

REPORT TO: LICENSING SUB-COMMITTEE 29 August 2023

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: DEREK STONE

Licensing Act 2003 - Summary Review Application - Pitch & Vinyl, 2 London Road, Portsmouth, PO2 0LH

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 - 53D¹ of the Licensing Act 2003 ("the Act") by the Chief officer of Police, Hampshire Constabulary and in respect of the following premises:

Pitch & Vinyl, 2 London Road, Portsmouth, PO2 0LH. Formerly known as the Blue Anchor

The holder of the premises licence is recorded as Ms Nancy Sarah Maxwell.

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.²

This follows an altercation that took place in the premises where alcohol was a key factor which later resulted in a further fight outside the venue where a male sustained serious injury. As part of the police investigation into this assault and others that occurred outside, it became apparent that a condition on the premises licence regarding CCTV was not being complied with. There was general lack of control of the premises by management.

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.

¹ *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.*

² *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 at 2 London Road has held various names over the years and is more commonly referred to as the Blue Anchor. There is a history of assaults and incidents at these premises over the years, despite the premises over the last ten years being reduced considerably in size to cater / allow for a separate Pizza outlet franchise to trade.

The existing conditions on the premises licence, reflect the control measures that the police expected as a minimum in order to exercise some degree of control at the premises.

A copy of the current premises licence is attached as **Appendix B**.

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

No further representations have been submitted.

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 August 2023** and the following decision(s) made:

Licence Suspended pending review hearing plus removal of DPS

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

There is no right of appeal to the Magistrates' against the licensing authority's decision at this stage.

Officer note: At the time of the interim steps hearing, although the premises licence showed Enrico Lobina as the DPS, he had not worked at the venue for at least a year. On the 25th July 2023 a change of DPS was submitted and the new DPS for the venue became Paul Killen.

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. It also cannot be avoided by way of negotiation or withdrawal of representation.

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 place.

The committee can take the following steps:

1. **The modification** of the conditions of the premises licence;³
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 including the supplementary Summary Review Guidance document.
- 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
- The 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

³ *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 Guidance⁴ 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*

⁴ Statutory Guidance issued by the Home Office

condition), for example, by reducing the hours of opening or by 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."

Members are also referred to Part 5 (starting at page 8 of 15) of the Summary Review Guidance for commentary on determination of the review.

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.⁵

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)

THE COMMITTEE IS REQUESTED TO DETERMINE THE SUMMARY REVIEW APPLICATION

For Licensing Manager
And on behalf of Head of Service

⁵ 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*