

SPECIAL LICENSING PANEL - RECORD OF PROCEEDINGS

1. **Date of hearing** - 27 March 2014
2. **Panel** - Councillor Brian Grocock (Chair)
- Councillor Mohammed Ibrahim
- Councillor Gul Khan
3. **Legal advisor** - Sarah Mills
4. **Note taker** - Mark Leavesley
5. **Application type** - Premises Licence review
6. **Applicant** - Mr M Turner (on behalf of Chief Constable, Nottinghamshire Police)
7. **Premises under Review and Premises Licence Holder (PLH)**

Mr Martin Lau *in respect of* Coco Lounge, 3 George Street, Hockley, NG1 3BH

8. Parties present

(1) For the applicant / Responsible Authority

- Nottinghamshire Police were represented by Malcolm Turner, Force Solicitor, who was accompanied by the persons below, all of whom were available for questioning by the Panel:
 - Inspector Ellis
 - Helen Guest, Snr Licensing Enforcement Officer
 - Sergeant Richard Shaw, Licensing Sergeant
 - Constable Nick Cobb, Licensing Officer
 - Constable Douglas
 - Constable Banton
 - David Browitt, Licensing Enforcement Officer

(2) For the PLH

- Mr Martin Lau was unrepresented. Mr Yat Sing Lee, Designated Premises Supervisor (DPS) was permitted to speak on behalf of PLH and was available for questioning by the Panel. He was also accompanied by the persons below, all of whom were available for questioning by the Panel:
 - Stuart Butler)
 - Scott Coupland) Elite Security (Door Supervisors)
 - Michael Karim)

- (3) Other persons making valid representations - Mr Joe Macbeth, local resident, for PLH
- Dr V G Wilson, local resident

Persons refused permission to speak and reason why - None

9. **Parties not present and reason why** - None

10. **Applications and decisions on ancillary issues eg requests for adjournments, determinations whether to proceed in absence, directions etc**

At the beginning of proceedings Mr Turner made an application on behalf of George Shorter, Principle EHO within the Food and Health and Safety Team at Nottingham City Council that the proceedings be held in private as the investigation of alleged offences under s15 of the Food Safety Act 1990 were ongoing and a public hearing may prejudice any subsequent criminal proceedings. The Panel considered the s9 statement made by George Shorter at page 255 of the Police bundle and determined that the matter would continue as a public meeting.

11. **Supplementary material taken into consideration other than that which was contained within the agenda**

The Panel took into consideration the content of bundles circulated by both the applicant and the PLH.

Police Bundle

Statements of:

- Inspector Ellis
- PC Cobb & Exhibits NC1 –NC56
- Inspector Scurr
- PCs Spencer, Douglas, Tinley, Cattell, Banton, Hardwick, Stables, Smith, Prebble, Stevens and Marshall
- Nathan McKintosh
- George Shorter
- David Browitt and Exhibits DPB1 - DPB13

Premises Licence Holder Bundle

Statements of:

- Martin Lau
- Sim Yat Sing Lee
- Jay Sansoyer
- Dominic Pavier
- Mark Marvin

Policy Documents:

- Drug Prevention Policy
- Door Policy
- Noise Prevention Policy
- Occupancy Policy
- Theft Policy
- Fire Safety Policy

Photographs of signs displayed around bar.

12. **Facts/Issues in dispute**

Whether it was appropriate to take any of the following steps in order to promote the prevention of crime and disorder, the prevention of public nuisance, public safety, or whether no action is necessary to promote the licensing objectives:

- modifying the conditions of the licence permanently or for a temporary period of up to 3 months;
- exclude a licensable activity from the scope of the licence permanently or for a period of up to 3 months;
- remove the designated premises supervisor;
- suspend the whole Premises Licence for a period of up to 3 months;
- revoke the licence in its entirety.

13. Decision

The Panel listened to all the evidence put before it and also took into account the contents of the application and all supporting documentation and submissions made in relation to it by both/the parties.

The Panel found that:

Dr Wilson outlined his representations regarding public nuisance to the Panel.

Thereafter, Mr Turner outlined the case for the applicant, the Panel was told that although the owners, Mr Lee and Mr Lau, took over the premises in December 2011, there were no particular problems until the stabbing inside the premises in December 2012, where the victim was seriously wounded (a GBH offence for which the offender recently received a prison sentence of five years). There was increasing concern following this incident that the premises were attracting organised crime groups and intelligence was received that gang members were using the premises as the management was weak. Summary review was considered but it wasn't considered proportionate, the premises voluntarily closed and the PLH received a written warning and applied for a variation to enable additional conditions to be applied to the licence. Breaches of these conditions were identified soon afterwards and there were continuing breaches of licensed conditions throughout 2013.

In May 2013 intelligence was received suggesting that the management was pouring cheap spirits into premium branded bottles, this was verified by Nottingham City Council's Food and Health and Safety Team in September 2013 when tests on the contents of Bacardi and Smirnoff Vodka revealed that the spirits were not genuine.

On 5 June 2013 following a visit regarding an assault at the premises, where the offenders were permitted to re-enter the premises after the assault, more breaches of the licence conditions were found, namely that the CCTV only had 24 days of footage available instead of the 31 days required and the incident was not recorded in the incident book. Following which the DPS was given a verbal warning.

On 13 July 2013 an assault was reported in the early hours and, on attending, the officers found a man unconscious on the ground outside, bleeding heavily from cuts to his head. Initial enquires revealed that the victim had been ejected by the door staff, however, this could not be verified by the CCTV as the PLH had deleted the CCTV footage and replaced the hard drives. On 3 October 2013 the PLH accepted a caution for wilfully obstructing a police constable in the execution of his duty in relation to the deletion of the CCTV footage.

Throughout August and September 2013 additional breaches regarding security were identified as the premises had no door supervisors on Wednesday evenings, customers were being permitted access without being subjected to the necessary level of search and the door security were not wearing high visibility jackets.

Mr Turner referred to the Police bundle and called Police Inspector Jeremy Ellis as a witness, his evidence was accepted by the Panel. He summarised the issues referred to in his statement and told the Panel that the mobile CCTV van was deployed outside the premises for 50% of time on Saturday nights. When questioned by the PLH he did state that the van had been deployed less frequently over the last 6 months.

Police Constable Cobb was called as a witness, both his written statement and oral evidence was accepted by the Panel. PC Cobb played the CCTV of a number of incidents that took place in the premises, namely the stabbing in December 2012, an assault that took place on the stairs by the toilets on 2 June 2013, the footage that was recoverable on 13 July 2013 when the PLH had removed the hard drives, an example of the door staff failing to carry out the required searches on 19 July 2013 and an incident in October when a large group of males were initially refused entry then subsequently allowed access.

Police Constable Douglas, Police Constable Banton and David Browitt were called as witnesses and their evidence was accepted by the Panel.

Both Mr Lau and Mr Lee (joint owner of the premises) addressed the Panel and responded to a number of the issues raised by the applicant. The Panel were told that prior to purchasing the premises in December 2011 they had no experience in running licensed premises and although they had invested a lot of money into the premises it wasn't profitable. They further stated that they had worked hard to improve the premises and overcome the hurdles they had encountered. The Panel were told that Joe MacBeth had been employed to strengthen the management team after the incident in December 2012. Mr MacBeth made representations to the Panel in support of the PLH and DPS and his evidence was considered credible and accepted by the Panel.

With regards the authenticity of the premium branded spirits, Mr Lau stated that staff previously married-up spirits (i.e. tipping the end of a bottle of spirit into a new bottle of the same brand spirit) but they didn't anymore and only stored the spirits behind the bar.

Mr Lau stated that he had taken full responsibility for the removal of the hard drives and deletion of the CCTV on 13 July 2013 but that there had been no malice involved as he was only trying to up-date the system to ensure that it retained 31 days footage and that it was a coincident that he chose the time of the incident to do it.

Both Mr Lee and Mr Lau stated that the premises had significantly improved and there had been fewer incidents since they employed a new door security Team. This was accepted by the applicant, although Mr Turner commented that there were concerns over whether this was sustainable in light of the history. Whilst both the PLH and DPS accepted some responsibility for the issues with the previous door security company and supervising them; they commented that as the door supervisors were SIA trained they should have been able to comply with the conditions without being constantly monitored by the management.

The Guidance (31 October 2012) at paragraph 11.24 states that the role of the Licensing Authority when determining a review is not to establish the guilt or innocence of an individual but to ensure that the crime prevention objective is promoted. The panel therefore focused on the management of the premises and the various breaches of conditions, which themselves amounted to criminal offences.

The Guidance stated, at paragraph 11.201, that when reviewing a licence, the Licensing Authority should seek to establish the causes of the concerns which the representations identify, and that any remedial action taken should be directed at the causes and be no more than an appropriate and proportionate response. Here the cause of concerns were:

1. Both the PLH and DPS (the management) displayed a lack of knowledge of the licensing trade and licensing objectives.
2. Despite the management being given a number of opportunities to rectify their practices following various supplementary conditions being added to the licence in the aftermath of a stabbing at the premises in December 2012 and subsequent written warnings, breaches of these conditions were identified soon after the licence variation and have been ongoing since. This lack of compliance demonstrates a disregard for the safety of both their customers and general public.
3. The following breaches of the licence conditions constituted criminal offences and were evidence of failure to uphold the licensing objectives:
 - Failure to retain CCTV images for a period of 31 consecutive days and have them available on request;
 - Failure to maintain an incident book and a bound book containing all requisite details of the door supervisors employed at the premises;
 - Failure to ensure that door staff wore yellow reflective jackets and carried out requisite searches for drugs and weapons on all people entering the premises;
 - Failure to ensure that a door supervisor was employed when the premises was open on Wednesday evenings.
4. The considerable number and seriousness of incidents reported and or observed by the Police was a significant consideration and the Panel was particularly concerned about the following incidents:
 - 2 June 2013 – Assault where man was hit with a bottle;
 - 5 June 2013 – Licensing Team visit following assault on 2 June 2013 shows male being assaulted on stairs, the two offenders pursue him out of the premises were then permitted to re-enter the premises;
 - 13 July 2013 – Assault and subsequent deletion of CCTV footage and removal of hard drives. Mr Lau accepted a caution for obstruction;
 - 28 August 2013 (Wednesday) – No door staff are on duty on as required by licence;
 - 2 October 2013 – Large group of males initially refused entry are subsequently allowed access by management.

The Guidance at paragraph 11.17 indicates that when considering any action which may be necessary on the review of a licence, Licensing Authorities should consider the use of warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted.

Here, however, the panel was satisfied that a warning was not an appropriate or proportionate response to the issues that had arisen at the premises nor to ensure the continued promotion of the licensing objectives given the high number of incidents and seriousness of the issues involved and a number of previous warnings had not been adhered to.

The panel bore in mind that the DPS was also the co-owner of the premises and therefore would still be involved in the management of the premises whether or not he was removed from the role as DPS. For this reason it was not considered that the removal of the Designated Premises Supervisor alone would be an appropriate solution.

Having considered that supplementary conditions had previously been added to the licence following a serious incident at the premises in December 2012, and the poor record of the Premises Licence Holder in complying with these and the conditions already on the licence, the Panel determined that the imposition of any further new conditions would not be an appropriate solution nor would it address the cause of the problems identified at the premises.

As the terms and conditions of the licence which had been breached related to all of the licensable activities authorised by the premises licence, it was not considered that suspension of one of more of the licensed activities would prove an appropriate response to the concerns raised in the review application.

The Panel considered that the cause of the concerns at the premises was the inadequate and inappropriate level of management by the Premises Licence Holder, suspension of the licence for a temporary period was considered inappropriate since the management of the premises would remain the same.

Paragraph 11.23 of the Guidance indicates that any detrimental financial impact that may result from a Licensing Authority's decision is appropriate and proportionate to the promotion of the licensing objectives. However, it goes on to state that where 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, to revoke the licence.

Whilst the Panel acknowledged that there had been improvements since (i) the new security company were engaged at the premises and (ii) the commencement of the review proceedings, it was mindful that this level of compliance was not sustainable, particularly since the premises was not a profitable enterprise. Furthermore; having considered the history and vast number of incidents referred to in the Police case and seriousness of these incidents, the overall standard of management and their lack of knowledge of the licensing trade and licensing objectives, together with their failure to adhere to the conditions of the licence and their lack of appreciation of the serious consequences of those breaches, the Panel held that it was appropriate and proportionate to revoke the premises licence in the interests of the wider community.

The licence was therefore revoked.

The action outlined above shall take effect in accordance with the provisions of section 52 (11) of the Licensing Act 2003.

Signed: Councillor Brian Grocock (Chair)

Dated: 27 March 2014