

Licensing Sub Committee Hearing Panel

Minutes of the meeting held on Monday, 9 December 2024

Present: Councillor Riasat – in the Chair

Councillors: Bano and Hilal

LCHP/24/78. Application for a Premises Licence Variation - AVAN Lounge & Bar, UNIT 4, 163-165 GREAT DUCIE STREET, MANCHESTER, M3 1FF

The Hearing Panel considered a report from the Director of Planning, Building Control and Licensing concerning an application for a Premises Licence Variation. The Hearing Panel considered the written papers of the parties submitted and the oral representations of the parties who attended, as well as the relevant legislation.

The applicant addressed the Hearing Panel, noting their understanding of the objections received. An incident had occurred outside of the Premises and the applicant had been unable to provide CCTV. This was due to an electrical issue which affected around 36 devices at the Premises, one of those being CCTV recording. It was when GMP officers arrived that the applicant had realised the recordings were not working. Other than this, there had been no issues at the Premises. The applicant had other Premises too where there had been no issues. The applicant had applied for additional hours to help the business.

GMP noted that the electrical fault had occurred in September, yet GMP officers did not attend the Premises until 6 November, so queried if the Premises had been without CCTV for two months. Queries were also raised regarding how often the applicant checked if the CCTV was recording and if any additional conditions had been proposed for the extra hours applied for. The applicant accepted that CCTV recording had not been working for two months and that they got it fixed as soon as they realised. The live CCTV feed was working in this time. As there had been no incidents prior to this, the applicant had not checked if the CCTV was recording since it was installed. They had checked around a week before but when they could not access the recordings, thought they were doing something wrong rather than the system being faulty therefore booked for the company to come and look. In terms of extra conditions, the applicant had already doubled their CCTV coverage from 16 to 32 cameras. The applicant had also employed an extra member of security staff. The applicant stated that they had wanted to work with the Responsible Authorities but felt the opportunity had not been available prior to the hearing. They thought they had provided the extra conditions to the Premises Licensing team however this was not received by GMP or LOOH.

The panel queried how often CCTV was now being checked, how the applicant would ensure any CCTV faults in the future were fixed immediately and sought clarity on the hours applied for. The applicant stated that the CCTV was now checked every day. If there was a fault with the CCTV, the applicant would receive a notification on their

phone through the app. The applicant would then need to inform the company who would come out to immediately fix it.

LOOH addressed the Hearing Panel, noting that this was an application for increased hours, yet no additional conditions had been proposed. They felt there was a possibility for public nuisance to be increased in this area. There had already been noise complaints received in this area. LOOH had received reports of Shisha smoking at the Premises which was to be investigated. They noted that this raised the possibility that the Premises may be in breach of the Health Act 2006.

The applicant questioned whether the noise complaints received were about their Premises. LOOH confirmed that they were not and during a visit this had been confirmed.

GMP addressed the Hearing Panel, noting their concerns that additional hours may undermine the Licensing Objectives. An incident had occurred outside the Premises where a young lady had been assaulted. Due to the faulty CCTV, GMP were unable to progress their investigation as they had no images of the incident. GMP were concerned that the CCTV had not been checked before this to be certain it was working. GMP had concerns that no additional hours had been proposed.

GMP summed up that, whilst they may not be opposed to an increase in hours in the future, given the recent incident they would like to see a period where the Premises met all their conditions first.

LOOH had nothing to add when invited to sum up.

The applicant summed up by stating that they had worked hard to get everything in place and had always been open with the Responsible Authorities. This was not their first restaurant and there had been no issues at their other restaurant. The applicant noted that it was not the fault of the Premises that the CCTV recording had stopped working, it was due to an electrical fault.

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 accepted that the applicant had not put forward any further conditions, however they were satisfied that they had gone beyond their current conditions without this by doubling their CCTV coverage as well as hiring an extra member of security staff. The panel accepted that the fault with the CCTV was caused by a third party. Whilst the panel had concerns that the CCTV recordings had not been checked, they understood that there had been no incidents in that time requiring checking. The panel accepted that the problem had been fixed, with mitigation measures in place against any further faults with the CCTV.

Decision

To grant the variation application with the following amendments to hours:

Supply of alcohol for consumption on the premises only:

Monday to Wednesday: Noon to Midnight
Thursday to Sunday: 10.00 to 03.30

Provision of Late-Night Refreshment:
Monday to Wednesday: 23:00 to midnight
Thursday to Sunday: 23:00 to 04:00

Provision of Regulated Entertainment:
Monday to Wednesday: Noon to Midnight
Thursday: Noon to 03:30
Friday to Sunday: 09:00 to 03:30

Opening Hours
Monday to Wednesday: Noon to Midnight
Thursday: Noon to 04:00
Friday to Sunday: 09:00 to 04:00.

LCHP/24/79. Application for a DPS Variation - Sky Lounge, 241 Barlow Moor Road, Manchester, M21 7QL

The Hearing Panel considered a report from the Director of Planning, Building Control and Licensing concerning an application for a DPS Variation. The Hearing Panel considered the written papers of the parties submitted and the oral representations of the parties who attended, as well as the relevant legislation.

The applicant addressed the Hearing Panel, noting the objection received from GMP. They understood the concerns. The applicant was already the Premises Licence Holder. The applicant felt they now had a good relationship with their neighbours and customers. They had resolved any complaints and did not believe any complaints had been received in the last six months.

The panel asked the applicant to confirm that no complaints had been received in the last six months. The applicant stated that they did not believe the public or neighbours of the Premises had made any complaints. They had tried to manage issues from the past. A letter had been sent to neighbours with the applicant's phone number for those nearby to contact if there were any issues. The applicant stated that they were trying to arrange a meeting with residents every three months to discuss any issues. The applicant noted that those meetings had not yet started. The applicant stated that they had been operating since 25 October 2023.

GMP addressed the Hearing Panel, noting that the person being proposed for this DPS variation, was the current Premises Licence Holder of the premises and with this application they were seeking to install themselves as the Designated Premises Supervisor of the premises. They had already been twice refused at committee of being the DPS at previous hearings in January 2024 and November 2024, so 2 separate licensing subcommittees have already determined the applicant as unsuitable to become DPS.

The premises licence for this premises and, as such the applicant, were subject to review proceedings which were applied for by Manchester City Council Licensing and Out of Hours Team due to the following serious issues:

1. Persistent refusal from the Licence Holder to comply with the hours & multiple conditions of the licence.
2. Refusal by the Licence Holder to provide CCTV in line with conditions & in connection with allegations of unauthorised licensable activities.
3. Complaints received by members of the public relating to nuisance & licensing offences.
4. Offences being committed under the Health Act 2006 relating to smoke free legislation.

The review hearing took place on 22nd January 2024 and, as a result of this hearing, the Premises Licence was revoked. This decision was appealed by the PLH and therefore the licence was still live and able to be traded on, pending the outcome of the appeal. Since the date of the revocation and subsequent appeal application there had been more offences discovered by MCC LOOH officers. LOOH visited on 1/10/24 to make the applicant aware that their DPS had resigned, and the applicant was found to be smoking shisha with another male in the conservatory whilst it was substantially enclosed again. The applicant was obstructive when spoken to and repeatedly told the LOOH officer that there was no tobacco or coal in the pipe, and that it was electronic. When the officer went to seize the pipe, the applicant admitted there was coal in it. The pipe was not seized as it was too hot to touch.

The previous DPS who had resigned, had been spoken to by LOOH and told them that they didn't know they were still DPS. They told LOOH they had not worked there since before Christmas 2023. Therefore, the premises have been operating without a DPS present for 10 months. This meant that any sales of alcohol during this time would have been unlawful, and the applicant should have been fully aware of this. LOOH and GMP visited Sky Lounge just after 7pm on Friday 18th October 2024 and completed a check of a couple of conditions, which were both in breach.

- 1) A member of staff who came to speak with them but was unable to communicate with them in English. The PLH and proposed new DPS, was not on site. A female staff member tried to translate. The applicant and the member of staff continuously telephoned each other which obstructed them trying to communicate with the applicant.
- 2) They checked condition 12 Annex 2 of the premises licence which stipulates a personal licence holder must be on site. No PLH was on site. The applicant was spoke to on the phone and confirmed they were the only personal licence holder. It was explained that a PLH must be on site at all times, the applicant responded that they cannot work 7 days per week and has trained all the staff. They said that they had told the committee they could not work every day, it's too much. They then asked the staff member if they could view the CCTV (Condition 1 Annexe 3). The staff member said only the applicant had access to it.
- 3) Staff confirmed they were currently selling alcohol, and inside customers could be seen drinking what appeared to be pints of lager.

Therefore, GMP had serious concerns as to the applicant's suitability to become the Designated Premises Supervisor due to the issues that have already occurred at the

premises and their failure to address them and cooperate with MCC Licensing and Out of Hours officers. The fact that the applicant has been found to be committing further offences whilst their licence has been revoked and was currently under appeal proceedings was also a cause for serious concern.

Manchester City Council's own Licensing Policy states:

"Where, following an objection by the police, the Licensing Authority are satisfied that the appointment of a person as a Designated Premises Supervisor would undermine the crime prevention licensing objective, the policy is to refuse the appointment or to remove them as the DPS in circumstances where they are already in post."

GMP therefore asked that the DPS variation was refused.

The applicant questioned if GMP had received any complaints from the public. GMP noted that complaints from the public regarding noise would go to LOOH. GMP had received complaints from LOOH and had stated what they were in their statement.

GMP summed up by stating that they believed the applicant to be unsuitable to be DPS. Whilst they can trade due to the revocation of the licence going through the appeals process, the applicant continued to commit offences.

The applicant summed up by stating that they had not received information pertaining to previous hearings which explained their absence from them. They had been trying to resolve all issues at the Premises over the last six months. They are always on site so felt there was no point in getting a different person to be DPS. All staff had received training and two were in the process of getting a personal licence.

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 the applicant had stated meetings would take place with neighbours to raise any issues, but they had not yet happened. The panel accepted the evidence of GMP that the applicant had been seen smoking a shisha pipe containing coal on-site and this was a breach of the Health Act 2006. The panel were satisfied by the evidence of GMP that to appoint the applicant as DPS would undermine the Prevention of Crime and Disorder Licensing Objective. The panel concluded that the applicant had a total disregard for the licensing regime and was not a suitable candidate to be a DPS of a licensed premises.

Decision

To refuse the application for a DPS variation.