

LICENSING SUB COMMITTEE

2 February 2022

Present: Councillor G Saffery (Chair)
Councillors Devonish and Stanton

Also present: Ms Manuela Batista, Applicant
Ms Rita Barbosa, Applicant's Representative
Sergeant Luke Mitchell, Hertfordshire Constabulary
Ms Jo Tomkins, Hertfordshire Constabulary

Officers: Senior Solicitor
Senior Licensing Officer (AY)
Community Safety Co-ordinator
Democratic Services Manager
Senior Democratic Services Officer (JK)

10 **Committee membership/ election of a Chair**

The sub-committee was asked to elect a Chair for the hearing.

RESOLVED –

that Councillor G Saffery be elected Chair for this hearing.

11 **Disclosure of interests (if any)**

There were no disclosures of interest.

12 **Application for a new Premises - DKSR, 164 Whippendell Road, Watford WD18 7NB**

The Chair welcomed all parties to the hearing, introduced the members and officers present and explained the procedure to be followed.

The Senior Licensing Officer confirmed that all parties expected were present. Mr Panchal would be representing the applicant.

Application

The sub-committee received a report of the Senior Licensing Officer outlining an application for a new premises licence for DKSR, 164 Whippendell Road, Watford.

The Senior Licensing Officer introduced the report and explained that two representations had been received, one from the Police, a Responsible Authority and Liam Fitzgerald, the Community Safety Co-ordinator for Watford Borough Council, an Interested Party. The representations had been included as appendices to the report. The Police had indicated that they considered the application would undermine all four of the licensing objectives. The Community Safety Co-ordinator had considered the application to undermine the prevention of crime and disorder objective.

The Senior Licensing Officer advised that he had not been informed of any additional materials that needed to be circulated to the sub-committee and other parties.

The Senior Licensing Officer informed the sub-committee that the premises was not currently licensed. The history of the premises had been included in the report and was provided only as factual information for members. A number of potential conditions had been included in the report at paragraph 9.10, should the sub-committee be minded to grant the application.

He reminded the sub-committee that the members would need to consider the application and give reasons for that decision.

The Chair thanked the Senior Licensing Officer and invited questions from the sub-committee members.

In response to questions from the sub-committee the Senior Licensing Officer stated no further information had been received about the applicant receiving any training or information about the CCTV. He confirmed the applicant and their representative had received the agenda and also been made aware of the representations when they had been received. In addition the notice of the hearing had been issued on 17 January. He had not been contacted by the applicant or their representative since the agenda had been submitted.

There were no questions for the Senior Licensing Officer from the Senior Solicitor, the applicant, the applicant's representative or the Police.

Representations

The Chair invited Sergeant Luke Mitchell to present the representation on behalf of Hertfordshire Constabulary.

Sgt Mitchell informed the sub-committee that he had been the Police licensing officer for the last four years. The Police had been involved with the application premises since 2010. The history of the premises was set out in the report. He referred to some of the background. Following the licence being revoked there had been a reduction in anti-social behaviour in the area, which implied the licensed premises had been the cause of the problem. The premises had been given a further opportunity and again within 10 days of the licence being active, the premises licence conditions had been breached. The licence holder at the time, the applicant's daughter, surrendered the licence. In 2018 a meeting had taken place to discuss a new licence but no evidence had been provided to show how they would manage the premises. He referred to an incident in 2018 regarding stolen alcohol from another premises in the area. The applicant had allowed officers to inspect his premises. The applicant had been asked to provide the CCTV recording but this had never been provided.

Sgt Mitchell then referred to the new application. The applicant had constantly been given the opportunity to hold a premises licence but he did not seem to be able to abide by the conditions. He had met with the applicant and his daughter and they had asked to be given the licence in order to make a living. They had not explained how they would keep to the conditions.

Sgt Mitchell added that throughout the pandemic he had worked with local businesses to ensure they were able to get up and run and were viable. This particular case was a concern. If the applicant was granted a licence he did not want to be back at the council talking about the premises. The last two licences held for the premises had conditions but they had been breached within 10 days. This gave him little faith in the applicant and family abiding by the conditions.

The applicant's representative was invited to put questions to Sgt Mitchell. He referred to the incident in 2018 when the Police had inspected the premises. He asked if the Police had found any evidence to show that the applicant had sold alcohol without holding a licence. He also questioned whether the applicant was bound to have CCTV even though he did not have a premises licence.

Sgt Mitchell responded to the question explaining the situation at that time. He confirmed that the applicant had not been bound to have CCTV, however, it was in place and had been requested. The recording had never been supplied, even though this would have helped. He added that if someone was seeking a licence and wished to show they were an appropriate person; they

would support the Police in their enquiries. He acknowledged that the applicant had allowed officers to look behind the till area and had been co-operative. He had been unable to operate the CCTV and had suggested contacting his daughter. Officers did contact her and the CCTV footage was still not supplied.

Councillor Stanton acknowledged the information both parties had provided regarding the incident. He said the current application required members to consider the future.

In response to a further question from the applicant's representative about the current application and the applicant, Sgt Mitchell stated that he had not seen anything that would prove to him the applicant would do everything as set out within the application. He did not believe the applicant would keep to the conditions. He acknowledged he had a pre-judged view of the applicant. If the applicant was granted the licence it would provide him with an opportunity to prove he could manage the licence.

Sgt Mitchell commented that during the discussions in 2018 and since then, no information had been provided to show how the licensing objectives would be promoted and discuss a way forward. He had to consider the previous history of the premises. He had noted the suggested conditions in the operating schedule but had to consider the risk, which currently he could not accept. He rarely objected to applications. It was for the sub-committee to make the final decision.

In response to a question from the Senior Solicitor, Sgt Mitchell confirmed that no other information had been provided to support the application. He was willing to meet people to discuss an application. He needed to be reassured about applicants. He would have met the applicant to discuss the application, however he could not confirm if this would have meant he would not have objected to the application.

Following a question from Councillor Devonish about the meeting in 2018, Sgt Mitchell recalled it had been about the viability of the business. He had said they would need to show how they would meet the conditions. He felt the daughter had been very passionate about the business but did not fully understand the responsibility of holding a premises licence. There was nothing in the current application to nullify his concerns, but was happy to hear the submission.

The Chair invited Liam Fitzgerald, the council's Community Safety Co-ordinator to set out his representation.

The Community Safety Co-ordinator advised that he had submitted the representation as an Interested Party. Sgt Mitchell had covered many of his comments already. His role involved managing risk within the community. He had submitted the representation as he considered there would be a risk if the applicant was granted a premises licence and allowed to trade again. He needed to consider the impact on the community. He lacked faith in the applicant and his understanding of the role of a licence holder. There had been no communication from the applicant. The Community Safety Co-ordinator believed there would be a risk to the four licensing objectives if the premises licence was granted.

In response to questions from the applicant's representative, the Community Safety Co-ordinator advised that he was unable to identify the popularity of the shop as there was no record of footfall. His role related to the risks and threats to the community; unless there were community safety issues he would not be aware of a business. He had noted the comments that if the premises did not have a licence it would not thrive.

Councillor Devonish referred to levels of anti-social behaviour in the area. She asked if the officer had noticed a decrease in anti-social behaviour.

The Community Safety Co-ordinator advised this had not been in his submission, but he had been in this post or similar for 20 years. He was able to confirm that there had been a downturn in anti-social behaviour and street drinking at the bus stop in front of the premises. There was a correlation as residents of the Sanctuary were not able to visit the premises to buy alcohol. Once the licence at DKSR had ceased the anti-social behaviour stopped.

In response to a question from the Chair about the operating schedule, the officer commented that the premises had not had a licence for a few years. It was rare for him to make representations and on this occasion this was due to the concerns he had about the premises, which were based on its history.

The Community Safety Co-ordinator added that this particular location was not an area of focus related to alcohol. During the pandemic there had been some issues but not related to anti-social behaviour in close proximity to the business. There had been a definite downturn in incidents at the corner of Park Avenue, Durban Road East and by the bus stop outside the premises since the premises had lost their licence.

The Senior Licensing Officer referred to street drinkers and other licensed premises in the area.

The Community Safety Co-ordinator advised that he had not seen any reports that any issues had arisen in that area. He confirmed there were other licensed premises trading in the area. Following a question from the Chair, he commented that due to the location of Sanctuary he was concerned the issue could arise again.

The Senior Licensing Officer noted that the applicant's representative had made reference to certificates. Sgt Mitchell and the Community Safety Co-ordinator were happy for these to be shared with the meeting.

The Chair agreed to adjourn the meeting for a few minutes to allow everyone to see the information before they moved on to the next stage of the hearing.

Address by Applicant's representative

On reconvening the meeting, the Chair invited Mr Panchal to present the application on behalf of his client.

Mr Panchal informed the sub-committee that his client had held a personal licence since 2006. The family had two shops one in Watford and the other in Southall, which had been licensed for a long time. His company supported both premises and provided training. He had been involved with the business during the previous issues and when the licence had been surrendered. He said any references to breaches connected to the licence being surrendered should not be taken into account as no hearing had been held.

Mr Panchal referred members to the report and how the four licensing objectives would be promoted. He said that legislation stated that licences should be granted unless the application did not promote the objectives. There was no evidence before the sub-committee that showed the objectives would not be promoted. He explained the three documents that had been provided prior to the adjournment.

Mr Panchal advised members that his client's business was just surviving. If alcohol was not available to purchase customers would go to other shops. His client wanted to increase footfall for the business. His client maintained a diary of any incidents in his store since 2018. This had been done based on his company's advice to the client. He wanted to show that things had changed. During the pandemic his client had helped many in the community.

Mr Panchal outlined the steps that would be put in place to promote the four licensing objectives, including posters, CCTV signage. If the application were

to be granted the CCTV would be in working order. A training manual would be maintained and show that each member of staff had undergone training every three months. The document would be made available to Responsible Authorities if requested. A refusal book would also be introduced and made available to Responsible Authorities. He was happy for the suggested conditions within the report to be added to the premises licence. It was essential to talk about the future of the premises and that lessons had been learnt from the past.

There were no questions from Sgt Mitchell.

In response to a question from the Community Safety Co-ordinator, Mr Panchal confirmed that Mr Sundralingham's wife held the licence for the premises in Southall and Mr Sundralingham would hold the licence for the Watford store.

The Community Safety Co-ordinator then asked Mr Sundralingham to answer a question that was included in the personal licence course. The question related to the difference between low alcohol and no alcohol drinks, referencing the ABV percentages. Mr Sundralingham did not provide the answer.

Following the explanation of the applicant's representative regarding the procedures to be put in place, Councillor Devonish asked Sgt Mitchell and the Community Safety Co-ordinator if they were satisfied and had changed their views about the prospective premises licence.

Sgt Mitchell responded that the same procedures had been put forward for previous applications. He acknowledged the documents that had been circulated during the meeting. He felt it would be interesting to hear directly from the applicant. However, at the moment nothing would change how he approached this application.

The Community Safety Co-ordinator commented that he had put the question to the applicant as the applicant had undergone further training. In addition to the proof of training he would expect a prospective Designated Premises Supervisor to have an active understanding of licensing.

Councillor Devonish then asked the applicant about the differences between the shop in Southall and the one in Watford, particularly as the one in Southall appeared to operate successfully.

Mr Panchal explained that the shop in Southall was run by Mrs Sundralingham and she was possibly better at maintaining the four licensing objectives. In Watford they had tried their best. He asked Mr Sundralingham to

tell the sub-committee of the four licensing objectives and how he would ensure they were promoted.

Mr Sundralingham having spoken about the shop in Southall, said he would run the Watford shop properly. He would ensure there was good communication with the Police and council.

Mr Panchal advised that the applicant was nervous but he had personally asked him on previous occasions and he had provided the answers.

The Chair acknowledged attending a hearing could make people nervous. The Chair then referred to the statement included in the documents circulated and asked if the applicant had reported the person to the Police for theft from his store.

Mr Panchal responded that he understood that Mr Sundralingham had stopped the person from using his shop but had not reported him to the Police. He added that as part of the training Mr Sundralingham had been advised to report such incidents to the Police and not take the law into his own hands.

Mr Panchal informed members that his company was a multi-lingual organisation, four or five different languages. The company worked with the ethnic minority community to ensure compliance with the requirements of having a licence. It worked with the Police. It was a member of the Institute of Licensing and was a BIIAB training centre. The company had worked with Mr Sundralingham to reach the level needed to be able to apply for a licence. He had encouraged the family to speak with the Police. The company had worked with Mr Sundralingham four months ago. A Tamil trainer had supported him and ensured he had the relevant training.

The Senior Licensing Officer referred to the training period as there seemed to be a difference; in one instance it was said to be every three months and then every six months.

Mr Panchal explained that every six months the training would be carried out at the company's training centre. They would repeat the BIIAB level 1 training. The three months training for staff Mr Sundralingham had been advised to hold would be at the premises and usually given by the Designated Premises Supervisor. All training would be logged in the manual.

The Senior Licensing Officer then referred to the certificate provided and asked if Mr Panchal could provide details of the syllabus of Level 2, including the topics.

Mr Panchal informed the sub-committee that this level was for personal licence holders. Mr Sundralingham had his personal licence in 2006 and did not need to reapply for it. The course covered the four licensing objectives, how to apply for a personal licence and a premises licence, underage sales and how the challenge 25 scheme worked.

In response to a question from the Senior Licensing Officer about evidence to show the responsible running of the Southall premises, Mr Panchal advised that he worked very closely with the West London authorities and mentioned the Licensing Enforcement Officer, Bob Dear. He had spoken to the officer about the Southall shop and he had been happy and there were no problems. The company worked closely with the Senior Licensing Officer and the licensing team but had not worked with Sgt Mitchell as he was not aware of any issues in the area. A reference could be obtained from Bob Dear. It had not been considered relevant to bring any evidence about the Southall shop for this meeting.

Following a question from the Senior Solicitor about the evidence regarding the Southall premises, Mr Panchal advised that he did not have written evidence only verbal. He acknowledged there was nothing to support the verbal evidence.

The Senior Solicitor noted that Mr Panchal had made reference to all of the authorities he and his company worked with in respect of the Southall premises. She asked why they had not built the same relationship with Sgt Mitchell.

Mr Panchal responded, saying that when they came across problems with a premises they would work with the enforcement officers and responsible authorities if the client provided the company's details. When the Watford premises had lost its licence there needed to be a long journey of improvement. In 2014 and other occasions he had told the applicant there needed to be further improvement. It was now felt that the situation had improved. His company would continue to monitor the shop to ensure the four licensing objectives were met.

Mr Panchal stated that he was aware of the discussions that took place in 2018 between the Police and the applicant's daughter, but his company was not involved.

The Senior Licensing Officer advised that an application was submitted in 2018 but through a different agent. The application was withdrawn before a decision could be determined. He had not referred to it in the report due to the

withdrawal but wished to explain as references had been made during the meeting.

Mr Panchal advised he was aware of the application.

The Senior Solicitor asked if there was a reason a meeting had not been arranged with Sgt Mitchell to discuss the documents provided at the meeting in support of the application and try to convince them about this application.

Mr Panchal referred to the 2018 application when discussions had taken place between the applicant's daughter and the Police. The decision had been to submit the application with a different agent.

Councillor Stanton referred to the comments made during the meeting about the viability of the premises without a licence. He understood that Mr Panchal and his company were not providing a free service. He questioned whether the cost of the training every six months would be expensive. In addition, he asked about the training due to take place every three months and would Mr Sundralingham provide that training.

Mr Panchal explained that the training was not very expensive. It was £65 for the BIIAB level 1 course or £25 online and £120 for level 2 certificate. Pubs, off licences and clubs carried on their training.

Councillor Devonish asked if Mr Sundralingham would like to explain what he would do in practice in order to give the sub-committee some confidence and how it was different to previous applications.

Mr Panchal suggested that if the sub-committee were able to grant a licence for up to a year this would allow them to see that everything was being done properly at the premises, including training. The training manual could be conditioned. Since 2018 Mr Sundralingham had been asked to write down any incidents at the premises; this was ongoing. This provided him with the confidence in the applicant. However, it was not available for the meeting. The company would support the applicant, providing the posters for the premises and making sure the incident book was in place. It was important he complied with the licence and did not come back before the council.

The Senior Licensing Officer informed the sub-committee that it was not possible to grant a premises licence for a specific amount of time, which was confirmed by the Senior Solicitor.

In response to a question from the Senior Solicitor about the day to day running of the premises, Mr Panchal explained that Mr Sundralingham would

employ staff who held personal licences. He would be happy for a condition to state that on the premises licence.

Summary

The Chair invited all parties to provide a summary of their comments.

Sgt Mitchell stated that he had not been convinced by any of the evidence provided at the hearing. He noted the applicant was unable to recite the four licensing objectives, but acknowledged there could be a language barrier. Written evidence could have been obtained from the Licensing Enforcement Officer mentioned during the meeting, but this had not been provided. There was no factual evidence. He was very open in working with Designated Premises Supervisors and a very supportive mechanism was in place to work with premises.

The Community Safety Co-ordinator advised that nothing presented at the meeting had changed his view about the application. He did not feel the applicant had a level of understanding that was essential to hold a premises licence.

Mr Panchal said that he had tried to explain how robustly the four licensing objectives would be promoted. The sub-committee would be deciding on a way forward and not what had happened in the past. He assured the sub-committee that his company would ensure the applicant did have consideration of the four licensing objectives and they were promoted robustly. The improvements he had seen at the premises he hoped would trigger the licence to be granted.

The Senior Licensing Officer referred to the comment from Mr Panchal about the condition regarding licence holders being on the premises; the condition was within the council's pool conditions should members wish to add it.

There were no further questions.

Decision

The Chair advised that the sub-committee would retire to make its decision. All parties would be notified of the decision within five working days.

RESOLVED –

The sub-committee has decided to reject the application for the Premises License for DKSR, 164 Whippendell Road, Watford.

The sub-committee has found that the licensing objectives of prevention of crime and disorder, the prevention of public nuisance, prevention of public safety and protection of children from harm are relevant to this application.

The sub-committee has read all of the information before them. The sub-committee heard from the Police, Mr Liam Fitzgerald (the council's Community Safety Co-ordinator) Mr Panchal, the Applicant's representative and the Applicant Mr Srithas Sundralingham.

At the hearing, the sub-committee heard from the Police on the history of visits and enforcement actions in respect of this premises. The premises is located within the Sensitive Licensing Area of Whippendell Road between its junction with Cassio Road and Hagden lane, an area that suffers greatly with street drinkers and anti-social behaviour. They heard information of a number of historical incidents involving the premises between the period commencing March 2011 and 19 April 2018.

The Police were of the opinion that if the application was granted, it would be detrimental to policing in Watford and to the community. It would impact on the wider community in terms of increased anti-social behaviour and crime and disorder. The sub-committee heard how this would place a huge pressure on the local public services and Police.

Mr Liam Fitzgerald gave evidence of the historical breaches in respect of the premises. He stated there had been a dramatic reduction on anti-social behaviour related street drinker activity in this location since the removal of the premises licence for this premises. He was of the opinion that there was no evidence to show an understanding of the licensing objectives and he still had the same concerns about the management and responsibility.

In determining the application, the sub-committee was mindful that their concern here is to be confident on the balance of probabilities that the licensing objectives of the prevention of crime and disorder, protection of children from harm, the prevention of public nuisance, and public safety will be safeguarded and promoted if the application was granted.

The sub-committee has therefore decided not to grant the application for the premises licence. The reasoning behind the decision is, the Applicant has failed to show a clear understanding of the licensing legislation and the requirements of licensing. The sub-committee is of the view that if the application is granted, the licensing objectives would be undermined.

The sub-committee is aware of and took into account any implications that may arise from the Human Rights Act 1998.

The sub-committee had due regard for its public sector equality duty under section 149 of the Equality Act 2010 and considers that in reaching the decision they have fulfilled their duty under the Equality Act 2010.

In reaching their decision the sub-committee had due regard for all that they have read, seen and heard, along with consideration for the licensing objectives, the Licensing Act 2003, s182 Guidance, and the council's statement of licensing policy.

Advisory: The sub-committee would encourage the Applicant to liaise with the Police, Community Safety and Licensing Authority.

Chair

The Meeting started at 10.30 am
and finished at 12.30 pm