

London Borough of Hammersmith and Fulham
Decision of the Licensing Sub-Committee ("Committee")
5 December 2018

Broadway Food and Wine, 51 Fulham Broadway, London SW6 1AE ("the Premises")

The Committee has considered an application for the review of a premises licence under the Licensing Act 2003 ("the Application").

The Committee has considered the committee papers and the submissions made by all of the parties, both orally and in writing. In reaching its decision the Committee has had regard and has taken into account the relevant legislation, the Secretary of State's Guidance ("Guidance") and the Authority's Statement of Licensing Policy ("SLP").

The Committee has decided, after taking into account all of the individual circumstances of this case, that it is appropriate for the promotion of the licensing objectives to revoke the premises licence.

Procedural Matters

1. The application to review the Premises Licence ("the Licence") was submitted by Mr Adrian Overton on behalf of the Council's Licensing Department on the grounds of the prevention of crime and disorder, public safety and the protection of children from harm. Mr Overton proposed revocation of the Licence.
2. PC Cardwell on behalf of the Metropolitan Police submitted a representation in support of the Application on the grounds of all four licensing objectives
3. Mr Love on behalf of the Trading Standards team supported the Application. Mr Love also proposed the imposition of eight conditions to the Licence and the deletion of two conditions if the Committee elected not to revoke the Licence. The details of the conditions are set out on pages 6 and 7 of the Report.
4. Further representations in support of the Application were received by the Barclay Road Residents Association, Ward Councillor Belinda Donovan, HRRRA Residents' Association and one local resident.
5. The Premises Licence Holder, Mr Suganthan Sinnathurai ("PLH"), was represented at the hearing by Mr Robert Jordan, a licensing agent.
6. PC Kris Cardwell and PS Tom Stewart attended the hearing on behalf of the Metropolitan Police.
7. Mr Doug Love attended the hearing on behalf of the Trading Standards team.
8. Councillor Donovan also attended the hearing on behalf of the local resident and the local residents association

Reasons

9. The Committee recognises that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. Representations must relate to the particular premises in question and must be relevant to the promotion of the licensing objectives. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority 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.

10. The Committee is entitled to and has taken into account local knowledge in reaching its decision.
11. In submitting the Application, it was Mr Overton's considered opinion that the prevention of crime and disorder, public safety and the protection of children from harm licensing objectives had been undermined by the operation of the Premises. Mr Overton set out in the Application and at the hearing details of the numerous breaches of conditions of the Licence which had taken place between September 2017 and September 2018. The Committee noted that the PLH had been advised in a PACE recorded interview about the breaches of condition. Prior to this warning letter, on 8 December 2017 and 1 December 2017 following inspections of the Premises where breaches of conditions were noted, a copy of the inspection sheet detailing the breaches of conditions was left at the Premises. After offences continued in 2018, the PLH received a second warning letter on 14 June 2018. Following this letter, further breaches of the Licence did occur with the most recent taking place in September 2018. Further issues in connection with the Premises involved the sale of alcohol to a minor and the possession of large quantities of wine where duty had not been paid. The full details of the breaches are set out in the Annex to the Application. The Committee noted that the PLH was the licence holder when the vast majority of the breaches of conditions and other issues set out in the Application had occurred.
12. The Police in their representation and at the hearing made clear that they were very concerned about the operation of the Premises which was failing to promote the four licensing objectives. The Police noted the location of the premises and that this was an area which suffered from anti-social behaviour. The Committee noted that the Premises is located in the Fulham Town Centre Area which has been identified as being adversely affected in terms of the licensing objectives because of the cumulative impact of the concentration of drink led premises. This area has a special policy relating to cumulative impact as provided by the Secretary of State in its guidance. The location of the Premises and its proximity to the Chelsea football stadium means that the Licence contains a "football related condition" which applies on match days when Chelsea Football Club are playing at home. The Police were concerned that the failure of the Premises to comply with this condition and others given the location of the Premises showed a disregard to the promotion of the licensing objectives
13. Mr Love in his evidence noted the history of non-compliance of conditions by the PLH and that nearly all of the events listed involved the PLH. The Committee noted from the evidence of Mr Love that the PLH had attended a recent training session offered to licence holders.
14. The Committee shared similar concerns to Councillor Donovan regarding the sale of alcohol to underage children as well as concerns about the non-duty paid alcohol .
15. The PLH via Mr Jordan advised that he was happy to accept the conditions proposed by the Trading Standards team. He also advised that all staff had now undertaken training on licensing related matters. Mr Jordan explained in respect of the PLH that it was the first premises that he had managed and that the issues were down to lack of experience. In relation to the employee who made the underage sale, he no longer works at the Premises. In relation to the warning letter, he did advise during the hearing that he had not received this however Mr Overton then advised that the PLH had received this.
16. Whilst the PLH had agreed to the imposition of conditions proposed by the Trading Standards team, the Committee was not satisfied on the basis of the very real evidence in front of it nor that the imposition of these conditions would help to promote the licensing objectives given that from the evidence available, conditions had been placed on the Licence that the PLH failed to comply with and that one of the main concerns which led to the review was the continuous breach of conditions.
17. The Committee considered that in the circumstances it would be appropriate and necessary to revoke the licence. In reaching this decision the Committee was mindful of all the statutory powers available to it, as well as paragraph 11.20 of the Guidance which states that:

“In deciding which 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 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 to address the causes of concern that instigated the review.”

18. In determining this matter the Committee was particularly mindful of the advice in the Guidance at paragraph 11.27 which lists particular criminal activity arising in connection with licensed premises “which should be treated particularly seriously” and includes the use of the Premises for “the sale or storage of smuggled tobacco and alcohol”
19. Paragraph 11.28 goes on to advise Licensing Authorities that where a review arises due to the prevention of crime and disorder objective being undermined for any of the reasons cited in paragraph 11.27 then “it is expected that revocation of the licence – even in the first instance – should be seriously considered.” Paragraph 11.26 of the Guidance highlights that the licensing authority is empowered to take any appropriate steps to remedy the problems that have triggered the review and places a duty on the authority to “take steps with a view to the promotion of the licensing objectives.
20. The Committee was mindful that it was not determining the “criminality” of the offences relied upon by the Licensing Authority to bring the review, nor was it seeking to establish the guilt or innocence of the PLH. Rather, its objective is to ensure the promotion of the the licensing objectives and it was incumbent on the Committee to take the appropriate steps to ensure that the licensing objectives are promoted. Furthermore, the Committee was also satisfied that it did not require an outcome of any criminal proceedings to determine whether the prevention of crime and disorder licensing objective had been undermined.
21. The Committee noted that the issue at the Premises did not simply involve the breach of conditions but included the sale of alcohol to minors as well as the possession of non-duty paid alcohol.
22. The Committee considered that the PLH’s proposals at the hearing were reactive and that the PLH had not demonstrated a proactive, professional manner to address the issues to ensure the promotion of the licensing objectives. The Committee noted that both the Police and the Licensing Authority had sought to resolve the issues posed by the Premises without the need to effect a review by engaging with the PLH over a period of time . Instead of assisting to resolve the issues, the approach of the Licensing Authority did not have the desired effect as the PLH has continued to breach licensing conditions. The Committee did not have confidence that the situation would improve or that the licensing objectives could be promoted with the current operator despite what the PLH said in the meeting. The Premises had ample opportunity to put into effect all of the items that it was now proposing to implement from the time that the breaches had started but had failed to do.
23. The Committee was concerned that the PLH appeared to have no real understanding or appreciation of the CIP and the impact of this on the operation of the Premises. On different occasions, the PLH noted that incidents had happened when he was not there which in the view of the Committee showed an unwillingness to take responsibility for events which occurred when he was responsible for management of the Premises.
24. Furthermore, in weighing up what steps the Committee could and should take in determining this application, it considered that the temporary suspension of the licence would not address the serious issues. The Committee noted that Mr Love had provided a list of conditions that *could* be added to the licence if it decided not to revoke the Licence and that the PLH had accepted the imposition of the conditions. However, in considering whether such a course of action would be appropriate in the circumstances, the Committee was mindful that it could only do so if it was satisfied that those conditions could be complied with and it was not. The Committee did consider whether or not it would be appropriate to vary the Designated Premises Supervisor but considered that many of the problems arose from the mismanagement of the Premises by the PLH and was not satisfied that a change to the

designated premises supervisor whilst still retaining the same licence holder would suffice to promote the licensing objectives.

25. In view of the reasons cited in this decision, it was the Committee's considered view that it is appropriate and proportionate to revoke the premises licence to ensure that the licensing objectives are not undermined.

26. If any of the parties are unhappy with the decision they are entitled to appeal to the magistrates' court within 21 days from the date of notification of this decision. This determination does not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

Licensing Sub-Committee
5 December 2018