

DECISION NOTICE

Bury Council

Licensing Sub-Committee

Summary review of Premises licence at Metro Off Licence, 66 Spring Lane, Radcliffe, M26 2SZ pursuant to Section 53A Licensing Act 2003

26th March 2024

In reaching its decision, the Licensing Sub-Committee ("LSC") considered:

- Certificate under Section 53A (1) (B) of the Licensing Act 2003 issued by Chief Superintendent Hill of the Greater Manchester Police Service 22nd March 2024
- Form for Applying for a Summary Licence Review submitted by P.C. 15913 Eccleston of the 22nd March 2024
- The Council's Statement of Licensing Policy
- The Licensing Act 2003 and the Regulations made thereunder,
- Section 53A Licensing Act 2003 Home Office Summary Review Guidance
- Guidance issued by the Secretary of State under S.182 of that Act
- Human Rights Act 1988.

Having considered all written representations, evidence, and oral submissions, the LSC resolved to suspend the licence and remove the Designated Premises Supervisor.

Basis of Decision

The LSC considered the Certificate under Section 53A (1)(b) Licensing Act 2003 from Chief Superintendent Hill of the Greater Manchester Police Service. This was emailed to Bury Council on March 25th 2024 at 10.02 am.

Chief Superintendent Hill's certificate pleaded that pursuant to Section 53A (1)(b) Licensing Act 2003, in his opinion the premises were associated with serious crime and serious disorder.

The facts of the test purchase of cigarettes at the premises on 29th February 2024 and when officers attended the premises on 21 March 2024 are clearly outlined in Chief Superintendent Hill's certificate and P.C. 15913 Eccleston's application.

The LSC considered that the presence of the machete and hockey stick under the counter at the premises and the account provided by Mohammed Quasim Khan.

Mohammed Quasim Khan presented himself as the owner of the business.

The LSC considered that the explanation given by Mohammed Quasim Khan to P.C. 15913 Eccleston regarding the machete materially lacked credibility.

P.C. 15913 Eccleston confirmed that GMP had no record of the report made regarding the incident referred to of an attempted robbery. The LSC considered the account of the C.C.T.V. which was not able to be produced and which was said to have captured the individuals responsible but not them entering with the machete or being confronted and having the machete taken from them added further lack of credibility.

The LSC considered that the circumstances surrounding the machete inferred that it was for use in self-defence by staff in the shop and that this was without lawful authority or reasonable excuse.

The LSC considered the facts surrounding the hockey stick. It was considered that although a hockey stick was less likely to be inferred as a machete, the lack of account given for the hockey stick and its proximity to the machete, the hockey stick could also be inferred as being an article for self-defence by staff in the shop and that this was without lawful authority or reasonable excuse.

Having determined that both articles met the criteria for offensive weapons pursuant to the prevention of Crimes Act 1953, the LSC considered the criteria for Serious crime. Section 53A Licensing Act 2003 Home Office Summary Review Guidance at Paragraph 2.3 states the key definition used to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) (a) and (b) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:

(a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; and (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

The Prevention of crimes Act 1953 maximum penalty for carrying of offensive weapons without lawful authority or reasonable excuse is a term of imprisonment for a term not exceeding four years.

The LSC considered that the machete and hockey stick were found under the counter which would not be in the part of the public area of the premises and that there was not therefore an offence committed for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more.

The offence disclosed regarding the machete and hockey stick was one pursuant to Section 141(1A) Criminal Justice Act 1988. This is possession of a weapon in private. This carries on summary conviction, as maximum penalty of imprisonment for a term not exceeding 51 weeks.

The LSC considered that the summary review was whether there was an association with an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more.

The LSC considered that the presence of the machete and hockey stick in these circumstances were an act commensurate with possession of offensive weapons pursuant to the Prevention of Crimes Act 1953.

The LSC considered Section 53A Licensing Act 2003 Home Office Summary Review Guidance at 2.6. This states that in triggering the summary review process, the police will wish to take into account the fact that an intended use of the power is to tackle the use of dangerous weapons and the violence they fuel. For example, in appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53C, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe.

The LSC considered that the presence of the machete and hockey stick, dovetailed with the lack of credibility regarding the presence of the machete and no explanation regarding the hockey stick undermined the licensing objectives.

The LSC considered that the conduct of the DPS in this incident undermined the role and went so far as to materially impact on the furtherance of the type of conduct a DPS was required to prevent.

The LSC further considered that the lack of supervision by Mohammad Shafqat as the Premises Licence Holder and Designated Premises Supervisor was a material factor regarding the finding at the premises.

This re-enforced the LSC's opinion that an alternative measure which allowed the licence to continue would not be sufficient to deal with the maintaining of the licensing objectives being met.

The LSC agreed with Chief Superintendent Hill's review in so far as it related to the presence of the machete and hockey stick. The facts regarding the tobacco products and disposable vapes which contravened the Tobacco and Related Product Regulations 2016 were considered appropriate to determine at the review hearing within 28 days. The LSC were satisfied that Chief Superintendent Hill had had regard to 2.4 of Home Office Section 53A Licensing Act 2003 Summary Review Guidance in considering what added value will use of the expedited process bring and how would any interim steps that the licensing authority might take effectively address the problem.

The LSC determined that the following licensing objectives were not met:

- Prevention of crime and disorder
- Public safety
- Protection of children from harm.

Pursuant to section 53B (3) (d) Licensing Act 2003 the LSC determined to take the following interim steps:

- Suspension of the licence.
- Removal the Designated Premises Supervisor.

The LSC considered that the interim steps were required to effectively address the problem and that no alternative power would adequately address the situation and to protect the public and meet the licensing objectives.

The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would at some point be superseded by the full review which would have to be completed within 28 days of the application being received by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48-hour period, any non-working day can be disregarded.

Pursuant to Section 53C (2) Licensing Act 2003 Bury Council must hold a hearing to consider the application for the review and any relevant representations and take such steps as it considers appropriate for the promotion of the licensing objectives.

The review must take place within 28 days after the day of receipt by Bury Council of the Certificate pursuant to Section 53A (1)(b) Licensing Act 2003 from the Greater Manchester Police Service of March 25th 2024.

Minutes of: LICENSING HEARING SUB COMMITTEE

Date of Meeting: 26th March 2024, 1.00pm

Present: Councillor G. McGill (in the Chair)
Councillors G. Marsden and M. Walsh

M. Cunliffe (Democratic Services)
L. Jones (Licensing Unit)
C. Riley (Legal Services)
B. Thomson (Assistant Director- Operations Strategy)

Also in attendance: PC P. Eccleston (Greater Manchester Police)
I. Oldman (Press)

Public Attendance: The Hearing was held virtually and interested members of the public were provided with a link to access the hearing online via Microsoft Teams or could be telephoned into the meeting via audio only. No members of the public were in virtual attendance.

1 APOLOGIES FOR ABSENCE

Apologies were submitted by M Bridge, (Licensing Unit Manager) and Mr M Shafqat (premises Licence Holder & DPS)

2 DECLARATIONS OF INTEREST

There were no declarations of interest submitted.

3 MINUTES OF THE LAST MEETING(S)

The Minutes of the last Licensing Hearing Sub Committee meetings held at 10.00am on the 29th January 2024, 10.00am on the 2nd February 2024 and 1.00pm on the 18th March 2024 were attached to the agenda.

Resolved:- That the minutes of the Licensing Hearing Sub Committee held at 10.00am on the 29th January 2024, 10.00am on the 2nd February 2024 and 1.00pm on the 18th March 2024 be approved as a correct record.

AN APPLICATION FROM GREATER MANCHESTER POLICE FOR A SUMMARY REVIEW OF THE PREMISES LICENCE IN RESPECT OF METRO OFF LICENCE, 66 SPRING LANE, RADCLIFFE, M26 2SZ

The Licensing Authority received an application by the Chief Constable of Greater Manchester Police in respect of the licensed premises, Metro Off Licence, 66 Spring Lane, Radcliffe, M26 2SZ, for a Summary Review of the Premises Licence and for interim steps to be taken in advance of that review in accordance with Sections 53A to 53C of the Licensing Act. The reason for the application was because the police believe that the premises are associated with serious crime.

The nature of the application and consideration of options was detailed in the report which was presented to the Members of the Sub-Committee by the Deputy Licensing Unit Officer, Ms L. Jones.

The options available were:

- To modify the conditions of the licence
- To exclude the retail sale of alcohol from the licence
- To remove the Designated Premises Supervisor from the licence
- To suspend the licence.

Attention was drawn to background papers which included:

Current Premises Licence

Section 53A application, Certificate and supporting evidence

Bury Council's Licensing Policy

Guidance issued under Section 182 of the Licensing Act 2003

Licensing Act (Hearings) Regulations 2005

Clarity was also provided that the address of the premises was 66 Spring Lane and not 66 Stand Lane as detailed on page 32 of agenda pack within the background information section.

On the 22nd March 2024, Greater Manchester Police submitted an application to the Licensing Authority for a Summary Review in respect of Metro Off Licence, 66 Spring Lane, Radcliffe, M26 2SZ, because they believed that the premises was associated with Serious Crime. The Licensing Authority must consider whether interim steps are required pending a full summary review hearing.

Summary reviews can be undertaken when the police consider that the premises concerned are associated with serious crime or serious disorder (or both). The summary review process allows interim conditions to be quickly attached to a licence and a fast-track licence review.

A 10 working-day public consultation exercise will be undertaken in accordance with Licensing Act 2003 regulations; requiring the application to be advertised by the displaying of a blue notice at or on the premises and details of the application published on the Council's website.

Under section 53C of the Licensing Act 2003, the licensing authority must hold a

full review of the premises licence and determine the review within 28 days after the day of receipt of the application

Following the review under section 53C, the licensing authority must then review any interim steps in place and determine whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

The premises licence in respect of Metro Off Licence has been held by Mr Mohammad Shafqat since the 3rd October 2022. Mr Shafqat is also the Designated Premises Supervisor and has been since the 23rd December 2022.

The Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) and the Licensing Act (Hearings Regulations) is the relevant legislation.

Within 48 hours of receiving a summary review application, under s53B of the Licensing Act 2003 the licensing authority must consider whether it is necessary to take interim steps pending the review of the licence for the promotion of the licensing objectives.

The Local Authority is required to consider what interim steps should be imposed for the promotion of the licensing objectives and what the steps should be. Any such measures and the reasons for them must be immediately notified to the premises licence holder.

The Panel will make a decision in relation to interim steps on the day of the hearing and the parties will be verbally notified of that decision. That decision will have immediate effect unless otherwise provided for by the Panel. The parties will also receive written notification of that decision, together with the reasons for it, by letter from the Licensing Office as soon as reasonably practicable following the hearing.

The Chief Superintendent had issued a certificate under section 53A (1)(b) of the Licensing Act 2003 in which he stated the following:-
The premises are associated with serious crime.

Attached to the agenda packs at Appendix 1 was the Application by Greater Manchester Police for the Summary Review. Appendix 2 was the Certificate issued by the Chief Superintendent respectively.

The Premises Licence was attached to the agenda pack at Appendix 3 and showed the current licensable activities and conditions.

In determining whether or not to impose interim steps, pending the summary review of the premises licence which must be held within 28 days from the date of the application being received, members must consider the information presented in relation to serious crime and or serious disorder. If members decide to impose interim steps, the following options are available to the Licensing Authority:

- a. To modify the Conditions attached to the licence

- b. The exclusion of the sale of alcohol from the scope of the licence.
- c. The removal of the Designated Premises Supervisor from the licence.
- d. Suspension of the premises licence

For the purposes of option a, the conditions of a premises licence are modified if any of them are altered or omitted or any new condition is added.

The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

PC P. Eccleston from Greater Manchester Police provided a summary of the application for a review at the meeting, which was contained at Appendix 1 of the agenda pack.

He explained on Thursday the 29th February 2024, a test purchase was carried out at the above licensed premises which had been organised by Bury Council Trading Standards Department. A successful purchase was made of a pack of 20 Lambert and Butler cigarettes in none standardised packaging for £7 as such it did not comply with the Tobacco and Related Products Regulations 2016.

As a result of the test purchase, at 15:50 hours on Thursday 21st March 2024, Kelly Halligan (Bury Council Trading Standards Unit Manager), Laura Jones (Bury Council Deputy Licensing Officer), Lucy Sutton (Dog Handler from DC Detection Dogs), Immigration Officers and I, attended the above address as part of Greater Manchester Police's day of action, Operation Avro.

On entering the premises, we were greeted by a male member of staff who introduced himself as Adrees Masood. Mr Masood was behind the serving counter at the time and claimed that he was only helping out at the shop. Whilst looking around the store, the dog and handler, went behind the counter and x4

packets of 20 Lambert and Butler cigarettes which were in the same, none standardised packaging as the packet recovered during the test purchase were found. Also found under the counter was a large machete with a blade over 12 inches in length and a hockey stick. As the search continued, 49 disposable vapes which exceeded the maximum capacity and therefore contravened the Tobacco and Related Product Regulations 2016 were also recovered. The cigarettes and the disposable vapes were seized by Kelly Halligan who has provided her own statement and photographs of the machete and hockey stick at appendix A.

There is no legitimate reason as to why a machete or hockey stick would be kept on any licensed premises, other than to cause serious harm to someone in the event of a robbery or other similar theft related incident. Considering this premise is open to members of the public, it is illegal to have such items under Section 1 of the Prevention of Crime Act 1953 (possession of an offensive weapon). As such, I seized the items as exhibits PE/1 and PE/2 respectively and a picture of the items have been included in appendix B.

Although no other items were recovered as evidence, we did find copies of the lease agreement for the premises which named two other individuals which had signed the agreement. The third named person was Mr Masood however there was no signature next to his details. He was asked numerous questions in relation to his involvement in the business and he continued to claim that he had nothing to do with and had only been working in the store over the last couple of weeks as a shop assistant.

At the time, there was some confusion as to who the premises license holder and designated premises supervisor were as the business was had recently been bought and was under new management. As such further enquiries were made by Laura Jones from Bury Council Licensing Department who was able to make contact with the named PLH and DPS, Mr Shafqat later that day. He claimed that he sold the business on the 1st November 2023 to a Qasim (no further details provided) and as far as he was concerned, has had nothing more to do with the business since. This conversation was confirmed via email which has been included at appendix C.

Due to the email received from Mr Shafqat, I returned to the premises in company with Bury Council Licensing Enforcement Officer, Luke Solczak on the following day, Friday 22nd March 2024. We spoke to a different member of staff stood behind the counter who introduced himself as Bardh Patel. He insisted that we spoke to his 'boss' and so rang him on his mobile phone and both I and Luke were able to have a conversation via the loudspeaker facility. The male we spoke to introduced himself as the owner of the business and provided his personal details, introducing himself as Mohammed Quasim Khan. We explained that because of the email from Mr Shafqat, there was no DPS in place to authorise the sale of alcohol and therefore was in breach of the Licensing Act and as such was required to either remove the alcohol from the store or close the business until such time the premises license could be transfer and a new DPS be nominated. At the time the request was complied with, and he informed us both

that he would be in touch with the previous DPS, Mr Shafqat to see if he would reconsider.

I also took the opportunity to ask him questions in relation the machete which was found under the counter. He claimed that the machete had been taken off someone who attempted to rob the shop early in the previous week. He claimed that a report had been made to the police and police had attended to collect CCTV which had captured the individuals responsible but not them entering with the machete or being confronted and having the machete taken from them. What I do find extraordinary about Mr Khans account is the CCTV's ability to capture those responsible but not the machete or the confrontation as the machete is being removed from those that have entered. Furthermore, and what is even more suspicious, is the claim that police had been contacted and had been to the store to recover CCTV, yet the machete was never handed over the police and on checking police computer systems, there is no record of a report being made to Greater Manchester Police. In fact, the last reported incident to the police which involved the premises directly was on the 20th October 2023, which was in relation to a robbery.

Since the conversation with Mr Khan, a further email has been received by Bury Council Licensing Department from Mr Shafqat, asking to be reinstated as DPS at the premises. This email has been included at appendix D.

It is my opinion that an expedited review of the premises licence is necessary to allow the licence authority to impose interim steps not only for the safety of the staff but also members of the public. It is quite clear for all to see, that they are unable to run the business within the limits of the relevant laws and legislation. Having a lethal weapon on the premises plus offering for sale illicit tobacco products is not in any way promoting the licensing objectives and it is for those reasons that as a delegated licensing officer acting on behalf of the Chief Officer, I am requesting the panel to seriously consider the DPS be removed from the license and the premises license be suspended until such time a full review hearing can be heard due to the likelihood that the licensing objectives will continue to be undermined.

PC Eccleston highlighted Appendix A and B in the agenda pack which detailed photographs taken from within the premises of the weapons found and a statement from Trading Standards.

Members questioned PC Eccleston if the CCTV system was working and was there a refusal log. It was confirmed the CCTV was working and the till system had a button to record refusal sales.

The Chair sought clarity on how rare it would be for a crime reported to them not be recorded. GMP had searched their records and even checked with the Neighbourhood Crime Team, but no such incident had been recorded at the premises as alleged.

The Chair confirmed that the Premises Licence Holder and DPS Mr Shafqat was not present at the meeting and had submitted no representations.

The Sub-Committee then duly retired to consider the matter and all of the information provided.

The Members of the Sub-Committee were advised by the Legal Adviser 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 relevant provisions of national guidance and the Council's licensing policy statement.

In addition, Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives and the representations presented at the meeting.

DELEGATED DECISION

The Sub-Committee carefully considered the representations and evidence provided which demonstrated serious crime. It was therefore unanimously decided to **remove the Designated Premises Supervisor from the licence** and to **suspend the licence** in order to promote the licensing objectives.

The Sub-Committee was therefore satisfied that there was sufficient evidence to mean interim steps were necessary to remove the Designated Premises Supervisor from the licence and to suspend the licence under the licensing objectives recommended by GMP:-

The evidence presented at the meeting had demonstrated the following licensing objectives had not been met:-

- The prevention of crime and disorder
- Public safety
- The protection of children from harm

The reasons by the sub-committee, included:-

- 2 dangerous weapons found under the counter
- Accounts of an alleged incident provided by the Licence Holder in relation to the weapons being present were not believable.
- It was noted that other factors of concern could be dealt with and finalised at the full review hearing.

COUNCILLOR G. MCGILL
Chair

(Note: The meeting started at 1.00pm and ended at 1.48pm)