



## **Licensing Sub-Committee minutes**

Minutes of the meeting of the Licensing Sub-Committee made up of three members of the Licensing Committee of Wyre Borough Council held on Wednesday 6 December 2017 at the Civic Centre, Poulton-le-Fylde.

This meeting was a continuation of the Licensing Committee meeting of 30 November 2017 at which the item Review of Premises Licence – Today's Local, 92 Lord Street, Fleetwood, FY7 6JZ was adjourned because the licensee was unable to attend due to illness.

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### **Licensing Sub-Committee members present:**

Councillor Bridge (Chairman)  
Councillor Catterall  
Councillor Ormrod

### **Officers present:**

Mary Grimshaw, Senior Solicitor  
Neil Greenwood, Head of Environmental Health and Community Safety  
Niky Barrett, Licensing Manager  
Simon Clark, Environmental Health Officer  
Mandy Seddon, Environmental Health Officer (non-participant)  
Duncan Jowitt, Democratic Services Officer

### **Others present:**

Helen Parkinson, Lancashire Police  
Lauren Manning, Lancashire County Council (LCC) Trading Standards  
Andrea Forrest, Forrest Solicitors (representing the Premises Licence Holder)  
Arumugan Kalamohan (Premises Licence Holder)  
Nathan Niroshan (Mohan Retail Group)  
Devenanden Diraj (Designated Premises Supervisor (DPS))

No members of the public or press were present.

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### **LIC. 39      Declarations of interest**

None

**LIC. 40****Review of Premises Licence – Today's Local, 92 Lord Street, Fleetwood, FY7 6JZ**

The Service Director Health and Wellbeing submitted a report to provide members of the Licensing Committee with information to assist members to determine an application from Lancashire Constabulary, submitted under section 51 of the Licensing Act 2003 (the Act), seeking a review of Premises Licence PL(A)0391, in respect of Today's Local, 92 Lord Street, Fleetwood, FY7 6JZ.

The Premises Licence Holder, Mr Kalamohan, was present at the meeting along with Mr Diraj, the current DPS, and Mr Niroshan of Mohan Retail Group. Mr Kalamohan was legally represented by Ms. Forrest.

Before the meeting was able to start, Ms. Forrest had asked if supporting evidence, which she had emailed to one of Wyre's licensing officers earlier that afternoon, could be photocopied and admitted as evidence. As a result the commencement of the meeting was delayed until the documentation had been copied. When the meeting began, the Chairman explained that, although it was important that it was seen to be a fair hearing and that all facts were taken into account, he was very uncomfortable with the late submission of documents. As none of the Responsible Authorities raised any objection to the admission of the evidence, the Chairman then asked Mr. Kalamohan, Mr. Niroshan, Mr. Diraj, Ms. Forrest, the Head of Environmental Health and Community Safety, Environmental Health Officers, Licensing Manager and representatives of the Responsible Authorities to leave the room whilst the sub-committee considered whether to allow the evidence to be taken into account.

When the sub-committee reconvened at 7pm the Chairman announced that, despite having serious reservations that the papers should have been made available in advance to allow them to be read in full, the additional evidence would be admitted and Ms. Forrest could circulate it at the appropriate time.

Cllr Bridge asked whether all of the Responsible Authorities had sent a representative to the meeting and the Licensing Manager informed him that apologies had been received from Lancashire Fire and Rescue Service.

The Licensing Manager then introduced the report and the Chairman offered an opportunity for all participants to ask questions.

Next, the police representative gave a detailed statement outlining their concerns. During the opportunity for participants to ask questions of the police it was confirmed that the police believed that the premises licence should be revoked.

Further evidence was then presented by the representative of LCC Trading Standards which focussed on the discovery of bottles of vodka on the premises which had been found to have counterfeit labels and had been smuggled into the country, which was a very serious matter and that customs had been notified. This was again followed by an opportunity for questions.

The Environmental Health Officer then set out his concerns for public safety, particularly following an explosion caused by the proximity of a heater to gas canisters which had caused injury to an employee. An investigation was currently underway and he said that the premises had been lacking in a number of ways under the Health and Safety at Work Act including having no risk assessment in regard to hazardous substances. He confirmed that Environmental Health also supported the police in calling for revocation of the licence.

With the consent of the sub-committee, the Head of Environmental Health and Community Safety presented the information submitted by Lancashire Fire and Rescue Service. Their involvement followed the canister explosion mentioned previously that had resulted in a projectile causing a lower leg injury to an employee. After meeting with staff and discussing issues, it was found that there were no fire risk assessments and the distance between the shop and accommodation was also found to be inadequate. An enforcement notice had been issued to address the issues and the premises had been provided with an action plan and it was understood that a fire alarm had recently been installed.

The Licensing Officer then summed up the case and confirmed the Licensing Authority's agreement with the police in seeking a full revocation of the premises licence.

Ms. Forrest then spoke to the committee in the owner's defence, expressing surprise at the call for revocation from all of the Responsible Authorities as her understanding was that the police were asking for conditions to be added to the licence. Her subsequent explanation of the mitigating circumstances centred on the fact that a different DPS, Richard Anthony's, was in place when the failed tests took place and that the onus had been on that previous DPS to comply as he had been given full responsibility for running the business. It was Mr Anthony's, she said, that had failed to provide training to staff and not the licence holder, who owned about 20 shops. She stated that good due diligence training was now taking place and formal training for staff was now provided by Under Age Sales Limited. She also queried whether there had been other successful test purchases that had been successful of which the premises were not informed as a test purchase by Camelot was known to have been successful.

Ms. Forrest circulated a number of documents in support of her evidence including:

- Fire Risk Assessment,
- COSSH compliance
- Contract of Employment between Mohan Retail Limited and Nathan Lester,
- Details of training
- Letter from Camelot confirming a successful test purchase from Camelot
- ICO letter regarding data protection renewal registration,

- Management agreement between Mohan Retail Limited and Mr Richard Napoleon Anthonys,
- HSE refresher training confirmation,
- Premises age verification policy,
- Licensing training checklist/ Refusals register and
- Images of signs on the premises

The Chairman then invited questions to be asked of the Premises Licence Holder and his legal representative and Ms. Forrest, Mr. Kalamohan, Mr. Niroshan and Mr. Diraj responded to a series of questions from members of the sub-committee and the representatives of the Responsible Authorities.

All participants who were not involved in considering the decision were then asked to leave during the sub-committee's deliberations. Only the members of the sub-committee, the senior solicitor and the democratic services officer remained in the room whilst the case was considered.

The Licensing Sub-Committee then reconvened and the Chairman announced the decision.

**RESOLVED** that the licence for Today's Local be revoked.

**The reasons for the decision were:**

1. The Committee were satisfied from evidence provided by the police, Trading Standards and the Licensing Authority that numerous attempts had been made in the past to encourage the management of the premises to introduce effective staff training and implement a challenge 25 policy. Despite repeated warnings, the premises were still found to be operating in breach of the licence conditions and had general compliance issues as evidenced by the two earlier failed test purchases and the lack of a suitable policy in 2016 to prevent underage sales, a further failed test purchase in September 2017 and a later unscheduled visit that revealed a failure to adhere to the licence conditions. The Committee were satisfied having regard to these repeated failures that the Licensing Objective for the protection of children from harm was being undermined.
2. The Committee heard from Ms Forrest, that a different DPS, Richard Anthonys was in place when the failed test purchases took place. She said that Mr. Anthonys was responsible for the running of the premises and referred to the management agreement he had signed which she said operated like a franchise agreement and stated that the PLH had exercised due diligence. She also referred to the general improvement in the management of the premises with the recent appointment of an experienced DPS and referred to the training that had been undertaken and the procedures that were in place. She expressed surprise at the request for revocation as her understanding was that the police were asking for conditions to be added which the PLH had agreed to. However, the Committee considered that Mr. Kalamohan, as the Premises Licence Holder was ultimately responsible for the premises

and found that there had been little improvement since the failed test purchase failure in 2013. The Committee considered that the premises were poorly managed and there was a general lack of compliance associated with the premises. The Committee were satisfied that there was a discernible pattern of behaviour whereby no clear responsibility had been taken by the PLH and that he was passing off his responsibility to the DPS when in fact it was ultimately his responsibility to uphold the Licensing Objectives for the licensed premises.

3. The Committee heard that despite having been advised in writing in 2011, that a fire risk assessment must be undertaken, the premises had failed to address these issues until an incident occurred in September 2017 resulting in serious injury to a member of staff, which required him to have surgery. The Committee noted Mr Clark's submission that the incident highlighted health and safety non-compliance issues and also revealed the unclear lines of responsibility for health and safety within the company. The Committee considered that these failings also potentially exposed members of the public to hazard and undermined the public safety objective.
4. The Committee heard evidence from Ms Manning that 37 smuggled vodka bottles had been found on the premises in February 2016. The bottles were found to have counterfeit labels to avoid payment of excise duty which the Committee considered to be very serious. The Committee were concerned that the premises were being used for the sale or storage of smuggled alcohol and were satisfied that the crime prevention objective was being undermined. The Committee were not satisfied with the PLH's explanation that the bottles were the responsibility of Mr Richard Anthony's, the previous DPS, as it was noted that Mr. Kalamohan, had signed a form agreeing to transfer the goods to Trading Standards for destruction and ultimately Mr Kalamohan, as the Premises Licence Holder was responsible for ensuring compliance with the Licensing Objectives.
5. The Committee after having considered all of the information were satisfied that the premises, Today's Local were not upholding the Licensing Objectives relating to the Prevention of Crime and Disorder, Protection of Children from Harm and Public Safety. The Committee decided that given the previous failed test purchases, the activity relating to the smuggled vodka bottles, the failure to comply with health and safety and fire safety legislative requirements and the general lack of compliance and cooperation with the Responsible Authorities over a number of years that revocation was appropriate for the promotion of the Licensing Objectives and was proportionate.
6. The Committee considered that the removal of the DPS was not an appropriate option, as Mr Devenandan Diraj had only been recently appointed and the Committee were satisfied that Mr Kalamohan as PLH had overall control and responsibility for the premises.

7. The Committee also considered that a suspension of the licence was not an appropriate option as the recurring failings associated with the premises were longstanding and a short period of closure would not fix these issues.
8. The Committee noted the police's total lack of confidence in the Premises Licence Holder in running the premises which was supported by the other Responsible Authorities and considered that none of the other options available on review would resolve the problems associated with the premises and were not appropriate in the circumstances.

The meeting started at 6.45pm and finished at 9.15pm

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