

MINUTES OF LICENSING SUB-COMMITTEE

Thursday, 1 July 2021
(7:00 - 9:50 pm)

Present: Cllr Moin Quadri (Chair), Cllr Faraaz Shaukat (Deputy Chair) and Cllr Peter Chand

1. Declaration of Members' Interests

There were no declarations of interest.

2. Licensing Act 2003 - Premises Licence Review Application - Bardhi Pool Club, 70a Longbridge Road, Barking, IG11 8SF

The Council's Licensing Officer presented a report in respect of an application made by the Metropolitan Police for a review of the premises licence for the Bardhi Pool Club at 70a Longbridge Road, Barking, under the Licensing Objectives of 'the Prevention of Crime and Disorder', and 'Public Safety'. The application was supported by two 'responsible authorities'; namely, the Licensing Authority Responsible Authority Officer (LARO) and the Trading Standards Enforcement Officer (TSEO).

The Licensing Officer stated that the review application had been submitted as a consequence of a visit to the premises by the Police on 7 April 2021, which confirmed that Mr Lad Bardhaj, the Premises Licence Holder (PLH), and the Designated Premises Supervisor (DPS), had breached the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 by permitting approximately 19 people to gather inside an extended rear extension to the premises and consume alcohol, refreshments and shisha. When questioned by the Police, Mr Bardhaj stated that he was present at the premises only to do some jobs such as cleaning, and that during this time, people started turning up, asking to be served.

By way of background, the Licensing Officer further stated that:

- On 7 August 2019 an application for a variation of the premises licence to extend the licensed area of the premises to include a rear extension was received. This application went into consultation but was not determined;
- On 16 August 2019, an application for an expedited summary review of the premises licence was received from the Police, in response to the execution of a search warrant on 8 August 2019 under the Misuse of Drugs Act 1971;
- On 19 August 2019, the Council's Licensing Sub-Committee met to consider the expedited summary review and determined that the premises licence be suspended pending the full review;
- The full review hearing took place on 10 September 2019 and the Sub-Committee's decision was to revoke the premises licence;
- On 27 September 2019, an appeal was lodged at Barkingside Magistrates Court against the decision of the Sub Committee; and
- On 20 March 2020 the Justice of the Peace granted a Consent Order upon

agreement by all parties concerned that the licence was to be re-instated subject to new agreed conditions.

The Sub-Committee then heard the following submissions by the applicant's representative, arguing for the revocation of the licence:

- This was not a small gathering of friends or family, for example; rather, this breach of the Regulations meant that a large number of people (five whom had fled upon the Police's arrival) had gathered indoors, many of whom were consuming drinks and shisha and smoking, with no attempt to socially distance;
- As documented in the applicant's documents within the public agenda pack, Mr Bardhaj was well aware that permitting people to gather inside the premises would breach the Covid-19 regulations, as his son had stated to the Police that he had informed his father that he should not open the premises, but Mr Bardhaj went ahead anyway;
- The circumstances during the visit indicated that there was some attempt by Mr Bardhaj to cover up his activities, such as the premises' front shutters being down, and people entering the premises via the side entrance. Therefore, Mr Bardhaj's claim that he was there only to clean, and people happened to turn up, was implausible;
- The bar area was messy and the lights in the drinks refrigerator were switched on, which indicated that the premises were in full use and that attendees would be well provided for;
- Even if Mr Bardhaj's claim that the gathering of people within the premises was not planned, and that people 'twisted his arm' as they turned up for drinks, was true, it would highlight Mr Bardhaj's weak character, making him an unsuitable person to carry out the responsibilities of the DPS. An outrageous, wilful breach of the regulations, which risked the spread of Covid-19 amongst those who attended and their close contacts, had occurred, undermining the Licensing Objectives of the prevention of crime and disorder and public safety.

The applicant's representative referred to the representations made by the LARO and TSEO; however, the respondent's representative intervened to state that it was unlawful for the applicant to 'amplify' the evidence of the other responsible authorities. No specific authority which prohibited was cited, and the Police's representative confirmed that he was merely referring to the representations of the other responsible authorities contained within the public agenda pack, and that he was not 'amplifying' their comments.

The applicant's representative then explained that the Police Licensing Officer, PC Dunn, would play footage to the Sub-Committee, recorded by the cameras worn by the police officers who visited the premises on the day the Covid-19 breaches occurred. A further procedural point was raised by the respondent's representative in that he felt that the commentary should remain purely factual and descriptive of what was on screen and should not extend to opinion. The CCTV was played, and no objection was raised to the commentary.

The Sub-Committee then heard from both the LARO and TSEO, both whose submissions were set out in the public agenda pack.

An objection was raised by the respondent's representative to the comments made by the LARO, who, as part of his submissions, had stated that the previous licence was "handed back" to the license holder after the appeal against its revocation in 2019. The respondent's representative argued that as the decision to revoke the licence had been suspended pending the appeal and given that a Consent Order was entered into following the appeal, the license was never, as a matter of law, removed, and therefore not able to be "handed back".

The respondent's representative then put the respondent's case forward, making the following submissions:

- The footage of what occurred at the premises on 7 April 2021 had been shown to the Sub-Committee and the main facts were not in dispute; however, it was crucial that the matter was dealt with in the most proportionate way, as required by the law;
- The Police and responsible authorities' representations included emotive language intended to sway the Sub-Committee to revoke the licence;
- He was not attempting to 'play down' the incident; however, the statutory guidance around how review applications should be determined was clear in that the Sub-Committee should seek to establish the causes of concern, and its decision should be based on remedial action needed to address those concerns, and nothing more. Since the premises were now Covid secure, the causes of concern had been addressed, and revocation would be a disproportionate outcome;
- The TSEO omitted from his representation that they now deemed the premises to be Covid-19 secure;
- The fine for businesses such as the Bardi Pool club breaching Covid regulations was a Fixed Penalty Notice (FPN) of £1000, which Mr Bardhaj had accepted and paid. Had Parliament intended for the consequences of breaching the Regulations to be more than this, it would have legislated to this effect;
- The circumstances which led to this review application were nowhere as serious as the circumstances which led to the review application in 2019, which involved serious crime and disorder;
- Following the Covid-19 breach, due to the Direction in place from Trading Standards, the premises had to remain closed for a period when Covid restrictions had been lifted and would have allowed it to open, so it could be considered that Mr Bardhaj had already been 'punished';
- The suggestion by the applicant and responsible authorities that Mr Bardhaj was being secretive and covert on the day of the breach, was an exaggeration. He was at the premises for other purposes and had left the side gate open which allowed people to come in. Had he wished to be covert, he would have invited the guests into the main building and kept the back doors shut, effectively concealing everyone inside so that they were entirely out of sight;
- Those present when the Police arrived on 12 April 2021 were friends, members of the club and/or previous regular customers. Mr Bardhaj knew that he should not allow them to stay or offer drinks; however, people were pleased to see him, and he wanted to be friendly. He made an error of judgment and due to his personality and culture, offered those present, drinks and refreshments. It was not the case that he allowed the premises to be overrun, and as seen in the footage, he accepted responsibility for his

error;

- No money had been exchanged for the drinks and refreshments and except the Covid-19 breaches, no offence had occurred. The FNP had been paid and the Directive issued by Trading Standards had been complied with. There had been two further unannounced visits by Trading Standards to the premises, which did not give rise to any further concerns. Looking ahead, there was no suggestion that there would be any further Covid-19 breaches. This meant that the incident had been dealt with; and
- The previous decision to revoke the licence in 2019 never took effect as it was overturned at appeal and replaced with a Consent Order, stipulating new conditions to the licence.

The respondent's representative appraised the options available to the Sub-Committee, as follows:

- The Sub-Committee could revoke the licence, but this would be an entirely disproportionate outcome. Revocation was for the most extreme of cases, such as those involving serious crime and disorder, which this situation was nowhere near akin to;
- It could suspend the licence for three months, but this would not be remedial and was therefore not appropriate. A three-month suspension would mean that Mr Bardhaj would lose his livelihood for that period, and given that he had taken responsibility and paid the £1000 FPN, it was not a proportionate way of dealing with the matter;
- It could suspend the licence for a period less than three months, for example, from now up to 19 July 2021, when the Government was expected to lift the remaining Covid-19 restrictions, which would be more a proportionate outcome than a three-month suspension; and
- The Sub-Committee could issue a formal warning to Mr Bardhaj, which would be a proportionate outcome.

The Legal Advisor to the Sub-Committee suggested that the cause for concern in this case was not just the Covid breach itself, but that which led to the breach - Mr Bardhaj's weak character and lack of management ability. The respondent's representative responded that Mr Bardhaj had held the premises licence for 12 years and managed it well over this period, but that he made an error of judgement on the day in question and had learnt from his mistake.

In response to a question, the respondent's representative confirmed that:

- Removing Mr Bardhaj from the position of DPS was also an option open to the Sub-Committee; however, it would not be a proportionate way of dealing with the matter, as this was a small family run business, Mr Bardhaj was overall of good character, had taken responsibility for his actions and would not commit the breaches again;
- All the conditions imposed by the Consent Order following the appeal against the decision to revoke the licence in 2019 had been complied with; and
- He did not agree that the Covid breach occurred outside of the licenced part of the premises as there was case law to suggest that the area to rear of the property should be considered as being covered by the licence. In any case, he did not think this point was relevant, as no sale had occurred and

mere consumption of refreshments was not a licensable activity.

The Police's representative referred to PC Dunn's witness statement provided within the public agenda pack and asked why PC Dunn would state that Mr Bardhaj, on the day of the Police visit, had tried to pass the blame for the breach on to customers by describing them as 'demanding', demonstrating that he was not of strong enough character to be running the premises. He further asked what would happen the next time people turned up demanding something of Mr Bardhaj which he knew he should not comply with. The respondent's representative stated that Mr Bardhaj did not blame customers and the officer may have misunderstood him, and that his client had chosen to serve drinks that day to please the visitors and had taken responsibility for his actions.

The Sub-Committee retired to consider its decision in private at 9.22pm and reconvened the meeting at 9.43pm.

Decision

The Sub-Committee, **resolved** to remove Mr Bardhaj as the Designated Premises Supervisor from the licence for the following reasons:

- The cause of concern in this matter was the DPS himself in that the decisions he had taken demonstrated his weak approach to the management of the premises, which had put all those present on the day of the Covid-19 breaches at risk. Therefore, removing him as the DPS was a proportionate response to the review application, and was remedial in the sense that a new, more suitable DPS would need to be identified, ensuring that in future, the premises would be run in a way that would promote the four Licensing Objectives.