

BROMSGROVE DISTRICT COUNCIL

VIRTUAL MEETING OF THE LICENSING SUB-COMMITTEE

TUESDAY 1ST DECEMBER 2020, AT 9.40 A.M.

PRESENT: Councillors M. A. Sherrey, C. J. Spencer and P. J. Whittaker

Also in attendance: PS R. Field, West Mercia Police

Officers: Mrs. V. Brown, Mr. R. Keyte (observing),
Mr. D. Etheridge, Mrs. P. Ross and Ms K. Somers (observing)

5/20 **ELECTION OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor P. J. Whittaker be appointed Chairman of the Sub-Committee for the meeting.

6/20 **APOLOGIES**

No apologies for absence were received.

7/20 **DECLARATIONS OF INTEREST**

No declarations of interest were received.

8/20 **SUMMARY REVIEW - CONSIDERATION OF REPRESENTATIONS AGAINST INTERIM STEPS - DEEDAR RESTAURANT, 26 HEWELL ROAD, BARNT GREEN, BIRMINGHAM.**

The Chairman welcomed everyone to the virtual meeting and introduced all parties present.

The Council's Legal Advisor reminded Sub-Committee Members that they were been asked if it was appropriate that the interim steps imposed on 26th November 2020, should continue; having had regard to the written representations submitted on 27th November 2020, by Mr. Dildar Hussain on behalf of Mr. Kaptan Miah, the premises licence holder, as detailed at Appendix 4 to the report.

It was noted that the Sub-Committee Members had been informed of the reason why the Premises holder had been unable to attend the meeting.

The Sub-Committee then considered whether the Interim Steps Pending Review, imposed on 26th November 2020, were still appropriate in respect of Deedar Restaurant, 26 Hewell Road, Barnt Green, Birmingham, B45 8NE.

The meeting was briefly paused due to technical issues with the live streaming of the meeting.

The Senior Practitioner, (Licensing) Worcestershire Regulatory Services (WRS), introduced the report and in doing so highlighted that, at 12:32 hours on Wednesday 25th November 2020 an application was received from West Mercia Police for a summary review of the premises licence held by Deedar Restaurant, as detailed at Appendix 1 to the report.

The premises licence was currently held by Mr. Kachi Kabir and Mr. Kaptan Miah and the designated premises supervisor named on the licence was Mr. Kachi Kabir.

Members were asked to note that Mr. Kabir's personal licence under the Licensing Act 2003 was issued by Solihull Metropolitan Borough Council. Enquiries made by WRS with Solihull Metropolitan Borough Council, had revealed that Mr. Kabir had surrendered his personal licence in September 2018. Therefore, it would appear that the designated premises supervisor named on the premises licence did not currently hold a personal licence.

Members were further informed that on Thursday 26th November 2020, as required under section 53A of the Licensing Act 2003, that the licensing authority was asked to consider whether it was necessary to take interim steps pending the determination of the review application.

At the Consideration of Interim Steps Pending Review Hearing, on Thursday 26th November 2020, Licensing Sub-Committee Members decided that the following interim steps would be taken:-

- the removal of the designated premises supervisor from the licence;
- the suspension of the licence.

Appendix 3 to the report detailed the decision notice, which was served on the licence holders and West Mercia Police.

At 11:20 hours on 27th November 2020, the licensing authority received representations against the interim steps taken, submitted by Mr. Dildar Hussain on behalf of Mr. Kaptan Miah, the premises licence holder, as detailed at Appendix 4 to the report.

Members were further informed that the licensing authority was then required to consider the representations submitted by Mr. Kaptan Miah within 48 hours (the period of 48 hours' time that was not a working day was to be disregarded); and to consider whether the interim steps imposed were still appropriate for the promotion of the four licensing objectives and to determine whether to modify or withdraw the interim steps taken.

At the invitation of the Chairman, the Responsible Authorities, namely PS Field, West Mercia Police addressed Sub-Committee Members.

PS Field reiterated that as highlighted by the Senior Practitioner, (Licensing) WRS, Sub-Committee Members were being asked to determine if the interim steps should be modified or if they were still appropriate, following on from the representations received from Mr. Dildar Hussain on behalf of Mr. Kaptain Miah, as detailed on page 51 of the main agenda report.

PS Field further drew Members' attention pages 39 and 40 of the main agenda report which detailed the public health breakdown of Covid-19 cases summary for Bromsgrove.

PS Field also drew Members' attention to page 11 and 12 of the main agenda report which detailed the Prime Ministers public address and advice of the further restrictive measures commonly referred to as 'Lockdown 2'.

The UK government had been really prescriptive and had outlined businesses that must close and businesses that could remain open. Under point 1 of the businesses that must close were restaurants, which included restaurants and dining rooms in hotels or members' clubs which would have included premises such as Deedar Restaurant. Page 12 of the report provided details of what the guidance stated with regards to hospitality venues that were required to close for consumption on the premises.

PS Field continued and stated that the paramount importance of the Chief Officer of Police for West Mercia Police was public safety. PS Field drew Members' attention to the four licensing objectives; as given by the Licensing Act 2003, two of which had been breached by the licence holders for Deedar Restaurant namely:

- the prevention of crime and disorder and
- public safety

On behalf of West Mercia Police, as a Responsible Authority under the Licensing Act 2003; the chief officer of police Supt Mark Colquhoun had issued a certificate, due to the serious and significant concerns raised by the Police Constables who had visited the premises, as detailed on page 15 of the main agenda report.

PS Field referred to the witness statements of PC Bednall and PC Barnes as detailed on pages 29 to 33 of the main agenda report. Their statements detailed the significant breaches of Covid-19 restrictions that officers witnessed when they visited Deedar Restaurant on Friday 20th November 2020.

Members' attention was also drawn to page 28 of the agenda report, the Licence Conditions/Undertakings of Deedar Indian Cuisine, and the breach of condition 1.

PS Field drew Members' attention to page 34 of the main agenda report, the witness statement of Mr. Kachi Kabir. In which Mr. Kabir highlighted that he had told Mr. Husain that they needed to transfer the licence to sell alcohol as he was surrendering his personal licence to Solihull Metropolitan Borough Council.

PS Field further highlighted that this was supported by the diligent enquiries made by the Senior Practitioner, (Licensing) WRS, and included in his report; that Mr. Kabir had surrendered his personal licence to Solihull Metropolitan Borough Council in September 2018.

He would therefore ask Sub-Committee Members to give considerable weight to this evidence; as Mr. Kabir had informed both Mr. Miah and Mr. Hussain, when he sold his share of the business that he would be surrendering his personal licence. So, having been made aware they should have arranged to transfer the licence in order to ensure they remained compliant. His actions show a complete disregard of the Licensing Act.

PS Field also commented that Mr. Hussain had stated in his representation that the removal of the licence to sell alcohol at the restaurant would have an adverse effect on his business. Mr. Hussain appeared more concerned about the impact on his business, rather than the significant breaches of Covid-19 restrictions and licensing laws and the four licensing objectives.

Mr. Hussain had accepted that he had made a mistake by interpreting the law differently. West Mercia Police would state that Covid-19 legislation and restrictions had been all over the mainstream news channels since March 2020. Local news articles had been released and guidance for businesses. All guidance had been readily available on the government's website and WRS had a dedicated webpage on the impact of Covid-19. If Mr. Hussain was unsure, West Mercia Police and WRS officers would have supported him.

As stated by Mr. Hussain, West Mercia Police had had no cause to attend the premises previously, but the one visit they did make they found a total disregard for national restrictions.

PS Field then drew Members' attention to the Decision Notice dated 26th November 2020 on pages 49 and 50 of the main agenda report and in doing so; highlighted that Sub-Committee Members stated:-

"The evidence demonstrated a significant and fundamental failing in the management of the business not only with regards to the current coronavirus restrictions but also in relation to the licence condition which

allowed alcohol to be sold only to persons who were eating in the premises”.

PS Field further stated that he would urge the Sub-Committee to uphold the original interim steps decision made on 26th November 2020.

In response to Members, PS Field clarified that the police had visited the premises following a phone call from a member of the public to an Inspector at West Mercia Police.

The Council’s Legal Advisor reminded Members that they were not being asked to consider a review of the licence, a full hearing to review the licence would be held at a later date. Members were been asked to consider at this stage whether, the interim steps taken by Sub-Committee Members at the meeting held on 26th November 2020, were still appropriate for the promotion of the four licensing objectives; or whether to withdraw or modify those interim steps.

The Council’s Legal Advisor referred to Mr. Hussain’s representation, as detailed on page 51 of the main agenda report. Whereby, Mr. Hussain accepted and admitted that he should not have been selling alcohol at the time. However, his understanding or misunderstanding was that alcohol could be sold alongside a take-away.

Members should consider the four licensing objectives, more specifically the prevention of crime and disorder and public safety.

The Chairman announced that the decision of the Sub-Committee would be made available to all parties to the proceedings.

Having regard to:

- The certificate that accompanied the summary review application.
- The representations made by the chief officer of police for the police area in which the premises are situated.
- The representations made by Mr. Dildar Hussain on behalf of the holder of the premises licence Mr. Kaptan Miah.

The Sub-Committee decided that the interim steps were appropriate for the promotion of the licensing objectives, specifically the prevention of crime and disorder and public safety, the reasons were as follows:

Having considered the representations made on behalf of the premises licence holder the Sub-Committee noted the acceptance by Mr. Hussain that the premises had failed to adhere to Covid-19 restrictions and the conditions on the licence.

The Sub-Committee did not find that the representations addressed the failings in the internal management of the business that had directly resulted in the commission of a criminal offence and potential risk to public safety.

The representation demonstrated a lack of understanding of the current legislation by reference to the comments “I have made a mistake by interpreting the law differently with regards to Covid-19”.

The Sub-Committee was of the view that whether this was a mistake or not, the information provided by the chief police officer showed that this was a serious and significant incident and the risk to public health extended beyond those who had been present in the premises at the time of the visit and indeed may never have entered the premises.

What was witnessed by the police was also in breach of the licensing conditions placed on the premises licence as alcohol could only be sold to persons who were eating in the premises. Enquires made following the incident confirmed that the premises were operating without the required Designated Premises Supervisor (DPS), a mandatory requirement that ensured that alcohol was sold in a responsible manner.

The Sub-Committee considered this to have been a factor that may have contributed to failure to promote the licensing objectives and whilst the removal of the DPS as an interim step was not contested by the premises licence holder, the Sub-Committee considered it to be an aggravating feature as the s182 Guidance refers to the DPS as someone who would “normally be the person who has been given day to day responsibility for running the premises”.

The Sub-Committee noted that Mr. Hussain’s representation included reference to the financial impact that the interim steps would have on his business, the Sub-Committee did not consider this to be relevant to the need to promote the licensing objectives.

Having considered the representations the Sub-Committee considered that the failings of those managing the business had led to serious breaches of legislation and risk to public safety and in all the circumstances it was appropriate for the interim steps to remain pending the review hearing.

The following legal advice was given:

- The Sub-Committee should have regard to all of the representations made and consider whether the interim steps imposed on the 26th November 2020 were appropriate for the promotion of the licensing objectives and determine whether to withdraw or modify the steps taken.
- The decision whether the interim steps were appropriate was not a final determination of the review.

Where the Licensing Sub-Committee has determined under section (8) whether to withdraw or modify the interim steps taken, the holder of the premises licence may only make further representations under section

(6) if there has been a material change in circumstances since the authority made its determination.

The meeting closed at 10.30 a.m.

Chairman