

Licensing Sub Committee Hearing Panel

Minutes of the meeting held on Monday, 22 January 2024

Present: Councillor Connolly – in the Chair

Councillors: Reid and Riasat

LCHP/24/5. Review of a Premises Licence - Sky Lounge, 241 Barlow Moor Road, Manchester, M21 7QL

The Hearing Panel considered the report from the Director of Planning, Building Control and Licensing regarding the above applications. The written papers and oral representations of the parties who attended were also considered, as well as the relevant legislation.

The Applicant and his business partners, Licensing Out of Hours and Greater Manchester Police attended the hearing. The Chair used the agreed procedure to conduct the hearing.

The representative of the Responsible Authority who had applied for the review-Licensing and Out of Hours (LOOH) explained to the Panel that the Premises Licence Holder (PLH) had obtained a premises licence for Sky Lounge on the 18th of September 2023, only 4 months ago. Furthermore, when the PLH attended the hearing to make the application for the premises licence, he agreed to a number of conditions to be attached to his licence and also agreed to reduce the hours applied for. He had agreed that last food orders would be at 8.45pm and the premises would close at 9.30pm. This was evidenced in the bundle through the minutes of that hearing.

The Panel was referred to the original application made by the PLH in the hearing bundle, which stated that should false information be given that this was considered to be an offence under section 158 of the Licensing Act 2003. The LOOH's officer told the Panel that the PLH had made false statements when making his application on the 18 September 2023 and had misled the Panel.

The Panel was advised that on the 1 November 2023, the LOOH's team was first contacted by residents. A summary of complaints was evidenced in the hearing bundle.

The Panel was told that the LOOH team had requested CCTV footage to be provided by the PLH, however he had refused to do so. He was therefore in breach of his licence conditions, which is also a criminal offence under Section 136 Licensing Act 2003.

Furthermore, there had been issues with waste at the premises which resulted in the service of a Prevention of Damages by Pests Act (PDPA) 1949 notice.

The Panel was advised by the LOOH's officer that the premises had been opening before 11am and closing after 9.00pm, which is beyond the permitted hours.

In addition, there had been an allegation of an assault made to GMP, which is said to have taken place at the premises on a person under the age of 18 years. It was alleged that the wife of the business partner had assaulted a staff member. The worker who alleged she had been assaulted reported that she was paid cash in hand by the business; that there had been drunk males allowed in the upstairs of the premises; that they were smoking shisha inside and that the premises was operating beyond its permitted hours.

The LOOH officer advised the Panel that numerous visits had taken place at the premises. On the 1 November 2023, when officers had attended the premises, staff who were on duty were not aware who the DPS was, and they advised the officer that the duty manager had just nipped out. After waiting for one hour the manager did not appear, however a female attended. There was no Personal Licence Holder on the premises at the time as per the condition on their licence.

The Panel was told that the premises had been asked to supply CCTV but had failed to do so. Following this a warning letter was sent to the premises. This was evidenced in the hearing bundle.

The LOOH's officer explained to the Panel that she had attended the premises and provided advice to them.

The Officer told the Panel she had found an advert, promoting a Halloween party at the premises until 11.00pm, which is beyond their permitted hours. This was evidenced in the hearing bundle.

The LOOH's officer was advised that the named DPS had been sacked from the premises due to the problems occurring and that he was working at a pizza restaurant in Sheffield. The LOOH's officer told the Panel she was able to track him down and when she spoke with him, he told her that he had never stepped foot in the restaurant and he had done it to help a friend. Following this, the DPS removed himself from being the DPS. The officer reminded the Panel that at the hearing on the 18 September 2023, the PLH had assured the Panel that the DPS would be on site and would have day to day control of the premises.

The Panel was referred to Condition 1 on Annex 3 of the licence which set out the requirements for the CCTV, which includes 'upon request by the police or authorised local authority officer, the footage must be provided as soon as reasonably practicable'. Despite numerous requests, the footage had not been forthcoming. The Panel. The CCTV requests and the PLH's responses were evidenced in the hearing bundle.

Due to the lack of co-operation by the premises licence holder the LOOH's team had no alternative but to apply for a review.

Since commencing review proceedings, the LOOH team had received a further three allegations about the premises staying open after hours.

The officer told the Panel that on the 20 December 2023, one of the shareholders

and their legal representative contacted LOOH about applying for a Temporary Event Notice for New Years Eve. It was explained that there was not sufficient time to apply for the Notice and despite being told this, the event went ahead which was again in breach of their licence.

On the 28 December 2023 the LOOH team received an email from the Shareholder explaining that she had departed company with the premises as “they cannot work constructively to move matters forward” and confirmed that they continued to breach their licensing conditions.

The Panel was referred to the hearing bundle (exhibits PB01/PB02/PB03) which evidenced that the premises was open on 31 December 2023 at 21:59-22:01, with customers inside. Having requested CCTV from this event, none had been forthcoming.

The Panel was advised that on 8 January 2024 the Licensing Panel had to decide whether they would allow the Premises Licence Holder to become the DPS of the premises as a variation application had been submitted. However, after hearing from GMP they were satisfied that the crime prevention licensing objective would be undermined were that to be granted.

It was submitted by the LOOH’s officer that the Premises Licence Holder had a blatant disregard for compliance with the law. The officer explained she had looked at whether any additional measures could be put in place, however due to the level of dishonesty and them continued breaching of licence conditions, the only appropriate action was to bring the matter for a review and seek revocation.

In summing up the officer reminded the Panel that the Premises Licence Holder had:

1. Committed Section 136 offences under the Licensing Act 2003.
2. They had submitted incorrect floor plans.
3. They had breached their CCTV condition.
4. They had again breached their licence conditions by operating beyond the permitted hours.
5. Section 158 offence - misleading the Panel.
6. An assault had taken place at the premises, this is linked with HMRC offence(s).
7. Public Nuisance - noise from the premises.

The officer referred to section 11.18 of Section 182 guidance which states:

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.

The Panel was told that despite the warnings given, the premises had continued to operate in the same way.

The Panel was told that GMP made a supporting representation. The officer advised the Panel that he had been contacted in November regarding concerns with the premises. As a result, he looked at the records over the last three months and he came across a crime which involved a 17-year-old who alleged she had been assaulted by one of the managers' partners. A crime of common assault had been recorded. The alleged victim decided that she did not wish to pursue the matter but was concerned how the premises was operating. LOOH stated the worker confirmed that she had been paid cash in hand and also served people with alcohol whilst underaged. The LOOH officer had brought to GMP's attention that CCTV had not been supplied by the Premises Licence Holder, despite this being requested on numerous occasions. GMP also requested footage from them. The Panel was referred to the email correspondence between GMP and the Premises Licence Holder. GMP submitted that the PLH was not suitable to hold a premises licence and invited the Panel to take action against the licence. In summing up, GMP pointed out to the Panel that the Premises Licence Holder had failed to answer any of the questions that had been put to him in the hearing and had instead talked around them. GMP stated that the PLH was aware of the conditions on the licence and had chosen not to comply with them. Further he had not worked with the Responsible Authorities and had no intention of doing so. Therefore, GMP invited the Panel to revoke the licence.

With regard to Local Councillor representations, a Councillor endorsed what had already been said to the Panel by the LOOH officer. The Panel was advised that the local councillors had received complaints from their residents about how they had been affected by this licensed premises. The councillor told the Panel that the complaints began very quickly after the premises had opened. The residents had complained about the noise from music at the premises and that they had been told when approaching the premises to "put ear plugs in". Furthermore, there had been complaints about them operating outside the hours on their licence and parking issues at the premises. The Councillor concluded by saying that this premises was not operating with consideration for the residents.

In line with the agreed procedure for such hearings, the Panel then heard from the PLH. The PLH opened by saying that over the last three months they had experienced issues, and that this was accepted. However, he said that those issues could be resolved. He stated that he would provide information to the authorities. He advised the Panel that they opened the premises on the 25 October 2023 and since then he had had over 1000 great reviews on the Google website. He explained to the Panel that all premises get some complaints. He said it was clear at the first hearing of this matter that the neighbours did not want his premises to be granted a licence. The PLH advised the Panel that the premises has created 25 jobs for the local community. He went on to say that they are a new business and that they required support and advice from the Council. The PLH explained when the PLH officer attended and spoke with the DPS at the premises, he had found it difficult to understand her as English was not his first language and that he felt pressured when questioned which had resulted in him not telling the truth. He said that he felt that his business had been targeted and that the LOOH officer had not been very nice to them. He then went on to state that there were several businesses within the area the majority of whom were not complying with their licences and were operating beyond their hours. He questioned why no action was being taken against them. He

accepted that some days the premises did not close at the time they should, but explained that this was due to customers not finishing their meals on time and that the premises could not ask the customers to leave. He stated that the premises did not serve customers after 9.30pm. The PLH said that an additional hour is required so that people can finish their meals.

Regarding the PDPA notice served, the PLH said that this did not relate to him as he was not at the premises then. The PLH then addressed the Panel about the CCTV request. He explained that it had been faulty, and that an engineer had to be called. Furthermore, when officers had requested CCTV footage, he was concerned that the footage would be shared on social media and that he would need to get the consent of the ladies who were in the footage. He explained that the women on the CCTV footage were Muslim and had removed their headscarves. He confirmed there are signs up that state CCTV is in operation at the premises.

In respect of the 17-year-old that was working at the premises, the PLH stated that she did not work for them, and that she was only at the premises for training purposes. Whilst in training, the 17 year old had got the orders mixed up and served the meals to the wrong table. She did not get paid any wages but was told that she could have a share of the tips for that day. She never had a contract of employment.

The PLH went on to tell the Panel that they do not allow Shisha to be smoked inside the premises and that it only takes place in the designated smoking area.

During questioning the PLH confirmed that the DPS was now happy to remain as such on the licence. He further accepted they lacked experience. He went on to say that he would produce CCTV footage if requested in the future. He was questioned about the four licensing objectives, and he was not able to name them. The PLH, in summary, stated that his business is good for the community; that they will work with the Council and will supply footage when requested.

In reaching its decision, the Panel has also considered the Council's Statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under Section 182 of that Act as well as the licensing objectives.

The Panel noted that this licence had only been granted in September, some four months ago. It was clear from the evidence in the hearing that the PLH had misled when the licence was initially granted with particular reference to the DPS named in that application. The PLH had put a friend's name down to be the DPS who had no intention of fulfilling the role at the premises. It was also quite clear from the minutes/decision of the Panel that it was the PLH who had reduced the hours applied for and agreed to the conditions placed on his licence.

The evidence provided today by the PLH was found not to be credible. Furthermore, he was not able to answer the questions that were put to him by any of the parties or the Panel members and would instead simply try and talk around the issues despite being asked by the Panel to answer the questions put to him directly.

The admissions made during the hearing demonstrated that the PLH had no control

over how the premises operated and when customers leave. The PLH accepted that the premises had been operating beyond its permitted hours.

The Panel accepted the evidence provided by the LOOH team and found the following:

1. Persistent refusal from the Premises Licence Holder to comply with the hours and multiple conditions of the licence:
 - a) Operating beyond the permitted hours on a number of occasions
 - b) Customer drinking in the outside area in breach of Condition 3, Annex 3
 - c) The designated smoking area being substantially enclosed and in breach of the Health Act legislation.
 - d) Not having a DPS and further not having a Personal Licence Holder authorising sales as per Condition 2 and 3 of the mandatory conditions.
 - e) Further breaches of condition 'between 11am and 9.30pm there shall be a member of staff on the premises who holds a personal licence'.
2. There had been a refusal by the PLH to provide CCTV in line with conditions and in connection with allegations of unauthorised licensable activities, despite being requested by LOOH's and GMP. The condition on the licence is very clear and it was placed on the licence as it was deemed necessary and appropriate to do so, to uphold the Prevention Of Crime And Disorder licensing objective. The Panel did not accept the account given by the Premises Licence Holder as to why CCTV was not provided and concluded that it had been deliberately withheld from the authorities to avoid them obtaining evidence against them. The Panel resolved that it was clear from the emails provided in the bundle that the LOOH's officer and GMP had clearly set out why it was needed, who it would be shared with and why.
3. There had been complaints received by members of the public relating to nuisance and licensing offences. A summary of those complaints had been provided by the LOOH team. Despite those issues being raised with the Premises Licence Holder, they continued to operate as they pleased. The Panel noted that the complaints had continued to come in during the consultation period for the review proceedings. It was clear that the premises licence holder had not taken any steps to try to resolve the issues with them.
4. The Premises Licence Holder was not working with authorities to seek to resolve matters despite the fact they had attempted to assist them. A staged approach had been taken by the LOOH's team prior to moving to review proceedings. They did the following:
 - 1 November 2023 - visited the premises to discuss matters with them.
 - 2 November 2023 – met with the Premises Licence Holder to discuss the warning letter sent and to discuss the conditions on the licence.
 - 3 November 2023 – provided guidance and assistance and asked them to speak with the residents.
 - 18 November 2023 - to meet with the new DPS and discuss matters.

- 29 November 2023 - review application submitted.
5. Despite the intervention by a new shareholder and legal representative to change how the premises was operating, the Premises Licence Holder continued to breach the licence conditions and failed to cooperate with the authorities. At the meeting on the 22 December 2023 with a new shareholder and their legal representative the officer was advised that they would ensure that the premises was compliant. The shareholder confirmed to the officer that they were aware of the problems with the management of the premises and that it was operating out of hours as witnessed by herself. An email from the legal representative confirming the above was evidenced in the hearing bundle.
 6. GMP and the LOOH team both raised the allegation regarding the assault at the premises by a 17-year-old girl and whilst the complainant did not pursue the matter, she had provided useful information to the authorities which clearly shows that this premises does not operate within the law.

The Panel took into consideration the financial impact that a revocation of a licence would have on the business and the staff that work at the premises. However, the Panel concluded that this must be weighed and balanced against upholding the licensing objectives and whilst it is accepted that it is a draconian sanction, based on the evidence presented, it was agreed that this was the only appropriate and proportionate outcome.

The Panel considered all of the options available to them under Section 52 of the Licensing Act 2003 and considered each one in turn. However, because of the blatant disregard for failing to comply with the law and despite the efforts made to work with this Premises Licence Holder, the Panel concluded that the premises would continue to undermine the licensing objectives. Therefore, revocation of the licence was deemed appropriate and necessary.

Therefore, in summary, after careful consideration the Panel agreed to revoke the licence.

Decision

To revoke the Licence.