

BROMSGROVE DISTRICT COUNCIL

VIRTUAL MEETING OF THE LICENSING SUB-COMMITTEE

TUESDAY 22ND DECEMBER 2020, AT 11.00 A.M.

PRESENT: Councillors H. J. Jones, S. A. Robinson and M. Thompson

Reserve Member: Councillor S. J. Baxter (observing)

Also in attendance: PS R. Field, West Mercia Police and Mr. I. Khan, Senior Technical Officer, Worcestershire Regulatory Services

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

9/20

ELECTION OF CHAIRMAN FOR THE MEETING

RESOLVED that Councillor H. J. Jones be appointed Chairman of the Sub-Committee for the meeting.

10/20

APOLOGIES

No apologies for absence were received.

11/20

DECLARATIONS OF INTEREST

There were no declarations of interest.

12/20

SUMMARY REVIEW OF A PREMISES LICENCE - DEEDAR RESTAURANT, 26 HEWELL ROAD, BARNT GREEN, BIRMINGHAM

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

The Chairman explained that Councillor S. J. Baxter, Reserve Member and Mr. R. Keyte, the Council's Litigation Solicitor were present to observe the Hearing.

The Sub-Committee then considered a summary review of a Premises Licence in respect of Deedar Restaurant, 26 Hewell Road, Barnt Green, Birmingham, B45 8NE.

The Senior Practitioner, (Licensing) Worcestershire Regulatory Services (WRS), introduced the report and in doing so highlighted that on Wednesday 25th November 2020 an application was received from West

Mercia Police for a summary review of the premises. A copy of the current premises licence was attached at Appendix 1 to the report.

At the time the application was received, the premises licence was held by Mr. Kachi Kabir and Mr. Kaptan Miah and the Designated Premises Supervisor (DPS) named on the licence was Mr. Kachi Kabir.

Members were asked to note that Mr. Kachi Kabir's personal licence under the Licensing Act 2003 had been issued by Solihull Metropolitan Borough Council. Enquires made by WRS with Solihull Metropolitan Borough Council had revealed that Mr. Kabir had surrendered his personal licence in September 2018. Therefore, it appeared that the DPS named on the premises licence did not hold a personal licence at the time the application for review was made by West Mercia Police.

On Thursday 26th November 2020, as required by section 53A of the Licensing Act 2003, the licensing authority considered whether it was necessary to take interim steps pending the determination of the review application.

The decision of Licensing Sub-Committee Members was as follows:

- Removal of the Designated Premises Supervisor
- Suspension of the licence

This decision remained in place following the consideration of the written representations submitted on behalf of the licence holder.

Members were asked to further note that, on 2nd December 2020 an application was made by the holder of the premises licence to vary the licence to specify that Mr. Dildar Hussain as the DPS. This application was made in such a way as to have immediate effect and therefore the DPS now named on the licence was Mr. Dildar Hussain. Mr. Dildar Hussain was the son of one of the licence holders, Mr. Kaptan Miah.

Subsequently, on 17th December 2020, correspondence was received by WRS from Mr. Kaptan Miah giving notice to surrender his premises licence for Deedar Restaurant, 26 Hewell Road, Barnt Green, Birmingham, B45 8NE.

The licensing authority was now required to hold a hearing to consider the application for the review and any relevant representations received and to take steps (if any) that it considered appropriate for the promotion of the four licensing objectives, the steps being detailed at paragraph 2.7 of the main report.

The licensing authority must also consider and determine whether the interim steps already taken in respect of the premises licence were to cease following this review hearing or to continue to have effect during the period within which an appeal against the decision taken at this review hearing could be made or until such an appeal was disposed of.

The Senior Practitioner, (Licensing), WRS, informed Members that, the summary review application, the accompanying certificate from the Senior Police Officer and other supporting documents received on 25th November 2020, were attached at Appendix 2 to the report.

During the ten working days within which representations by the premises licence holder, responsible authorities or other persons could be made, West Mercia Police submitted further evidence in support of their application, as detailed at Appendix 3 to the report.

West Mercia Police also included DVD footage from the bodycam worn by the police officer who attended the premises on 20th November 2020. The DVD footage provided by West Mercia Police was not publicly available. However, for the purposes of the summary review hearing, Licensing Sub-Committee Members and the Council's Legal Advisor were able to securely view the bodycam footage.

The Senior Practitioner, (Licensing), WRS, further drew Members' attention to:-

Appendix 4 – Representations of the licence holder.
Appendix 5 – Director of Public Health's Representation
Appendix 6 – Environmental Health, WRS, Representation
Appendix 7 – Representation from a local resident; and

the Legal Implications, as detailed on page 9 of the main agenda report.

The Senior Practitioner, (Licensing), WRS, highlighted that Members were being asked to:-

1. Determine the review application made by West Mercia Police.
2. Determine what interim steps would continue to apply pending on any appeal against the interim steps taken by Licensing Sub-Committee Members on 26th November 2020.

In response to the Chairman, the Senior Practitioner, (Licensing), WRS, explained that in terms of training, the only training required was for someone who wanted to hold a personal licence. In order to act as the Designated Premises Supervisor (DPS), they would have to undertake a Level 2 Award DPS course. No specific qualification was required in order to hold a premises licence. However, any premises licence that included permission to sell alcohol, would need to specify a DPS and that person would have to hold a personal licence and therefore would have to had undertaken the required Level 2 Award.

With regards to the responsibility to ensure that there was a DPS, the Senior Practitioner, (Licensing), WRS, stated that the condition to have a DPS ultimately lay with the premises licence holders, in this case, Mr. Kabir and Mr. Miah.

The Chairman informed all those present that Mr. Miah and Mr. Hussain had been unable to attend today's Hearing.

At the invitation of the Chairman, PS R. Field, West Mercia Police, addressed the Sub-Committee.

PS Field, stated that this summary review followed on from the interim steps taken by Sub-Committee Members, as detailed in the report as presented by the Senior Practitioner, (Licensing), WRS.

West Mercia Police saw this as a significant day because of the impact of Coronavirus. The Hearing today was of paramount importance to West Mercia Police in principle, to ensure that the four licensing objectives were complied with, as set out in the Licensing Act 2003. Two of which were of paramount importance and had been breached by Deedar Restaurant, namely:-

- the prevention of crime and disorder; and
- public safety

West Mercia Police were a responsible authority under the Licensing Act 2003 and the Chief Officer of Police had issued a certificate under section 53A (1)(b) of the Licensing Act 2003, as detailed on page 27 of the main agenda report.

This Hearing focussed on Covid-19 and the impact of Coronavirus and the blatant disregard of Covid-19 restrictions and public safety by Deedar Restaurant.

PS Field quoted the World Health Organisation figures and referred Members to the Public Health response received from Worcestershire County Council, Director of Public Health; and their conclusion in respect of Deedar Restaurant, as detailed on pages 71 and 72 of the main agenda report.

PS Field further drew Members' attention pages 22 to 27 of the main agenda report which provided an overview and summary of this issues before Members today.

PS Field also drew Members' attention to pages 23 and 24 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 advice made it clear with regards to alcohol for consumption off the premises and food takeaways.

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 24 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.

The evidence provided by PC Bednall and PC Barnes, two experienced police officers, who visited the premises on Friday 20th November 2020; detailed that alcohol was provided for consumption in the premises and that this was a fully functioning restaurant. Their witness statements were detailed on pages 41 to 45 of the main agenda report.

PS Field continued and stated that page 50 of the main agenda report, summarised the evidence of the bodycam footage of PC Bednal and that this footage had been securely provided to Sub-Committee Members and the Council's Legal Advisor to view.

PS Field also highlighted that Mr. Hussain was issued with a £1,000 Fixed Penalty Notice.

Members' attention was also drawn to page 40 of the main agenda report, the Licence Conditions/Undertakings of Deedar Indian Cuisine, and the breach of condition 1.

PC Bednal and PC Barnes witnessed intoxicated people leaving the premises. PS Field asked Members to note that under Section 141 of the Licensing Act 2003, that it remained an offence to sell or attempt to sell alcohol to a person who was drunk. This was another criminal offence witnessed by PC Bednal and PC Barnes.

PS Field drew Members' attention to page 46 of the main agenda report, the witness statement of Mr. Kachi Kabir. In which Mr. Kabir highlighted that he had told Mr. Hussain 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. Therefore, during the last two years alcohol sales were illegally made without a DPS, which was a criminal offence under Section 138 of the Licensing Act 2003.

Under Section 182 of the Licensing Act 2003, the guidance stated that the DPS was the key person who would usually be responsible for the day-to-day management of the premises. Clearly this was not the case at Deedar Restaurant, which again was a serious, significant and blatant disregard of the Licensing Act 2003.

He would therefore ask Members to give considerable weight to this evidence and the witness statement of Mr. Kabir.

PS Field continued and referred to the witness statements of himself and PC Taylor with regards to obtaining CCTV footage for Friday 20th November 2020, as detailed on pages 54 to 57 of the main agenda report.

The CCTV footage would have either confirmed or denied that the premises was operating as a takeaway as stated by Mr. Hussain.

Mr. Hussain's email, as detailed on page 56 of the main agenda report, stated that he had not denied anything that the officers had said on the night they came to the restaurant; and that the CCTV footage only went back to 22nd November 2020.

This showed poor management of Deedar Restaurant and the inadequacies of the management team and in particular the new DPS Mr. Hussain. Members would never know if the premises were operating as a takeaway or not as CCTV footage had not been provided by the company. This would have been an important factor to give a true and accurate record of how the business was operating on the night of 20th November 2020.

PS Field then referred to pages 58 to 65 of the main agenda report, the witness statement of PC Norris, licensing officer and pages 73 to 74, the witness statement of Mr. Imran Khan, Senior Technical Officer, WRS.

In response to the Council's Legal Advisor, Mr. Khan, Senior Technical Officer, WRS, stated that the breaches he found at the premises would be public safety breaches under the Licensing Act 2003. The business failed to demonstrate a competence and the willingness to protect the public.

In response to the Chairman, the Council's Legal Advisor clarified that it was not a condition on the licence to make CCTV footage available. The conditions on the licence were detailed on page 40 of the main agenda report,

In response to the Chairman, Mr. Khan, Senior Technical Officer, WRS, stated that he had found a long list of contraventions including Covid-19 breaches as a food business operator. He would endorse PS Field's statement. There was clearly no understanding or demonstration of complying with public safety legislation. Mr. Khan clarified that an unannounced visit to the premises had been carried out.

In summing up, PS Field stated that West Mercia Police had submitted quite a significant bundle of evidence to Members.

The four licensing objectives were of paramount importance. The police did not take many summary reviews, as they tended to support and educate businesses rather than use enforcement. But this summary review was one that absolutely needed to be before Members today;

due to the serious and clear criminal offences that had been committed at the premises.

He would urge Members to take the most serious sanction against Deedar Restaurant. West Mercia Police would ask Members to remove the DPS and to revoke the premises licence. Actions which were supported by the Director of Public Health, Worcestershire County Council.

There were clear and significant risks to customers using Deedar Restaurant that they would not be aware of. This was not a responsible operator as they had failed to abide by the four licensing objectives under the Licensing Act 2003.

In summing up, Mr. Khan, Senior Technical Officer, WRS, commented that with regards to the previous history of compliance at the premises, that officers had issued advice in the past.

At the invitation of the Chairman, the Council's Legal Advisor, suggested that Members took the opportunity to consider the paperwork and bodycam footage. They were reviewing a licence which had been a long-standing licence. She would refer Members to the two conditions on the licence, as detailed on page 40 of the main agenda report.

The Council's Legal Advisor stated that she was in agreement with PS Field, and that as highlighted in legislation that, the licensing authority recognised that the police as a Responsible Authority should be its main source of advice on matters relating to the promotion of the crime and disorder licensing objective. It was the basis of West Mercia Police's summary review that Members were being asked to consider. The basis being that when police officers attended the premises, they found evidence of breaches of two of the licensing objectives, namely:-

- the prevention of crime and disorder; and
- public safety

The police considered that the two licensing objectives had been undermined. Members should also consider the interim steps taken.

Members had not heard from the licence holders and the premises licence had now been surrendered. However, notwithstanding the licence being surrendered, Members must still consider the summary review of the premises licence.

Members should begin by examining the evidence, both oral and written; and determine what weight to give to that evidence. Members could also have regard to the fact that the licence had been surrendered.

Members should disregard anything that was not within their remit. Any food safety issues highlighted during the course of the Hearing was not a matter for Sub-Committee Members. A different agency would deal

with these matters. She would ask that Members be careful to consider only those matters within their remit and to this particular premises only.

The Council's Legal Advisor referred Members to the public health response from the Director of Public Health, Worcestershire County Council and in doing so, asked Members to look at the evidence and how the public health response fitted in with the licensing objectives.

Members had the following options to consider:-

- The modification of the conditions of the premises licence.
- The exclusion of a licensable activity from the scope of the licence.
- The removal of the current DPS from the licence.
- The suspension of the licence for a period (not exceeding 3 months) or
- The revocation of the licence.

Members should determine what was before them and within their remit and what was relevant to this particular premises; and if the licensing objectives had been undermined and what action to take.

Members should be mindful that interim steps had already been taken and therefore it was a matter for Members having reached a decision on the summary review whether those interim steps should remain in place. The licensing objectives were Members main prime consideration.

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

Having had regard to:

- The licensing objectives set out in the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The guidance issued under section 182 of the Act.
- The report presented by the Senior Practitioner, Licensing, Worcestershire Regulatory Services and Appendices
- The review application / supporting documents, as detailed at Appendix 2 to the report and the oral representations made at the Hearing by the Responsible Authorities, namely, Police Sergeant R. Field, West Mercia Police.
- The additional police evidence, as detailed at Appendix 3 to the report.
- The written representation from the Director of Public Health, as detailed at Appendix 5 to the report.

- The written representation from Environmental Health, Worcestershire Regulatory Services, as detailed at Appendix 6 to the report.
- The written representations from a local resident, as detailed at Appendix 7 to the report.
- The bodycam footage from West Mercia Police, viewed by Sub-Committee Members.

The Sub-Committee decided to revoke the premises licence relating to Deedar Restaurant, 26 Hewell Road, Barnt Green, Birmingham, Worcestershire,

The reasons for the Sub-Committee's decision were as follows:

- Sub-Committee Members considered all of the evidence, both written and oral, provided by West Mercia Police in support of the application for Review of the Premises Licence. Members also viewed bodycam footage recorded by the police officers who attended the premises on the 20th November 2020.
- The Sub-Committee was mindful of the S182 Guidance which stated that the licensing authority should look to the police as the main source of advice on crime and disorder. The Sub-Committee was assisted by the evidence provided by the way of the bodycam footage which was entirely supportive of the statements provided by the police officers and confirmed without doubt that the business was operating in breach of the business restrictions imposed by The Health Protection (Coronavirus, Restrictions) (England)(No.4) Regulations 2020.
- The Sub-Committee noted specifically that the business was selling alcohol and there was evidence that food had been consumed on the premises as tables were untidy, with evidence of used napkins, a plate with remnants of food. The Sub-Committee was satisfied that this amounted to a clear and significant breach of the business restrictions in place at the time. The Sub-Committee was not convinced by the explanation given by Mr. Hussain to the police that only takeaway food was being served.
- The Sub-Committee considered the written representations provided by Mr. Hussain for the interim steps hearing in which he accepted that alcohol was being served to customers who were waiting for takeaway meals. Mr. Hussain's explanation was that he had made a mistake and had been under the impression that alcohol could be sold to those waiting to collect their food. Mr. Hussain stated that he had apologised for his action and gave an assurance that there would not be a repeat of this.
- The Sub-Committee was mindful of the extent of the publicity and support and guidance available to the hospitality sector throughout the periods of restriction, and Members considered it a significant

and blatant failing that such advice had either not been sought or had been ignored.

- The Sub-Committee considered the breach of the Covid-19 regulations to be significant as the risk to public safety was clear not only to those in the restaurant but also to the wider community who may never have entered the premises but may have been exposed to risk from those who had.
- The restrictions were specifically designed to reduce the risk of transmission and the sale of alcohol to those inside the restaurant either at tables or standing was increased as a direct result of the breach of the regulations. The availability of alcohol may have encouraged customers to enter the premises to wait for their food as indicated by those sitting at tables with drinks in close proximity to each other. The Sub-Committee was further concerned that one customer was intoxicated and had clearly been served alcohol whilst on the premises.
- The Sub-Committee also noted that the premises licence for this premises had the following condition:-

“Intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons taking table meals there and for consumption by such person as an ancillary to his meal”.

- The evidence presented to the Sub-Committee suggested that, irrespective of the Covid-19 restrictions, that there was a lack of knowledge that such a condition existed.
- The Sub-Committee gave little weight to the references to CCTV and the existence of an Incident Book as neither were licence conditions.
- It was further noted that enquires conducted after the visit by the police to the premises, that the named Designated Premises Supervisor (DPS) had previously surrendered his personal licence and therefore there was no named DPS attached to the Premises Licence. Since that time, an application for a new DPS had been submitted.
- Members considered the letter received from the Director of Public Health, Worcestershire County Council. Whilst the representation was factual with regards to the Covid-19 statistics for the district, it did not specifically address the particular concerns or risk posed by this individual premises.
- The Sub-Committee considered the written and oral representations submitted by the Senior Technical Officer, Environmental Health, Worcestershire Regulatory Services. Members noted that the officer had visited after interim steps had been imposed and the premises licence had been suspended. The Sub-Committee considered the

relevance of this representation to be limited as the review of the licence was in relation to the sale of alcohol and the representation primarily related to matters that would be addressed by other agencies.

- Having considered the evidence presented by all parties, the Sub-Committee was of the view that the premises had operated contrary to the licensing objectives and the failings in the business with regards to the sale of alcohol and breach of the Covid-19 regulations had identified significant management concerns.
- The Sub-Committee noted that the Premise Licence has been surrendered, and as such no representations had been received from or on behalf of the licence holder to address the evidence presented for the review.
- In the absence of any representations from the licence holder, Members were unable to assess if any changes were intended with regards to the business operation.
- The Sub-Committee concluded that in light of the evidence presented that the premises had not operated to promote the licensing objectives with regards to crime and disorder and public safety and Members did not consider that there were any conditions available to them that would address their concerns. The Sub-Committee was of the view that it was therefore appropriate to revoke the licence.

Review of the Interim Steps.

The Sub-Committee reviewed the interim steps taken in respect of the premises licence thus far and considered it appropriate for the steps to remain namely, removal of the DPS and suspension of the licence.

The Sub-Committee considered that these steps were appropriate to promote the licensing objectives with regards to crime and disorder and public safety; having had regard to the evidence presented which had demonstrated a lack of management of the business that allowed such significant breaches of both the Covid-19 regulations and the licensing conditions. In the absence of any representations to indicate otherwise the Sub-Committee did not have confidence that further breaches would be avoided and therefore considered the promotion of the licensing objectives could only be achieved by the continuation of the interim steps.

The following legal advice was given:

- That the Licensing Objectives must be the paramount consideration.
- That the Sub-Committee was obliged to determine the review application with a view to the promotion of the licensing objectives.

- The Sub-Committee must consider the review application and relevant representations and take such of the following steps (if any) as it considered appropriate for the promotion of the licensing objectives:
- The modification of the conditions of the premises licence
- The exclusion of a licensable activity from the scope of the licence
- The removal of the DPS from the licence
- The suspension of the licence for a period (not exceeding 3 months) or
- The revocation of the licence.

The Sub-Committee should reach a decision with regards to the Review application and separately review the interim steps and consider if they were appropriate

An appeal to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision was received by the Applicant.

The meeting closed at 11.58 a.m.

Chairman