the occupants. The fire risk assessment provided to the Council was largely incomplete. It referred to a number of internal policies and inspections without evidence to indicate that they had been completed. The fire alarm system did not seem to have been maintained, and tested--and it was not known whether it was in good working order. The Council's Health and Safety and Licensing Officer advised that the premises were not yet ready to re-open due to the various defects in the Improvement Notices. All of these matters clearly caused harm to the Licensing Objective of promoting public safety and needed to be addressed before the premises could reopen.

The business needed to consider whether to cease its use of the first floor for residential accommodation, or apply for registration as an HMO. All of the requirements of the Improvements Notices would need to be met. The decisions the business made, would need to take account of the well-being of its staff.

The Committee considered all the remedies available. In terms of the power to remove the Designated Premises Supervisor, Members noted the confusion concerning this and that there was a DPS at the time of the Inspection. The Committee did not feel that the modification of any of the licence conditions could address the failings that had been identified. Given the very serious nature of the issues identified, it was felt the business should

not trade until these matters were rectified; if the failings were satisfactorily addressed, then the business could continue to operate. The Committee agreed that a suspension of three months would be needed to achieve a resolution of all of matters and that a lesser period would not be sufficient. **For these reasons the Licensing Sub-Committee decided to suspend the licence of the premises for 3 months.**

Decision

The Licensing Sub-Committee has made the following decision having regard to the four licensing objectives, the Council's current Statement of Licensing Policy, the Secretary of State Guidance issued under Section 182 of the Licensing Act 2003 (As amended), the Licensing Act 2003 (Hearings) Regulations 2005 and the written and oral representations by the Applicant, by the Licence Holder, by the Immigration Service and by the Council's Public Division - Health & Safety Team and the Environmental Protection & PRS Housing Team.

The Licensing Sub-Committee considered all relevant matters on a balance of probability and decided to suspend the licence for the above premises for a period of three months with immediate effect.

While not part of their formal decision, the Licensing Sub-Committee Members did recommend that before reopening, the Licence Holder should liaise with Council's Licensing Team to ensure that all the relevant Environmental Health and Safety requirements had been met and that all of the improvement notices had been complied with.

The Licence Holder had a right of appeal against the decision to the Magistrates' Court within 21 days, if he so wished to exercise that right.