

Minutes of: LICENSING HEARING PANEL

Date of Meeting: 24 August 2016

Present: Councillor N Bayley (in the Chair)
Councillors G Keeley and J Kelly

Also in attendance: Mrs H Brookes – Review Applicant
Ms H Deegan – Representor
Mrs Morgan – Representor
Mrs Radcliffe – Representor

Mr Kersh – Premises License Holder
Mr Gilmore – Barrister representing Mrs Warrender
Ms Vickers – Designated Premises Supervisor
Mr Platt – Alt House Manager
Mrs Warrender – Associate of License Holder

7 Representatives from Greater Manchester Police

Apologies for Absence:

1 DECLARATIONS OF INTEREST

There were no declarations of interest made at the meeting.

2 AN APPLICATION FROM AN INTERESTED PARTY FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 IN RESPECT OF ALT HOUSE, 1 - 3 MOSS LANE

Prior to the Hearing, the licensing authority received an application pursuant to section 51 of the Licensing Act 2003, from Mrs Hannah Brookes, a local resident, for a review of the Premises Licence in respect of Alt House, 1-3 Moss Lane, Whitefield, Manchester.

Prior to hearing the application, the Panel heard oral representations from Mr Gilmore, barrister representing Mrs Warrender an associate of Mr Kersch, the representative of license holder of Alt House, Alt House Limited. Although it was noted that Mrs Warrender was not a party to the proceedings before the Panel, all of those present confirmed they had no objection to the Panel hearing from her representative. These set out the basis of a request for the Licensing Hearings Panel to adjourn the hearing as the Premises Licence Holder and those involved in managing the licensed premises, were not sufficiently prepared to deal with the review, had no legal representation and had been unable to secure any despite approaching 2 firms of solicitors.

Mr Gilmore explained that the request to adjourn was not only in the interest of the Premises Licence Holder but also in the wider public interest. If the Hearing were to go ahead the outcome would likely be appealed which would then have a negative financial impact on all parties. All other parties were asked to comment upon the application. Mrs Brookes and the other members of the public present asked the Panel to note their objection to an adjournment as the matter had been

ongoing for over two months, they were ready and prepared and it was felt likely whatever the outcome, there may be an appeal. GMP through their representative Mr Stott, stated they were neutral on the matter.

The Panel adjourned to discuss the request.

The Panel received legal advice from the Council Solicitor as to the requirements of the relevant legislation and on their return reported that the request for an adjournment had been refused and the hearing would continue. The Panel was satisfied that the balance of public interest was in favour of proceeding as a number of people had attended and come prepared. Mr Kersch, the representative of license holder of Alt House, Alt House Limited was offered a small amount of time to consider his case, but this was refused.

The representative for GMP, Mr Stott, then addressed the Panel and stated that GMP wished to withdraw its representation to the application with immediate effect.

The Panel adjourned to discuss the request.

The Panel received legal advice from the Legal Officer as to the requirements of the relevant legislation and on their return reported that the request was noted, that the evidence submitted by GMP would be entirely disregarded by the Panel and the representatives from GMP were advised they could be released.

The application was outlined in the report presented to members of the Panel by the Deputy Licensing Officer.

The application for a review of the licence was received within the appropriate period and complied with the procedural requirements within the Licensing Act 2003.

All written representations were contained within the report to Panel.

All documentary evidence comprising the application, report provided with the agenda and representations were served on all parties in advance of the hearing.

The Panel heard oral representations from the Applicant (Mrs Brookes) who was invited to explain the reasons for her application. The Panel also heard from local residents; Mrs Ratcliffe, Ms Deegan and Ms Morgan who had made representations in advance of the hearing. Councillor Mallon also made representations on behalf of Mr R Andrew from Barash Pharmacy whose business shares outside space with Alt House.

The Applicant and other members of the public stated that they had all lived within the area of the Licensed Premises for a number of years and that since opening there had been a great deal of public nuisance emanating from the premises and its patrons. This included noise from music and voices (shouting, arguing and foul language) from inside and outside the premises, particularly late into the evening and beyond, including from the smoking area and car park. This can be heard in the homes of the Applicant and other residents causing them distress and affecting the use and enjoyment of their homes. There is excessive

litter from bottles and drugs paraphernalia (small silver gas canisters) around the premises, public footpath and the ginnel nearby, which is also being used as a toilet.

The Panel asked questions of the Applicant and the other members of the public who made oral representations and all parties and the other persons present, were offered the opportunity to ask questions.

The representative of the Premises License Holder Mr Kersch was invited to present the case for the Licence Holder, Alt House Limited. He stated that he had originally planned for the premises to be a community café bar but that as he had needed financial assistance, those becoming involved in running the premises wanted it to be run differently. Mr Kersch stated that he accepted there had been problems emanating from the premises that had affected residents and he apologies for that. He accepted the problems re noise and litter, but indicated he and those involved were trying to deal with the problems and move forward. He stated that sound proofing and noise limiting improvements were planned to take place and agreed that the effect on residents to date was unfair.

The Panel asked questions and the other members of the public who made oral representations and all parties and the other persons present, were offered the opportunity to ask questions.

All parties were allowed the opportunity to sum up their respective cases.

The Panel then duly retired to consider the application and all of the information provided.

The Members of the Panel were advised by the Legal Officer on the issues raised by both parties in relation to the relevant licensing objectors being crime and disorder as well as public nuisance, that a criminal conviction was not required to satisfy these objectives, that incidents outside the premises could be taken into account if connected with the premises and that the standard of proof for the Panel was on a balance of probability.

The Panel then duly retired to consider the application and all of the information provided.

The Members of the Panel were advised by the Legal Officer as to their duties under Section 4 of the Licensing Act 2003 to at all times consider the promotion of the Licensing Objectives, these being:

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to:

- a) the Council's published Statement of Licensing Policy

- b) the Guidance issued by the Secretary of State as contained in section 182 of the Licensing Act 2003, which was updated in March 2015

In addition Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives and the representations presented by all parties.

The Panel also had regard to the European Convention on Human Rights and in particular that everyone has the right to peaceful enjoyment of his possessions, respect for his private and family life, his home and his correspondence. A fair balance between competing interests must be considered.

FINDINGS

The following facts were found:

1. The Premises License Holder accepted that the noise and litter from the premises was affecting local residents.
2. The noise and litter emanating from the Licensed Premises was affecting a number of local residents and amounted to a public nuisance
3. The representative of the Premises Licence Holder apologised for the effect on local residents of the noise and stated he was in the process of installing sound proofing to remedy the issue of noise.
4. Before the premises had opened it had been advertised as being a cafe and community hub but this had never happened.
5. The representative of the Premises License Holder confirmed that he had, on occasion removed empty bottles from the car park and ginnel. He went on again to apologise to local residents for this.
6. The representative of the Premises License Holder confirmed that there had been times when patrons had opened the windows to the rear of the premises but there was now a doorman in place to ensure that if windows were opened they would be closed straight away.
7. The representative of the Premises License Holder confirmed that patrons had been allowed to gather in the smoking area but the Premises Licence Holder's staff were now stopping people from taking drinks into the area after 7.30pm.
8. A new DPS had been employed by the Premises License Holder and had been in post for a matter of weeks.
9. Residents had sent text and email messages to representatives and staff of the Premises Licence Holder complaining about the noise and litter. These were acknowledged and apologies made, but any improvements were limited and short lived.

DELEGATED DECISIONS

The Panel returned to the Hearing room to give its decision.

Having heard from Mrs Brookes the Applicant, other members of the public who had made representations, along with the representative of the Premises Licence Holder (and others involved in running the licensed premises), the Panel considered the merits of the case and in accordance with its duties and decided as follows.

All of the evidence was considered with care and it was established that having understood the request for review and equally understanding the representations made, on balance, the Panel found there were causes for concern so far as the promotion of the following licensing objectives were concerned;

- Public nuisance

The Panel were satisfied based on the evidence before it, that there were regular incidents of public nuisance relating to noise and litter. It noted that this was accepted by the Premises Licence Holder and that the evidence presented by the Applicant and other members of the public was largely accepted.

The Panel considered the merits of the case and in accordance with its duties and in light of the relevant policy and guidance unanimously resolved the following modifications to the premises licence and further that henceforth, the exemptions granted by virtue of the Live Music Act 2012 in relation to the provision of Live and Recorded music will no longer apply to this premises:

1. That all the timings shown on the current licence be reduced by one hour with the resultant timings as follows:

- a. The Supply of alcohol – For consumption on the premises:

Monday to Sunday	11.00 to 23.00hrs
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- b. The Provision of Regulated Entertainment comprising: Performance of a Play (Indoors), Exhibition of Films (Indoors), Live Music (Indoors), Recorded Music (Indoors) Performance of Dance (Indoors) Entertainment of a similar description to that falling within E, F and G (Indoors):

Monday to Sunday	11.00 to 23.00hrs
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- c. Provision of Late Night Refreshment

Monday to Sunday	23.00 to 23.30hrs
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- d. The opening hours of the premises:

Monday to Sunday	07.00 to 23.30hrs
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1. None of the outside areas to the premises to include the rear car park are to be used for licensable activities or for the consumption of alcohol after 19.30 hrs daily.
2. An effective noise limiting device approved in writing by the Council (which shall so far as possible be tamper-proof) shall be installed and operated in the premises and all noise levels shall be agreed and set to the written satisfaction of the Council. Whenever regulated entertainment is taking place, all amplified music (whether live or recorded) and associated sources (e.g. DJ's and amplified voices/amplified instruments) are to be connected to this noise limiting device.
3. That reasonable sound proofing measures be taken within the premises to the satisfaction of the council to prevent the playing of live/recorded music disturbing residents within the vicinity of the premises.

COUNCILLOR N BAYLEY
Chair

(Note: The meeting started at 1.45 pm and ended at 5.00pm)