

NOTTINGHAM CITY COUNCIL

SPECIAL LICENSING PANEL

RECORD OF PROCEEDINGS

- 1. Meeting date** - 6 & 7 October 2014
- 2. Panel**
 - Councillor Brian Grocock (Chair)
 - Councillor David Smith
 - Councillor Mick Wildgust
- 3. Legal advisor & Note taker**
 - Ann Barrett
 - Mark Leavesley
- 4. Type of application** - Review under Section 53C of the Licensing Act 2003
- 5. Applicant** - Malcolm Turner on behalf of the Chief Officer of Nottinghamshire Police
- 6. Premises Licence Holder and premises under review**

Mr Gerard Dowling
Dowlings
532-534 Mansfield Road
Sherwood
Nottingham
NG5 2FR

7. Parties present

(1) For the Applicant

Michael Griffiths, Counsel, Nottinghamshire Police, accompanied by:

- Temporary Superintendent McFarlane (not present on 7 October);
- Temporary Sergeant 1799 Hardwick;
- Constable 2397 Stevens;
- Sergeant 3101 Shaw (not present on 7 October);
- Constable Stables (not present on 7 October);
- Helen Guest.

(2) For the License Holder

Mr John Kent, Solicitor, accompanied by:

- Gerard Dowling, Premises Licence Holder;
- Helen Dowling, Designated Premises Supervisor.

- 8. Persons present refused permission to speak and why** – None.
- 9. Parties not present and why** – None.

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

An application was made on behalf of Nottinghamshire Police that as there were various matters which were still under investigation and the Premises Licence Holder was on bail that the public should be excluded from the hearing in accordance with Regulation 14 of the Licensing Act 2003 (Hearings Regulations) 2005.

The Panel determined that for the reasons identified by the Police and as the case could not be presented without referring to matters and viewing evidence that were still under investigation that the public interest in excluding the public outweighed that of them remaining in the hearing.

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

1. 279 page bundle submitted on behalf of the police comprising:

- Copy application for expedited review and certificate;
- Notice of determination of interim steps dated 11 September 2014 and record of proceedings;
- Copy of Letter from Flint Bishop making representations against interim steps;
- Notice of determination of representations against interim steps and record of proceedings;
- Location map;
- Statement of Temporary Superintendent McFarlane dated 26 September 2014;
- Statement of PS Shaw dated 24 September 2014;
- Statement of PC Stevens dated 26 September 2014 and exhibits JRS2-66;
- Statement of Temporary Sergeant Hardwick dated 16 August 2014;
- Statement of Elizabeth Jane Bailey dated 22 September 2014 and exhibits EJB/1 and 2;
- Statement of Jane Wallace dated 19 August 2014;
- Statement of Rodney Abbey dated 27 September 2014;
- Statement of Trevor Oram dated 27 September 2014;
- Statement of Peter Bolger dated 15 September 2014;
- Statement of Lee Cattell (undated and unsigned).

2. CCTV compilations, footage and stills relating to various dates.

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 and/or Public Safety Licensing Objectives:

- modify 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 of the parties.

The Panel found that:

- Gerard Dowling had become the Premises Licence Holder in August 2013 after taking over from his sister Helen, who remained the DPS for the premises despite also being the Premises Licence Holder of another premises.
- During the course of the hearing it had been accepted that Helen Dowling had not been at the premises as often as she should have been nor had she provided the level of supervision and control at the premises that would be expected from a DPS. It had been conceded that it was no longer appropriate for her to remain as the DPS at these premises.
- Since Gerard Dowling had become the Premises Licence Holder in August 2013 there had been:
 - A failed test purchase;
 - Various complaints relating to noise emanating from the premises;
 - Several incidents of disorder.

However, more seriously there had been numerous breaches of licence terms and conditions, including:

- Failure to adhere to conditions of the licence requiring full details to be kept of door staff working at the premises;
- CCTV conditions (in particular regarding the length of time images were to be retained for);
- numerous breaches where the premises had carried on licensable activities well after the hours permitted by the licence and/or remained open after the hours stated on the licence.

In addition, the Panel had seen various pieces of CCTV footage which showed Gerard Dowling apparently taking and supplying what appeared to be drugs to various different people whilst on the premises. Mr Dowling had admitted this activity, albeit he maintained that the supply was to friends for recreational use, rather than general supply.

The Panel was satisfied that the premises licence holder had not only used the premises for the taking and supply of drugs but had intentionally operated the premises with blatant disregard to the conditions of his licence and the Licensing Objectives. Warnings and advice had previously been given but ignored and, on the balance of probabilities, the Panel believed that Gerard Dowling had failed to co-operate with the police and attempted to hide CCTV footage from them when the warrant had been executed and he had become under investigation.

The Guidance (June 2014) 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 Prevention of Crime and Disorder Objective is promoted. The Panel determined matters based on the balance of probabilities rather

than the criminal burden of proof and was satisfied that the premises licence holder had used the premises for the taking and supply of what appeared to be Class A drugs. In addition, the premises had been operated in clear disregard of both the Licensing Objectives and the general law. In the year or so since he had taken over the licence there had been a large number of breaches of its terms and conditions which themselves potentially amounted to criminal offences.

It had been submitted that Mr Dowling had been foolish, that his behaviour had been prompted by a breakdown in a relationship and that he should now be given a second chance rather than lose his licence. However, the Panel could not overlook the seriousness of the matters put before them. Whilst the Guidance indicates that any detrimental financial impact that may result from a Licensing Authority's decision should be appropriate and proportionate to the promotion of the licensing objectives, paragraphs 11.22 -23 of the guidance indicate 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.'

Paragraphs 11.27 and 11.28 of the Guidance indicate that where premises are being used for the supply of drugs then revocation may be appropriate, even in the first instance.

The Panel was satisfied that there had been numerous blatant criminal offences and breaches of the licence taking place at the premises on multiple dates with no regard to the Prevention of Crime and Disorder Licensing Objective.

The Panel was under a duty to take steps with a view to the promotion of the Licensing Objectives in the interests of the wider community and not those of the individual licence holder. Here the breaches were so numerous, serious and blatant that only revocation would be appropriate.

The licence was therefore revoked.

The decision above shall take effect in accordance with the provisions of Section 53C (11) of the Licensing Act 2003.

Signed: Councillor Brian Grocock (Chair)

Dated: 7 October 2014