

**REPORT TO: LICENSING SUB-COMMITTEE 20 August 2021**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: DEREK STONE**

**Licensing Act 2003 - Summary Review Application - Duke of Devonshire, 119 Albert Road, Southsea, PO5 2SQ**

## **1. PURPOSE OF REPORT**

The purpose of this report is for the committee to consider and determine a summary review application made pursuant to sections 53A - 53D<sup>1</sup> of the Licensing Act 2003 ("the Act") by the Chief officer of Police, Hampshire Constabulary and in respect of the following premises:

**Duke of Devonshire, 119 Albert Road, Southsea, PO5 2SQ.**

The holder of the premises licence is recorded as Mr Serkan Yaman.

## **2. THE SUMMARY REVIEW APPLICATION**

The certificate, review application and grounds for the summary review are attached as **Appendix A** and has been submitted by the Chief officer of Police on the grounds that the premises are associated with serious crime or serious disorder or both.<sup>2</sup>

This followed two reported incidents to the police over the weekend of 30<sup>th</sup> and 31<sup>st</sup> July 2021. One was the report of a 17 year female drinking alcohol in the premises purchased for her by a friend/relative. It was further reported that she was indecently assaulted and forced to take what appears to be drugs. CCTV in the premises shows that the female does appear to take an illegal substance on two separate occasions having had it passed to her by the male alleged to have assaulted her. This reported incident is subject to an ongoing police investigation.

The second incident involved a female being indecently assaulted resulting in a number of males fighting and being assaulted. CCTV in the premises shows that the fight started as a result of one male viciously head butting another with full force in the face and then punching and later kicking others. This reported incident is also subject to an ongoing police investigation.

The Police are of the opinion that other procedures under the act are inappropriate having regard to the seriousness of the crime and/or disorder and/or the past history of compliance in relation the premises concerned.

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<sup>1</sup> *Violent Crime Reduction Act 2006, section 2. These provisions came into effect on 1 October 2007 and allow a quick process for attaching interim conditions to a licence and a subsequent "fast track licence review" when the police consider that the premises concerned is associated with serious crime or serious disorder (or both). The purpose of the powers is to complement existing procedures in the Licensing Act 2003 for tackling crime and disorder associated with licensed premises. Police and Crime Act 2017 also refers.*

<sup>2</sup> *RIPA 2000, section 81(2). "Serious Crime" is conduct that constitutes an offence for which a person who is 21 or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more.*

### 3. BACKGROUND INFORMATION

The Premises Licence holder and Designated Premises Supervisor is Serkan Yamen who resides on the premises with his wife and two young children. Mr Yamen has run these premises since November 2018 on a 5 year tenancy agreement leased through EI Group.

A copy of the current premises licence is attached as **Appendix B** which is an old premises licence with limited conditions. On this licence you will note that there are no conditions regarding CCTV, Challenge 25, Staff training or SIA door staff.

When Mr Yamen arrived at the premises he installed 16 CCTV cameras and made use of one SIA door person on a Friday and Saturday night.

In accordance with the act and prescribed regulations, public notice of the summary review application was given at the premises, the Civic Offices and a notice of the review application was also posted on the council website.

The summary review application was also served on the responsible authorities.

### 4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

Following public notice further representations have been received from:

Councillor Kirsty Mellor, and Gosschalks the agent acting on behalf of EI Group who are the freeholders of the premises. Councillor Mellor has based her representation on the initial police application, whilst police enquiries continue to establish all the facts. A number of support representations have been received from regular customers who visit the premises. These representations are attached as **Appendix C**.

### 5. POLICY AND STATUTORY CONSIDERATIONS

The summary review administrative procedures as contained in the act (as amended) are complimented by the Licensing Act 2003 (Summary review of premises licences) Regulations 2007. This allows for:

- The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
- The licensing authority to respond by taking interim steps quickly. The licensing authority must give consideration as to whether it is necessary for any interim steps to be taken pending the determination of the review hearing proper. This decision must be made within 48 hours from when the application is given. The decision to impose interim steps can only be made by members of the Licensing Committee. Officers are expressly excluded by the Act from being given delegated authority to make such decisions.

The steps that must be considered are:

- **Modifying** the conditions of the premises licence;
- **Excluding** the sale of alcohol by retail from the scope of the licence;

- **Removing** the designated premises supervisor from the licence;
- **Suspending** the licence.

It is not necessary for the premises licence holder to be present at any initial interim steps hearing (or indeed to submit representations) although your reporting staff will always try to alert interested parties to accord with the rules of natural justice.

If interim steps are imposed, then the decision will take effect immediately or as soon after that as the Committee direct. The licence holder will be given immediate verbal and subsequent written notification of any interim steps measures imposed.

For the purposes of this review application, **an interim steps hearing** was held on 4<sup>th</sup> August 2021 and the following decision(s) made: Immediate suspension of the Premises Licence

In cases where interim steps are imposed and the premises licence holder has not previously been given the opportunity to make representations, then they may make representations against the imposed interim steps. The licensing authority must hold another hearing within 48 hours from receiving representations from the premises licence holder.

A further hearing to consider the licence holder's representations against the previously imposed interim steps was held on **5 August 2021** and the following decision(s) made:

The sub-committee considered all available options and concluded that the appropriate action in this matter was to retain the interim step of suspension of the licence until Monday 09<sup>th</sup> August 2021 at 11 am and modify the conditions of the current premises licence for the Duke of Devonshire as set out in the document provided by Mr Wallsgrove attached at **Appendix D**.

Upon the police and licensing authority being satisfied that all these new conditions are in place, the interim step of suspension of the licence shall be removed.

**Officer note:** Joint visit by Police and Licensing undertaken on Monday 9<sup>th</sup> August 2021 and premises fully compliant with these new conditions.

There is no right of appeal to the Magistrates' against the licensing authority's decision at this stage. Equally, the licence holder is prevented from making further representations pending consideration of the review proper, unless there has been a material change in circumstances.

After the consideration of any interim steps, the Licensing Authority must review the premises licence at a subsequent meeting and reach a decision within 28 days of the review application being received. The meeting cannot be adjourned or put back as is the case with other prescribed hearings under the act.

At the review hearing it is recommended that the committee adopt a "staged" approach and:

- Consider the application for the review and any relevant representations;
- Consider and take such steps (if any) as considered appropriate for the promotion of the licensing objectives; and

- Consider whether any of the interim steps (if previously imposed) shall cease to have effect or should remain in situ.

The committee can take the following steps:

1. **The modification** of the conditions of the premises licence;<sup>3</sup>
2. **The exclusion** of a licensable activity from the scope of the licence;
3. **The removal** of the designated premises supervisor from the licence;
4. **The suspension** of the licence for a period not exceeding three months;  
or
5. **The revocation** of the licence

Members should also be aware that the Act provides that where a decision is reached either to modify the conditions of a premises licence or to exclude a licensable activity from the scope of the licence, the committee **may provide** that such modification or exclusion is to have effect only for a specified period not exceeding three months.

When determining the summary review application, the committee must have regard to:

- Promotion of the licensing objectives which are;
  - Prevention of crime and disorder
  - Public safety
  - Prevention of public nuisance
  - Protection of children from harm
- The Licensing Act 2003;
- The adopted Statement of Licensing Policy;
- Judgments of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance issued by the Home Secretary in accordance with section 182 of the Act;
- The representations, including supporting information, presented by all the parties; and
- The human rights of all the parties concerned to ensure both a fair and balanced hearing and to consider any public sector equality duty requiring public bodies to have due regard to the need to:
- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share protected characteristic and people who do not share it; and

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<sup>3</sup> *Subject to the imposition of any relevant mandatory conditions as required by section 19 - 21 of the act*

- Foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are as follows:
- I) age, ii) disability, iii) gender reassignment, iv) pregnancy and maternity v) race
  - this includes ethnic or national origins, colour or nationality, vi) religion or belief
  - this includes lack of belief, vii) sex and viii) sexual orientation.

The amended Statutory Guidance<sup>4</sup> now gives advice in relation to the consideration of summary review applications generally although this is more concentrated on both the administrative and timescale periods to deal with this fast track procedure.

However, the following **general provisions** about the review procedure may assist members:

**Paragraph 11.1** - *"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."*

**Paragraph 11.16** - *"The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives."*

In reaching a decision upon a review application, the guidance offers *general assistance* to the licensing authority as follows:

**Paragraph 11.17** - *"The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder."*

**Paragraph 11.18** - *"However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."*

In cases where the Licensing Authority considers that action under its statutory powers are appropriate:

**Paragraph 11.19** - *"Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*

- *modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by*

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<sup>4</sup> Statutory Guidance issued by the Home Office

*requiring door supervisors at particular times;*

- *exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- *remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- *suspend the licence for a period not exceeding three months;*
- *revoke the licence."*

**Paragraph 11.20** - *"In deciding which of these 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.*

**Paragraph 11.21** - *"For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."*

**Paragraph 11.22** - *"Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."*

**Paragraph 11.23** - *"Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important 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 and for the prevention of illegal working in licensed premises. But 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."*

**Paragraph 11.24** - *"A number of reviews may arise in connection with crime that is*

*not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective."*

**Paragraph 11.25** - *"Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them."*

**Paragraph 11.26** - *"Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder."*

A copy of the Statement of Licensing Policy, current statutory guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

## **6. APPEALS**

An appeal may be made within 21 days of the licence holder being notified of the licensing authority's decision to a Magistrates' court. An appeal may be made by:

- The Chief Officer of Police;
- the holder of the premises licence; or
- any other person who made relevant representations in relation to the application.

The decision of the committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

***Any previously imposed interim steps having effect which are retained in the review decision proper will however remain in place, although the licence holder or Chief Officer of Police may appeal separately to the Magistrates' concerning the review of the interim steps and such appeal must be heard***

***within 28 days.***<sup>5</sup>

**7. APPENDICES**

- A.** Copy of the redacted summary review application together with any supporting documents
- B.** Copy of the current premises licence authorisation to include location plan
- C.** Copies of any other relevant representations received (only if applicable)
- D.** Proposed conditions submitted to remove suspension

**THE COMMITTEE IS REQUESTED TO DETERMINE THE SUMMARY REVIEW APPLICATION**



For Licensing Manager  
And on behalf of Head of Service

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<sup>5</sup> See *R (93 Feet East Ltd) -v- Tower Hamlets LBC 2013*, *Policing & Crime Act 2017* and as also advised by the *Statutory Guidance issued by the Home Office*