

Minutes

Alcohol, Entertainment & Late Night Refreshment Licensing Committee

Friday, 4 September 2020



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Committee members present

Councillor Harrish Bisnauthsing
Councillor Mrs Pam Bosworth
(Chairman)
Councillor Robert Broughton
Councillor George Chivers
Councillor Helen Crawford

Councillor Mrs Rosemary Kaberry-Brown
Councillor Philip Knowles
Councillor Nikki Manterfield
Councillor Charmaine Morgan

Officers

Senior Licensing Officer (Pam Robinson)
Licensing Officer (Chris Clarke)
Legal Advisor (Mandy Braithwaite)
Democratic Officer (Lucy Bonshor)
Technical Officer (Naomi Page)

Other Members

Councillor Ashley Baxter

44. Register of attendance and apologies for absence

All members were present apart from Councillors Kingman and Ward who had sent apologies.

Councillor Manterfield was present for agenda items 1, 2, 3 and 4 but left after these items as she had another engagement.

The Democratic Officer also confirmed those in attendance for the application before the Committee.

Sergeant Kim Enderby, Lincolnshire Police
Sarah Clover, Counsel representing Arumugam Kalamohan
Arumugam Kalamohan, Premises Licence Holder
Andrea Forrester, Solicitor (Arumugam Kalamohan)
Ian Rushton, Licensing Consultant (Arumugam Kalamohan)
Majure Sriramsothy, Interpreter

45. Disclosures of interests

None disclosed.

46. Minutes of the meeting held on 24 July 2020

The minutes of the meeting held on 24 July 2020 were agreed as a correct record.

47. Minutes of the meeting held on 21 August 2020

The minutes of the meeting held on 21 August 2020 were agreed as a correct record.

48. Licensing Act 2003: Review of Premises Licence - Today's Extra, 50 Kesteven Road, Stamford

Decision:

To modify the conditions of the Premises Licence in respect of Today's Extra, 50 Kesteven Road, Stamford, in relation to training and refresher training, employees right to work in the UK and the retention of documentation. Adequate wording of the conditions to be prepared.

The Senior Licensing Officer presented report ENV754 which concerned a review of the Premises Licence in respect of Today's Extra, 50 Kesteven Road, Stamford. The Senior Licensing Officer clarified that the premises had also been known as Today's Express which was referenced within the documents circulated with the agenda. The Premises Licence holder was not required to notify the Licensing Team of any change to the name of a premise.

The Chairman referred to the late papers that had been circulated to members as well as the Police. The Chairman indicated that she would allow the late papers unless the Committee did not agree. Members agreed to include the late papers. Ms Clover representing the Premises Licence Holder stated that the papers were for information and showed the due diligence now being undertaken by the Premises Licence Holder in relation to employees at the premise.

The Senior Licensing Officer continued with her presentation. An application to review the premises licence had been received on 12 May 2020 by Lincolnshire Police. The review had been submitted under the licensing objectives of the prevention of crime and disorder, public safety and the protection of children for harm.

Included in the review was a statement from Sergeant Kim Enderby which detailed the events of a joint visit between Lincolnshire Police and Home Office Immigration Officers carried out on 12 March 2020.

The current premises licence holder was Arumugam Kalamohan who had held a licence since November 2013. Following the receipt of the review from the Police the Licensing Team received an application to vary the Designated Premises Supervisor (DPS) to Sathygowri Sureshkumar. No objection to the new DPS was received from the Police.

(10:25am Councillor Manterfield left the meeting and did not return)

Sergeant Enderby made his representation. On 12 March 2020 a joint planned visit had been carried out at Today's Extra between Lincolnshire Police and Home Office Immigration Officers following intelligence that an immigration offender was working at the premises. Upon entering the store a member of the public was being served by the till by a male behind the counter. The male was the sole worker in the store. Sergeant Enderby identified himself and the purpose of the visit. The Immigration Officers carried out checks and Sergeant Enderby carried out a compliance check. A number of the conditions annexed to the Premises Licence were not being adhered to such as notices to "leave quietly", refusals policy and the Crimestoppers initiative were not being displayed.

Mr Kalamohan, the Premises Licence Holder stated that the posters were on display in the window and had been there between four and five years. Mr Kalamohan was told that his comments could be made by his legal team when they made their representation.

When the lone male working behind the counter was spoken to it became apparent that due to his immigration status, he was barred from working in the UK. He stated that he had been working in the store for a number of months and had received no formal training and lived above the store. The male had no knowledge of who the DPS was, or who the Premises Licence Holder was. He was unable to operate the CCTV and was the sole person in the store at the time of the visit; failure to be able to operate the CCTV was a breach of one of the premise licence conditions.

The Immigration Officers found two people in the flat above the store who had also committed immigration offences.

It was clear that the lone male had no knowledge of the licence conditions or licensing legislation. Attempts were made to locate someone who could answer Sergeant Enderby's questions. An elderly Asian male arrived at the store and he explained that he had worked at the store for a number of years together with his wife. The gentleman did not know who the DPS was, but did have Mr Kalamohan's details.

Sergeant Enderby stated that the gentleman held a position of responsibility within the store, but was unable to contact Mr Kalamohan and was evasive when questioned, despite having worked in the store for a number of years. The gentleman and his wife could not operate the CCTV, did not know about either the refusal or incident logs or any training records. Sergeant Enderby had tried to establish basic hours and their role in the shop but could not get any information. As nobody appeared to know about the paperwork, Sergeant Enderby went behind the counter and seized the documents there. The paperwork was out of date, incomplete or had not been started.

Of the two people found by the Immigration Officers in what appeared to be workers accommodation above the flat, one was arrested for being in the country illegally and the female had no right to work in the UK. Sergeant Enderby expressed concern that they may have been working in the shop, although both denied working in the premises. This could have been resolved if any of those present had been able to access the CCTV.

Sergeant Enderby expressed concern about what had been found in the shop with the three immigration offenders, together with multiple breaches of the premises licence conditions. He felt that the licensing objective of the prevention of crime had been seriously undermined, and referred to the legislation in respect of employing those disqualified to work in the UK and the Licensing legislation, specifically guidance under Section 182, section 11.27. Which stated that employing a person who is disqualified from work by reason of their immigration status in the UK should be treated particularly seriously. Both the restaurant and licensee areas were high risk areas for illegal employment. Vulnerable people were exploited and they undercut legal businesses. It also had a negative impact which included tax evasion and breaches of the national minimum wage. If basic checks had been implemented the issues could have been avoided.

(10:50am -10:56am meeting adjourned)

Sergeant Enderby stated that it could not be denied that an illegal worker had been found working in the shop or that breaches to the conditions of the Premises Licence had been found. He acknowledged that since the visit on 12 March 2020 changes had been implemented at the premises. The DPS had been changed and he noted the late items that had been circulated and the due diligence that was now being carried out in relation to employees and staff training. He made reference to the review which had come before the Committee in 2018 where a similar set of circumstances had been found and he felt that no lessons had been learnt. He was concerned that measures had failed to be put in place and indicated that revocation should be seriously considered by the Committee. He acknowledged that measures had been implemented since the visit and that moving forward the Committee had to be satisfied that the measures that had been implemented were reliable and legitimate and were robust enough to ensure the promotion of the licensing objectives and that other sanctions should be considered by the Committee.

A question was put to Sergeant Enderby concerning the CCTV to which he responded.

(11:05 – 11:10 meeting adjourned)

Sarah Clover, Mr Kalamohan's representative then made her representation. Mr Kalamohan had a chain of 40 businesses under the Today's Extra brand and had overall responsibility for all of them. Each model was slightly different but they all had an area manager. The shop in Stamford was different. Mr Kalamohan bought the lease to the shop in 2013 and Mr Selvaratnam Sellathurai (known as Mr Suresh) was already in situ. Mr Suresh and his wife carried on running the shop on a self-employed basis. The shop was separate to the flat above the shop and Ms Clover stated that Mr Kalamohan had nothing to do with the flat above the shop, it was not part of the lease.

There had been no difficulties at the shop between 2013 and March 2020. During this time a successful test purchase had been made and there was nothing to state that underage sales were being carried out.

Ms Clover then referred to the visit and the illegal worker issue and the compliance checks. Until the visit in March 2020 there was no reason to assume that anything

untoward was happening at the premise. Ms Clover stated that Mr Kalamohan had placed too much reliance on Mr Suresh carrying out his duties correctly and that the area manager for that premise had not paid enough attention to what had been going on.

Since the visit in March and the pressures brought by Covid-19 remedial steps had been taken to rectify what had happened at the premises.

When the lone male had been interviewed, he had stated that he had only been working for about one month and there was no evidence that the immigrants found in the flat above the shop had worked in the premises. Mr Suresh or his wife had not informed Mr Kalamohan about any employees at the premise and there was no evidence that the illegal worker had been paid. It was believed that the illegal worker had been paid in kind with food and accommodation, which was the wrong thing to do, but which Mr Kalamohan was unaware. Visits by the area manager had been stopped in March due to Covid-19.

Since the visit in March discussions had been held with Sergeant Enderby about the Today's brand documents and the whole programme of training and records that are in situ across the company and the whole chain of shops. Mr Suresh had been dispensed with following the March meeting and a new DPS had been installed who lived locally. All staff had been correctly verified that they could work in the UK and training had been carried out. The area manager had visited twice since the events had occurred to check conditions and compliance. The company employed a Licensing Consultant and retained a Legal Advisor to make sure all necessary licensing compliance was in place and that suitable systems were in use. Ms Clover stated that there was no dispute as to why the review had been brought but felt that revocation of the licence was not justified. She referred to the leniency that should be given by Licensing authorities during the Covid-19 crisis and the Section 182 guidance.

The DPS had been replaced and all necessary documentation was now in place. Going forward it may be that the Committee wished to add conditions in respect of due diligence checks that employees were allowed to work in the UK and that these were kept on file and to tighten conditions in relation to staff training that it was undertaken every 6 months. Any conditions had to comply with Section 182 guidance and be targeted and proportionate. She urged members not to consider revocation but look at other sanctions.

Mr Kalamohan through his interpreter stated that he had nothing to do with the flat above the premises. That the lone male behind the counter had only been in the country 2-3 weeks so could not have been working for months in the premise. He also felt that not enough effort had been made by the Police to contact him in relation to looking at the CCTV.

Questions were then put to Ms Clover about Mr Suresh's conduct, Mr Kalamohan's lack of checks at the premise, the number of times Mr Kalamohan visited the 40 businesses, what notes were taken and what was discussed and having what was seen as a reactive management style rather than a proactive style. Ms Clover responded to all questions and stated that this particular premises had fallen outside the model system. Issues with the premises had been addressed and all necessary paperwork and training

was in place, the premises was very much under both the authority's and the Police's radar. Mr Kalamohan had trusted Mr Suresh too much. A question was asked about what training the previous DPS had undertaken and it was stated that all DPS's had to have a personal licence which they would have had to take a test for.

(12:10 Councillor Kaberry-Brown left the meeting and did not return)

Further discussion on the management structure and the discussions at premises with the area manager and Mr Kalamohan followed, together responsibility for training.

It was reiterated that a Licensing Consultant and a Legal Advisor were both employed by Mr Kalamohan to ensure that all necessary training and legislation was complied with.

A comment was made about how confident Ms Clover was that the situation would not happen again. Ms Clover stated that the premises had been under a different model to that of all the other businesses and that this had now changed and had been brought in line with the other businesses and that situation should not occur in the future.

(12:28 Councillor Chivers left the meeting and did not return)

The Senior Licensing Officer then gave her closing statement and the options available to the Committee which were:

- To modify the conditions of the licence;
- Exclude a licensable activity from the licence;
- Remove the designated premises supervisor (DPS);
- Suspend the licence for a period not exceeding 3 months; or
- Revoke the licence.

If the Committee decided that none of the steps were necessary then they need take no action. She reminded the Committee that the guidance under Section 182 of the Licensing Act stated:

"In deciding which of these powers to invoke, it is expected that licensing authorities should, so far as possible, seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response." (Paragraph 11.20 at page 92 of the Guidance Issued under S182 of the Act.)

The Committee should therefore take a stepped approach to the problem and they should assess the evidence to seek to understand the cause of the problem.

(12:30 The Senior Licensing Officer and the Licensing Officer left the meeting due to other engagements)

Sergeant Enderby then gave his closing statement. He stated that following the March visit the issues found at the premise had been addressed and an explanation of the circumstances had been given. He referred to the conditions offered by Ms Clover and stated that the Committee must have confidence that any extra conditions would be

adhered to by the Premises Licence Holder and that revocation was not a justifiable sanction.

Ms Clover then gave her closing statement. She asked the Committee to draw back from revoking the premise licence. Conditions on the licence could be enhanced to improve compliance. The circumstances were bespoke and specific to that premise which had been addressed and were supported now by professionals and experts. She also referred to the Section 182 guidance and that a stepped approach should be taken which was proportionate. Public safety had not been impacted and that the review before the Committee, she felt was not a suitable case for revocation and that a set of stronger conditions should be considered.

(12:38 all parties left the meeting whilst the Committee deliberated)

Members discussed the application before them having regard to all the representations made, all relevant guidance and policies and all supporting paperwork submitted. Members expressed concern about what had happened at the premise and the lack of knowledge by those running the shop when the joint visit took place in March 2020 by the Police and Home Office Immigration Officers. Both revocation and suspension of the premise licence were discussed by the Committee. On balance it was noted that following the visit in March 2020, the DPS had been changed and steps had been made to run the business in line with the other businesses owned by Mr Kalamohan. Discussions had taken place with the Police and possible conditions had been put forward by Ms Clover on behalf of the Premises Licence Holder. Members felt that enhanced conditions, that could easily be enforced, covering training and refresher training, employees right to work in the UK and the retention of documentation needed to be included as conditions. The Committee also felt that the area manager for the premises should be more proactive. The Legal Advisor informed the Committee that if they decided to impose more stringent conditions, then she would deliver the decision and state that the conditions would be modified and confirmed later. It was proposed, seconded and unanimously agreed to modify the conditions of the premises licence to enhance conditions in relation to training and refresher training, the right to work in the UK and that documentation relating to these areas is retained on site in relation to these conditions.

(13:14 all interested parties return to the meeting)

The Legal Advisor read out the Committee's decision. The Committee had taken into account the report, additional papers, legislation, the guidance issued under S182 of the Licensing Act 2003 and the Council's Statement of Licensing Policy together with the representations made. The evidence showed that there had been clear breaches to the licensing objectives. The employment of an illegal worker was not acceptable and undermined the licensing objective of the prevention of crime and disorder. The Committee had carefully looked at the circumstances that had arose in relation to the previous DPS and acknowledged that a new DPS was in place. The Committee noted that the business now came under a new model and that a higher level of scrutiny was in place. Legal Advice had been given to the Committee about the options open to it and the need for any decision to be proportionate. The Committee had decided to enhance and add new conditions to the premise licence in relation to carrying out checks on employees, that they had the right to work in the UK and that copies of

documents used to check this were retained on site. The conditions in relation to training and refresher training were enhanced and documents and records kept on site. Specific wording of the conditions and the full reasons for them will be sent in due course.

Modification of Conditions

Conditions

Under the Protection of Children from Harm:

All staff members engaged, or to be engaged, in selling alcohol on the premises shall receive full training pertinent to the Licensing Act, specifically with regard to age restricted sales and the refusal of sales to persons believed to be under the influence of alcohol or drugs. Induction training must be completed prior to any sales being made by an individual and company refresher training shall be provided at least every 6 months. All such training is to be fully documented and signed by not only the employee but the person delivering the training. Training records shall be kept at the premises and made available upon request to responsible authorities or licensing officer.

In relation to right to work checks:

The premises licence holder must carry out checks relating to the right to work in accordance with the Home Office Guidance – “Right to work checks: an employer’s guide” in respect of all of the employees that work at the premises;

The premises licence holder must carry out checks relating to the right to work in accordance with Home Office Guidance - “Right to work checks: an employer’s guide” in respect of any prospective employees (including any trial period) before entering into a contract of employment with the prospective employee and

All copies of documents for members of staff as a result of conducting checks relating to the right to work at the premises must be stored securely by the Premises Licence holder at the premises for each individual member of staff and be retained for a period of 2 years post termination of employment and be made available to responsible authorities, immigration or licensing officers upon request.

49. Close of meeting

The meeting closed at 13:20pm.