

## **Licensing Sub Committee Hearing Panel**

### **Minutes of the meeting held on Tuesday, 30 October 2018**

**Present:** Councillor Stone – in the Chair

**Councillors:** T Judge and S Lynch.

#### **LACHP/18/159. Review of Premises Licence or Club Premises Certificate for Chickadoo, 676 Rochdale Road, Manchester, M9 5TT**

The Committee when considering the application for a variation in hours considered the application, the representations of all parties both oral and written as well as the relevant legislation, the guidance issued under s 182 of the Licensing Act 2003 and the Manchester City Council Statement of Licensing Policy.

The Out of Hours Team advised the Committee that they had brought the review as the public nuisance objective was being undermined.

The Committee heard evidence that the Out of Hours Team had tried to engage firstly with the premises licence holder and secondly with the manager The Manager/DPS with no success. The Committee was advised that the Out of Hours Team had exhausted all avenues and that they had to bring the matter to review. The Committee was invited to consider the Applicant's representation submitted and in particular to look at the number of times the premises have operated outside their permitted hours.

The Out of Hours representation showed that visits carried out at the premises commenced on 23/06/2018 and there had been a total of 9 visits to the premises up to 14/07/2018 and officers had witnessed on 6 of those occasions the premises operating outside their permitted hours. (The licence permits them to open until 11.30pm close on Sunday to Thursday and 12.00am on Friday and Saturday.) Further, The Out of Hours Team had submitted the front page off the 'Just eat' website which showed the opening hours as Sunday- Thursday until 01.45 and Friday and Saturday until 03.45. Further the evidence bundle contained photographs of food cooked at the premises after the terminal hour on the licence and a till receipt which showed that an order had been placed at 00:15 after the permitted hours.

The Committee was advised by the Out of Hours team there had been complaints made against the premises about noise from the premises in particular regarding their extraction unit and the metal shutters operating after the permitted hours.

The Committee was invited to revoke the licence.

GMP advised the Committee that they fully supported the application brought by The Out of Hours Team and they also sought revocation of the licence on the grounds of public nuisance and crime and disorder. The Committee was taken through the police's representation which stated there had been two incidents, the first on the 29<sup>th</sup> October 2017 and the second on 19<sup>th</sup> May 2018. The first incident involved a public

order matter at the premises where a male was in the premises threatening a member of staff with a bottle. This occurred at 0141 which occurred 1 hour and 40 minutes after the premises should have been closed.

The second incident involved one of the delivery drives from the premises who was robbed at knife point. The actual robbery occurred at 0120 which again is well after their permitted hours.

GMP submitted that this shows that they have no regard for their permitted hours and this has resulted in a serious crime being committed against one of their members of staff. Further the police submitted that these two incidents can be not looked at in isolation as The Out of Hours team have also found them on numerous other occasions operating outside their permitted hours.

In addition to the above the Committee was advised by GMP that they had carried out a licensing inspection at the premises on the 22<sup>nd</sup> January 2018 where the police found that the CCTV hard drive was broken, there was no summary of the licence on display and the premises were found to be in breach of conditions 2,3,4,15,19,20,24 of the premises licence.

During questioning of the Respondent by GMP, it became apparent that he was not aware of the 4 licensing objectives nor the licensing regime generally.

A written Representation was received from a local resident who states that there is a noise nuisance from the extraction unit which is operating at the premises and sometimes this can be operating until 4-4.30am and they need to sleep. The local resident states that she has met with the owner to resolve matters but his response was "He is going to open whenever he wants, because he needs the money." The resident further states this problem only occurred since the new owners have taken over."

The Committee had received written notification that the Manager/DPS could speak on behalf of the premises licence holder.

He advised the Committee that they had brought the shop in 2016 and when they took over the premises they were never given a copy of the licence. He further stated that he was told by the previous operator that he could stay open until 2/3am. The Respondent further submitted that the licence was only transferred into the current premises licence holder name in December 2017 and it was only then he became aware of the actual hours they could operate. He stated when they found out in December 2017 the actual hours for trading they have since traded within the permitted hours.

In regards to the licence inspection carried out by the police the Respondent submitted that this only took place one month after the licence was transferred.

The Respondent denied that he had operated outside his permitted hours on any occasion after the transfer of the licence. He advised the Committee that all orders are taken before the permitted hours and "they were just cooking off food" which had been ordered earlier and then either delivered by a member of staff or provided to the

customer at the premises. In regards to the till receipt showing an order taken after 12.00am the Respondent advised the Committee they had a new till system and staff were unaware how to use it.

The Respondent advised the Committee the Premises Licence Holder had left the business and he was in fact running the premises. He stated "She had no interest in the business". He advised the Committee he needed to transfer the licence into his name.

The Committee took into account all the evidence they heard and the written representations provided. The main concerns the Committee have regarding the premises are set out below:

1. How the premises is being run
2. The lack of engagement with responsible authorities
3. Operating outside of their permitted hours by the premises licence
4. Noise nuisance from the operation of the premises after the terminal hour
5. Breach of Licence Conditions

The Committee firstly, has grave concerns how this premises is operating. Of particular concern was the evidence given by the manager at the hearing that the Premises Licence Holder "wants nothing to do with the business" and that The Manager/DPS is running the premises. Secondly, the Committee are very concerned that the premises licence holder and manager have failed to engage with the Out of Hours Team despite them trying on numerous occasions to work with the operator. The Committee note that the premises have been warned and have ignored the Out of Hours Team. The section 182 guidance which the Committee have to consider states:

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, **licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.** Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

It is clear from the evidence that all avenues had been exhausted by The Out of Hours Team and they had no alternative but to bring this matter before this Committee for a review of the licence.

Thirdly, it was clear from the evidence that The Manager/DPS has no knowledge of the licensing objectives and how they are to be upheld. In evidence The Manager/DPS stated he trained his staff however it was apparent that they had not received any appropriate training on the Licensing Act 2003.

Fourthly, the Committee has concerns that this business was taken over and a copy of the licence was never obtained. The Respondent during evidence accepted that prior to the transfer of the licence in December 2017 they were just working off what

the previous premises licence holder had told them were the permitted hours. It was clear from the Respondent's evidence that prior to December 2017 they were trading longer than they should have been.

Fifthly, following the transfer of the licence in December 2017 trading continued beyond the terminal hour. The Committee accept the evidence presented by the Out of Hours team and Greater Manchester Police regarding them continuing to trade after their terminal hour. In addition the Respondent himself does not deny 'supplying' hot food after the terminal hour. (In regards to the law on late night refreshments, supply takes place when the hot food or hot drink is given to the customer and not when payment is made.) This again demonstrates his lack of knowledge of the Licensing Act and what is required under the premises licence. What is of great concern for the Committee is that having operated beyond the permitted hours a member of staff is threatened with a bottles and another member of staff is robbed at knife point.

Sixthly, GMP produced evidence that the premises licence holder was not complying the conditions of the licence. The Committee expect from day one of taking over a licensed premises that all conditions of the licence are upheld. In particular of concern was the broken hard drive (CCTV). Again the breaches of the licence conditions shows that the operator of the premises has no regard for the licensing regime.

Finally, as a result of them operating outside their permitted hours this is having an impact on local residents. There are flats above the premises and by operating these late hours into the night their extraction unit is effecting the local residents and this is set out in the local resident's representation. This clearly is of great concern to the Committee that local residents are been effected by them trading outside their permitted hours. It is clear from the evidence that this operator has a total disregard for the licensing regime and the Committee do not trust that this operator will operate within the permitted hours and not cause a public nuisance to local residents.

The Committee considered the options available.

Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence
- Or take no action.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.

**But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.**

The Committee have taken into account the financial impact it would have on the premises if they were to revoke the licence, however the Committee conclude that the appropriate and proportionate step to take in light of the evidence is to revoke the licence.

## **Decision**

To revoke the Licence.