



MINUTES OF THE MEETING OF THE LICENSING SUB COMMITTEE C

Live stream: <https://youtu.be/NT1nRh0QKr8>

THURSDAY, 9 DECEMBER 2021

Councillors Present: Cllr Emma Plouviez (Chair)
Cllr M Can Ozsen and Cllr Penny Wrout

Officers in Attendance: Robert Gardner - Enforcement & Business
Regulation Manager
Rabiya Khatun - Governance Services Officer
Amanda Nauth - Licensing and Corporate Lawyer
Suba Sriramana - Acting Principal Licensing Officer
David Tuitt - Business Regulation Team Leader

Also in Attendance: Ye Olde Axe, 69 Hackney Road, E2 8ET
David Forbes - Premises licence holder's
representative
Thomas Melody- Premises licence holder

1. Election of Chair

1.1 Councillor Plouviez was duly elected to chair the meeting.

2. Apologies for Absence

2.1 Apologies for absence were received from Cllr Peters.

3. Declarations of Interest

3.1 There were no declarations of interest.

4. Minutes of the Previous Meeting

4.1 The minutes of the previous meetings held on 3 August 2021 and 14 September 2021 were agreed as a correct record.

5. Licensing Sub Committee Hearing Procedure

5.1 The hearing procedure as set out in the agenda pack was explained to all participants.

6. Review of premises licence: Ye Olde Axe, 69 Hackney Road, E2 8ET

- 6.1 Subangini Sriramana, Acting Principal Licensing Officer introduced the report in respect of an application for a review of the premises licence Ye Olde Axe on the ground of the prevention of crime and disorder following numerous breaches of requirements under The Health Protection (Coronavirus) Regulations 2020 and continued unlicensed operation as a Sexual Entertainment Venue (SEV).
- 6.2 The Sub Committee noted the additional information from the premises licence holder, which had not been included in the agenda pack.
- 6.3 Robert Gardner, Enforcement & Business Regulation Manager, on behalf of the Licensing Authority, made submissions speaking in support of the summary licence review under the grounds the licensing objective of the prevention of crime and disorder, highlighting the following:
- During the pandemic officers had visited a large number of licensed premises in the borough and although some were non-compliant this premises was one of the worse premises with no controls in place or observing any of the legal requirements of the Regulations at the time to prevent the spread of Covid and protect customers and staff;
 - The witness statements from officers visiting the premises on 4 July and 9 July 2021 within the agenda pack outlined the breaches of the Health Protection Regulations 2020. These included no posted QR codes for customers to scan, no records of customers contact details, no social distancing in the premises, no table service, patrons and staff not wearing face coverings, and patrons being served at the bar. The licensee was subsequently fined £1,000;
 - Officers had also witnessed during these visits the premises operating as a SEV without a current licence and customers being approached and customers appearing to approach women in the bar area, which were in breach of the social distancing within the Regulations;
 - The premises also lacked basic controls and supervision. Officers also observed during their two visits that there had been no residual evidence of any controls being put in place previously such as posters and staff enforcing social distancing;
 - The performances witnessed on the first floor on 4 and 9 July 2021 had been intimate and physical with no social distancing and in breach of the Regulations 2021. The nature of the performances without a table or dias and the intimate contact during the performances would have amounted to a breach of the SEV licence and standards expected including no physical contact. Moreover, as part of the Covid restrictions all premises offering sexual entertainment had been informed to cease these activities including during 9 July 2021;
 - The licensee was an experienced operator and should have been familiar with licensing legislation and Covid regulations relating to the entertainment industry which had been extensively publicised on the television and news;

- Bishop's Stortford was approximately 32 miles and approximately 55 minutes from the premises;
- The licensee had a conviction and fine for an offence under the Fire Safety Order in 2019 with respect to a public house he previously owned; and
- It was emphasised that the premises had not been better managed since the SEV licence had been granted in May 2019.

6.4 The Sub Committee requested clarity on the review application and the Licensing Authority's representative replied as follows:

- The licensee's temporary address of Bishop's Stortford was approximately 32 miles, which was not a long distance to commute to the premises; and
- It was confirmed that the police had not accompanied Licensing Officers during their visits to the premises on 4 and 9 July 2021 but had accompanied officers during a visit after 9 July 2021 for the voluntary closure of the premises following safety concerns.

6.5 David Forbes, the premises licence holder's representative, made submissions speaking in opposition to the summary review of the licence, highlighting the following:

- This application was made on two grounds, which was a breach of the Health Protection (Coronavirus) Regulations 2020 and unlicensed operation as a Sex Entertainment Venue. It was argued that the SEV was not relevant to the hearing as the licensee had submitted a renewal application and had been awaiting a hearing date;
- The licensee accepted that the premises had been in non-compliance with the Health Protection Regulations with regard to the table service requirement on 4 and 9 July 2021. The licensee had relied upon his bar manager during his absence to inform staff to postpone the relaxation of the requirements from 21 June until 19 July but this had not been done. The licensee accepted that it was his responsibility and paid the fixed penalty of £1,000 imposed for the breach;
- It was argued that on 4 and 9 July 2021 the recording of customers details on entry and wearing face masks were desirable and not prohibited in the Regulations and these alone did not amount to a breach of the Regulations;
- He disputed that the premises had been operating as an unlicensed SEV. A licence had been granted in 2019 and a renewal application had been submitted in March 2020, which was due to be considered by the Licensing Sub Committee at a forthcoming meeting;
- He stated that the private dance performances might have breached the SEV licence and argued that the licence granted in 2019 remained in force on 4 and 9 July 2021 and continued in force by virtue of Paragraph 11 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, where a renewal application had been made prior to the expiry of the licence it would be deemed to remain in force

until its determination even though the expiry date had passed. Any breaches of the SEV licence would not necessarily amount to a breach of the Public Health Regulations 2020;

- The licensee had held a premises licence for 30 years and it would be wholly disproportionate to revoke the licence on the grounds of breaching the table service requirement when this had been adequately dealt with by the imposition of the fixed penalty; and
- The licensee normally resided at the premises but had temporarily moved to Bishop's Stortford to provide emergency care for his young grandson.

6.6 Following all submissions, the Chair led a discussion on the application, during which the following responses were made:

- The Licensing Authority's representative clarified they were seeking to revoke the premises licence only;
- The Licensing Authority's representative confirmed that all SEV licences had been suspended under the Covid regulations and any SEV operations during 4 and 9 July 2021 would have been in breach of the Regulations;
- The Business Regulation Team Leader clarified that the regulations being relied upon at this hearing were The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 and the government's four-step roadmap. There had been a delay in implementing step 4 from 21 June to 19 July. It was confirmed that during the visits to the premises on 4 and 9 July 2021 the premises had been in Step 3 of the roadmap and considered under 'restricted business' and therefore these Covid requirement failures were breaches;
- The Licensing Authority's representative stated that the Licensing Services had provided advice and guidance on the coronavirus regulations to all licence premises holders but had not been approached by the licensee for any advice;
- The Licensing Authority's representative clarified that officers had not visited the other three SEV premises in the borough but had visited many other licensed premises during the Service's routine visits;
- The premises licence holder's representative argued that no specific regulations had been breached and revocation was a disproportionate response to a sole breach of the table service requirement. The breaches of track and trace and face mask wearing were technical arguments;
- The licensee's representative confirmed that the fine related to the breach of table service; and
- The premises licence holder's representative emphasised that the licensee was entitled to a fair hearing based on legal requirements and the papers submitted at the meeting.

6.7 The premises licence holder's representative was asked if he wanted additional time to read the regulations but declined as he believed the other breaches presented at the meeting were not within the Regulations.

6.8 The Chair indicated that the Sub Committee would take a common sense approach to the interpretation of the Regulations at the time the incidents occurred and also noted that the premises as a restricted business was open when it was not permitted under the Regulations.

RESOLVED:

The decision

Review of the Premises Licence – Ye Olde Axe, 69 Hackney Road, London E2 8ET

The decision of 9th December 2021

The Licensing Sub-Committee, in considering this decision from the information presented to them within the report and at the hearing today and having regard to the promotion of the licensing objectives:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- The protection of children from harm,

that the premises licence for Ye Olde Axe, 69 Hackney Road, London E2 8ET be revoked.

The Reasons for the Decision:

The Licensing sub-committee felt after carefully considering the application from the Licensing Authority, considering representations from the Licensing Authority, and the representations from the Licensee's representative, and the supporting evidence decided that revocation of the licence was appropriate, and a necessary course of action, given the failures to comply with the Covid-19 regulations during the pandemic which is taken very seriously.

The sub-committee took into consideration the evidence from the Licensing Authority that due to there being breaches of the licence, no controls in place, and the serious breach of Covid regulations. Revocation of the licence was necessary given that the Covid regulations were well publicised, and had been in force for some time.

The sub-committee was satisfied that no other options would adequately address the breaches of the Covid regulations or the licensing objectives being undermined in the future.

The sub-committee considered the evidence relating to the site visits that led to the Review being called by the Licensing Authority. They took into consideration that the

management of premises allowed the following to occur, which undermined the Licensing objectives:

- i) During the pandemic Licensing officers had visited the premises on 4 July and 9 July 2021. This premises had no controls in place, and failed to observe any of the legal requirements of the Regulations at the time to prevent the spread of Covid and protect customers and staff;
- ii) The witness statements from the Licensing officers that visited the premises outlined the breaches of the Health Protection Regulations 2020. These included no posted QR codes for customers to scan, no records of customers contact details, no social distancing in the premises, no table service, patrons and staff not wearing face coverings, and patrons being served at the bar. The licensee was subsequently fined £1,000;
- iii) The premises also lacked basic controls and supervision. Officers also observed during their two visits that there had been no residual evidence of any controls being put in place previously such as posters and staff enforcing social distancing;
- iv) As part of the Covid restrictions all premises offering sexual entertainment had been required to cease these activities. The Covid regulations came into force on 29th March 2021. Under Schedule 3, Paragraph 9(1)(e) of The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021. The premises was required to cease offering sexual entertainment. This was a clear breach of the Covid regulations that were in force for some time, and prior to the visits made by the Licensing officers in July 2021;
- v) The licensee was an experienced operator and should have been familiar with licensing legislation and Covid regulations relating to the entertainment industry which had been extensively published nationwide on the television and news;

The sub-committee felt that the way the premises were operating in breach of the Covid-19 Regulations during the pandemic was completely unacceptable. There were very serious concerns about the ability of the licensee to uphold the Licensing objectives following these breaches. The sub-committee recognised that this was poor judgement on the part of the management of the premises in the absence of the licence holder who was away from the premises at the time the Licensing officers visited the premises. The premises lacked supervision and had no experienced staff running the premises.

The sub-committee, having heard the evidence from the licensee, the licensee's representative, and the Licensing Authority felt that there was no guarantee the public would be safe due to the failure to comply with the regulations. In addition the sub-committee took into account that there was no protection for the dancers, and there was no protection with masks observed at the premises. The dancers were put at greater risk due to Covid-19.

The sub-committee took into account that the licensee only felt that they were in breach of the Covid table service requirements. They did not take into consideration the other Covid Regulations that they were in breach of. It was clear that the licensee did not consider the impact on the staff and members of the public which, as an experienced licence holder, he should have considered. The sub-committee took these breaches very seriously.

The sub-committee when making their decision took into consideration the lack of confidence in the management. They were not confident, given the serious health and safety issues raised, that the current management in charge of the premises and the licensee are capable of upholding or promoting the licensing objectives and the failure to comply with the Covid-19 Regulations under The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021. The sub-committee considered that this was a serious risk to public health and safety and to members of staff at the premises.

7 Temporary Event Notice - Standing Item

7.1 There were no temporary event notices.

Duration of the meeting: 19.00- 19.58

Contact:

Rabiya Khatun

Governance Services Officer

rabiya.khatun@hackney.gov.uk

0208 356 6279