

Minutes

Alcohol, Entertainment & Late Night Refreshment Licensing Committee

Monday, 11 December 2023



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Committee members present

Councillor Pam Bosworth (Chairman)
Councillor Elvis Stooke (Vice-Chairman)
Councillor Ashley Baxter
Councillor Helen Crawford
Councillor Paul Fellows
Councillor Robert Leadenham
Councillor Nikki Manterfield

Officers

Elizabeth Reeve, Chris Clarke, Licensing Officers
Mandy Braithwaite, Legal Advisor
Ayeisha Kirkham, Head of Public Protection
Lucy Bonshor, Democratic Officer

39. Apologies for absence

Apologies for absence were received from Councillor Bisnauthsing, Councillor Cunnington, Councillor Ellis and Councillor Kingman.

40. Disclosures of interests

None disclosed.

41. Minutes of the meeting held on 17 November 2023

The minutes of the meeting held on 17 November 2023 were proposed, seconded and **AGREED**.

42. Exclusion of Press and Public

It was proposed, seconded and **AGREED** to exclude the press and public in accordance with Section 100A (4) of the Local Government Act 1972 during consideration of the following item of business because of the likelihood that otherwise exempt information, as described in paragraphs 1 and 2 of the Act (as amended) would be disclosed to them.

43. **Licensing Act 2003: Review of Premise Licence - Following a Closure Order**

Decision

To revoke the Premises Licence in respect of Terries (Mega Lulupo Ltd), 23 Westgate, Grantham.

The Legal Advisor introduced those present and confirmed who would be speaking in respect of the application from Lincolnshire Police, Sergeant Adams (also present were PC Braithwaite and PC Jones) and the Premise Licence Holder and DPS, Mr Terry Flowers.

The Licensing Officer then presented exempt report ENV873 which concerned a review hearing following the notification of a Closure Order issued by Lincoln Magistrates Court for 23 Westgate, Grantham. The closure order had been made under Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 and had been sought by Lincolnshire Police. The closure order was for a period of three months.

The closure order and review related to all four of the Licensing Objectives: -

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm
- Public safety

The Licensing Authority was required to notify responsible authorities and other interested parties of the review and invite representations. Notification was emailed out on 29 November 2023 and a notice was placed at the premises by the licensing authority regarding the review as well as on the Council's website.

A representation was received from the Lincolnshire Police on 20 November 2023 detailed within exempt Appendix 2 parts A – R. CCTV footage and body worn camera footage of some of the incidents had been requested by the Premises Licence Holder.

The premises had been licensed under the Licensing Act 2003 since 2005. The current licence holder (Mega Luluop Ltd) had held the premise licence since 18 November 2022.

The Police then made their representation stating that the Police's job was to ensure that the licensing objectives were being upheld by those who held a premises licence. In respect of Terries this was not the case and it was stated that there were significant risks at the premises and all four of the licensing objectives were being undermined and these were outlined within the appended documentation to the report. Sergeant Adams then went through key events that had happened at the premise over the last year whilst Mr Flowers had been the Premises Licence Holder as well as the Designated Premises Supervisor (DPS). The Premise licence had conditions attached to it in March 2023, when the premise changed from a bar to a restaurant whereby alcohol could only be

served ancillary to food, conditions included an earlier closing time, Challenge 25, CCTV conditions and both a drugs and refusals policy.

The Police also detailed two compliance check visits to the premises which were failed by the staff present and also the fact that traces of drugs were found present at the premises. Reference was made to the objection to the TEN Notice in October 2023 when a counter notice was issued to stop a Halloween event from taking place due to the concerns that the Police had with the running of the premise. A drugs warrant had been successfully granted in October 2023 and executed and evidence of drugs found at the premise. The Police had no confidence in how the premise was being run and a closure order was applied for and granted on 29 November 2023. Officers had tried to speak with the Premise Licence Holder and offer guidance but rather than things improving they had declined and it was clear to the Police that the Licensing objectives were being undermined and they asked that the Premise Licence be revoked.

The Premise Licence Holder then made his representation stating that due to the tight time scale he had been unable to get a solicitor. He spoke about the tenant within the flat above the restaurant and the various problems that she had caused due to the nature of her work and matters which he believed were taking place in the flat involving drugs. He indicated that there was a lengthy procedure he had to follow to legally terminate the tenancy.

He gave his view on the key events highlighted by the Police and felt that the condition attached to the licence that alcohol could only be served with food was a draconian measure, no other restaurant in town had this condition.

He detailed each event and gave his view of what happened. He spoke of his wife's ill health and that this was his main focus. He had left the running of the business to two other employees. He also felt that he had not had enough support from the Police. He also stated that he had tried to make the restaurant a safe haven for children and the incident that happened involving a 13 year old he knew nothing about. He felt that he had tried his best and had put signs up asking people to leave quietly and although he had tried to instil conditions such as Challenge 25 with his employees this had not appeared to get through. He was at a point where he was putting the lease for the premise up for sale as he would not be running the restaurant again and would be focusing on his ill wife.

Following his representation Mr Flowers indicated that he was leaving the meeting. The Legal Advisor explained to Mr Flowers that the hearing was at the point where the Police, Members and Licensing Officer could ask questions. Mr Flowers still indicated that he would be leaving the hearing at this point. The Legal Advisor asked if there was anything further, he wished to put forward to the Committee and Mr Flowers indicated that he didn't want his licence, he felt that the conditions attached were draconian measures, he felt that the restaurant was finished and it (the restaurant) was too much trouble when his wife was in such poor health and to just take it (the licence). He left the meeting at 11:15.

(11:20 – 11:30 the meeting adjourned)

Following the adjournment, Members of the Committee were each given an intelligence pack by the Police which contained sensitive information in connection with the premises. These were collected back by the Police once Members had read the content. A question was asked about the intelligence grading contained within the sensitive information to which the Police responded.

The Committee were then shown CCTV and bodycam footage in respect of the events that were mentioned within the report so that they could see what actually took place in respect of the incidents referred to in the report.

The Licensing Officer then gave her closing statement. She reminded the Committee of the steps that should be considered for the promotion of the licensing objectives as outlined in the Licensing Act 2003 at section 167(6).

- 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.

The Police then gave their closing statement. It was clarified that a sexual assault had taken place. It was also stated that although letters had been sent that proceedings were not being progressed in respect of certain events outlined within the report this was due to lack of evidence to enable it to be taken further.

The Police stated that they had tried to support and advise Mr Flowers and they were fully aware of his personal situation, however, it was no excuse for the many failings taking place at the business. There were serious safeguarding issues which undermined the protection of children from harm licensing objective, serious failings in the promotion of the licensing objectives in respect of the prevention of crime and disorder, prevention of public nuisance and public safety.

Revised Guidance issued under Section 182 paragraph 11.23 stated that:

“where a premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, revoke the licence.”

(12:00 the Licensing Officers and the Police left the meeting)

Members of the Committee discussed the information before them having regard to the review application, the representations made by both parties, the relevant parts of the Council's Licensing Policy, the Licensing Act 2003 and the statutory guidance. Members expressed serious concern about how the premises was being run and the failings in the promotion of the licensing objectives. They felt that the Police had been thorough in the evidence that they had put before the Committee in respect of the many incidents, some more serious than others, that had transpired in the premises. Although a stepped approach was discussed, it was felt that due to the nature of the incidents and what appeared to be no

respect for the licensing legislation and the undermining of the licensing objectives and the many breaches to the licensing conditions that the Committee had no alternative but to revoke the premise licence for Terries (Mega Lulupo Ltd), 23 Westgate, Grantham. On being put to the vote it was unanimously **AGREED** to revoke the Premise Licence.

(12:15 the Licensing Officers and the Police returned to the meeting).

The Legal Advisor read out the Committee's decision. Having regard to the review application and the representations made, the Committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the licensing objectives.

Taking into consideration the papers, evidence and submissions received and answers to questions, the Committee deliberated the different options available to them and the decision reached was to revoke the premises licence.

In reaching its decision, the Committee gave due consideration to: -

- The promotion of the licensing objectives as set out in the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The Home Office Guidance issued under section 182 of the Licensing Act 2003.
- The Licensing Committee agenda pack for the application, (additional papers) camera footage from the Police and Sensitive intelligence pack from the Police and papers provided by the licence holder at the hearing.
- The oral representations made during the hearing.

In making its decision, the Committee considered, in particular, the following parts of the S182 Guidance:

- Section 2 of the guidance which makes reference to all four licensing objectives and details considerations to be taken into account in relation to these objectives. Licensing authorities should look to the police as the main source of advice on crime and disorder. Licence holders have a responsibility to ensure the safety of those using their premises, as part of their duties under the Licensing Act 2003.
- The committee have regard to those sections of the guidance referred to in the police representation.
- Section 11 of the guidance – *“The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.*
- *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.

- *Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*
 - *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
 - *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)¹⁰;*
 - *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
 - *suspend the licence for a period not exceeding three months;*
 - *revoke the licence.*

Section 11 of the Statutory S182 Guidance:

11.20 - 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 that the and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 - States that, for example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 - Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.24 - A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective

Section 11.25 states that in any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.

Section 11.26 states that it is the role of the Licensing Authority to take steps to promote the licensing objectives in the interests of the wider community and not those of the individual licence holder.

11.28 - It is envisaged that the licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

The Committee:

Considered the crime and disorder implications - (1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent,

(a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and

(b) the misuse of drugs, alcohol and other substances in its area, and

(c) re-offending in its area

*(2) This section applies to each of the following—
a local authority*

- Took account of the evidenced cases of repeated incidents at the premises.
- The Committee was satisfied that the management was ineffective, repeated breaches of licence conditions demonstrated licence holders lack of understanding and ability to run the premises that will promote the licensing objectives.
- Found the incidences taking place at the premises as wholly unacceptable and clearly undermines all four licensing objectives.
- Were satisfied on the evidence that there had been sustained and significant breaches of licensing conditions and fire safety issues and that this undermined all the licensing objectives.
- Took into consideration the fact that the premises licence holder and members of staff had not tested positive to drugs.
- Noted that the licence holder had personal family medical issues but this was no excuse for operating the premises other than in accordance with the licensing objectives.
- They also noted that the revocation of the premises licence would be likely to harm the business and its employees.
- The crime prevention objective is not retrospective; it is concerned with the avoidance of harm in the future.

- Put weight on the fact that despite several attempts and assistance by the Police Licensing Team to work with the premises licence holder, the license holder refused to accept police concerns.
- Put weight on the fact that despite several attempts and assistance by the Police Licensing Team to work with the Premises Licence Holder, the License Holder refused to accept Police concerns in respect of drugs on the premises.
- Considered all the options open to them and noted that whilst the Committee had to consider what appropriate steps to take in respect of a review, such steps taken must also be proportionate. It recognised that a request for revocation of a licence was a major and severe step that had to be treated seriously, and that they had to consider whether there were alternative measures such as imposing conditions or adopting another sanction using its powers available to it under section 52 (4) of the Licensing Act 2003.
- They noted that the premises licence holder had a history of failure to comply with licensing conditions. They felt that given the history of repeated failings at the premises (significant breaches of conditions, fire safety issues) the premises suffers from either a lack of regard or poor management control and had no faith in the premises license holder being able to sustainably uphold the licensing objectives in the future.
- Due to the gravity of the situation and taking into account the promotion of all the licensing objectives, believed that other sanctions including the imposition of further or amended conditions or a suspension of the licence would be ineffective in the promotion of the licensing objectives.
- Accordingly, it was determined that the premises licence should be revoked.

There was a right of appeal to the Magistrates Court which must be made within 21 days of receiving written notice of the decision.

44. Close of meeting

The meeting closed at 12:25pm.