



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Tuesday 15th November, 2022**, Rooms 18.02, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Aziz Toki (Chair), Iman Less and Caroline Sargent

Expedited Review of a Premises Licence in respect of The Manette Café and Bar Basement and Ground Floor 16 Manette Street London W1D 4AR (“The Premises”)

The Metropolitan Police Service (“Police”) submitted an application for a Summary Review of the above Premises pursuant to Section 53A of the Licensing Act 2003 (“the Act”) on 11 November 2022 as the Police considered the Premises were associated with serious crime. The Premises Licence Holder (“PLH”) of the Premises is Mr Brian Kavanagh.

The full review of the Premises will take place within 28 days of the date the application was made, being 8 December 2022. However, the purpose of today’s hearing is for the Sub-Committee to determine whether it is necessary to take any interim steps pending the determination of the full review.

Applicant

Mr Brian Kavanagh and Designated Premises Supervisor

Persons attending the hearing

For the Police:

Mr James Rankin Counsel of Francis Taylor Building
PC Reaz Guerra
PC Steve Muldoon

For the Premises Licence Holder

Not present

Officers present:

Presenting Officer - Jessica Donovan
Legal Adviser - Horatio Chance;
Committee Officer - Jack Robinson-Young

Activities and Hours

The Premises operates as a Café and Bar and is permitted to allow the sale by retail of alcohol for the following hours: -

Playing of Recorded Music

Monday to Sunday 09:00 to 00:00

Sale by Retail of Alcohol (On Sales)

Monday to Sunday 11:00 to 22:30

Seasonal Variation/Non-Standard Timings: None

Hours premises are open to the public

Monday to Sunday 07:00 to 23:00

Preliminary Matters:

1. The Chairman introduced the Members of the Sub-Committee and outlined the procedure to the Parties in attendance. The Members confirmed that they had no declarations of interest to make.
2. The Chairman noted that the committee agenda consisted of the application for summary review, the existing Licence of the Premises and the supporting statements of the Police which had been served and circulated previously to all Parties which included Mr Brian Kavanagh as DPS, who did not attend the hearing, so he was unable to defend the application for interim steps.
3. Ms Jessica Donovan, the Presenting Officer outlined the application to the Sub-Committee. She advised that prior to the hearing, she had tried to arrange for Mr Brian Kavanagh the PLH to be present. When Mr Brian Kavanagh said he was unable to attend, she explained that a representative could appear on behalf of the Premises either in person or virtually.
4. Mr Kevin Kavanagh understood to be the Owner of the Premises and brother of the PLH gave details of a "property manager" and asked Ms Donovan to contact them. Upon contacting the property manager, a lady confirmed she would be willing to speak on behalf on the Premises and would appear before the Sub-Committee virtually. However, as the PLH and the DPS was Mr Brian Kavanagh and not Mr Kevin Kavanagh, actual consent was required from Mr Brian Kavanagh as the person responsible for the daily running of the Premises.

5. Ms Donovan advised that after speaking with Mr Brian Kavanagh minutes before the start of the hearing he did not consent to the property manager or anyone else for that matter appearing on behalf of the Premises.

Decision as to whether to proceed in the absence of the PLH

6. The Sub-Committee recognised that there is no requirement for the PLH to attend the interim steps hearing. The Sub-Committee noted that the PLH had been invited to attend the hearing. Moreover, The PLH had been contacted by Ms Donovan, the Presenting Officer and he was aware the hearing was taking place and he refused to allow anyone else to speak on his behalf and the Sub-Committee decided that it was appropriate to proceed in the absence of the PLH with the interim steps hearing as the Licensing Authority is obliged by the Act to consider whether any interim steps should be taken within 48 hours of the review application being made.
7. The Sub-Committee was mindful that the expedited review was requested by the Police as a result of a serious sexual assault incident which it alleged took place inside the Premises on 29 October and so the Sub-Committee heard the expedited review brought by the Police in the absence of any representative attending from the Premises albeit a late start of the hearing due to the above events.
8. In determining this hearing, the Sub-Committee may take such interim steps as it considered were necessary to address the immediate problems with the Premises and the likelihood of serious crime and serious disorder occurring pending the full review, namely: -
 - (a) modify the conditions of the premises licence;
 - (b) to exclude the sale by retail of alcohol from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence;
 - (e) to take no action.

Submissions by the Police

9. Mr James Rankin, Counsel for the Police, began by explaining the serious nature of the crime that had been committed and stated that this was a café, operating as a bar. Between the early hours of the 29 October, a lady entered the basement of the Premises to go to the toilet.
10. While on her way there, a gentleman offered her illegal drugs and she declined, then going into the toilet. The gentleman followed her, exposed himself to her (full genitals) and she fled the basement. Reuniting with her friend, they approached staff members to explain what had happened, but the Police at this point were not called. When the Police did arrive, officers were blocked from entering the Premises. The officers found the bar to be full, with some 20 people inside at 02:45, around four hours after their licensable hours ended.
11. The Police were obstructed from entering the Premises initially but made their way through and sealed off the bathroom where the incident had occurred,

they also tried to attain CCTV footage from the inside of the Premises but were told this did not work. However, Officers were able to find CCTV from a nearby different premises which showed the outside of the Manette Café and Bar.

12. Mr Rankin advised that the victim was drunk, to the point she was unable to give a statement, as was her friend. The victim does not wish to pursue the allegation, which is not uncommon, but this does not mean the allegation is any less serious. Turning to the Premises Licence itself, Mr Rankin advised that of the conditions on the licence, 14 were being breached and it was clear these conditions had been routinely breached for some time. If you take the evening in question into consideration, it is also clear the Premises operated well beyond their licensable hours and their registered DPS was not present. These additional licence breaches take the total to 16 breached conditions.
13. Mr Rankin stated that Mr Kevin Kavanagh did attempt to surrender the licence, but it is under his brother, Mr Brian Kavanagh's name. In any event because of section 50 under the Act there is a mechanism whereby the Premises Licence can be resurrected. Mr Kevin Kavanagh is the owner but not the registered DPS, neither of these gentlemen were there on the night.
14. Mr Rankin advised that for a period of around 9 months the Manette Café and Bar has been selling alcohol without Mr Brian Kavanagh there as the registered DPS.
15. The Sub-Committee asked how many Police Officers attended and who called them? PC Reaz Guerra explained there were 4 officers who attended the Premises and they were called by the victim. The suspect had left by the time the Police had arrived.
16. The Sub-Committee asked what conditions Mr Rankin thought were breached, and he explained that conditions 10, 11, 12, 17, 18, 19, 21, 24, 25, 26, 27 and 28 are being currently breached. He also stated that the works condition, namely conditions 24 and 25, were breached as an Environmental Health Officer never signed off the works. This totalled 14 conditions being breached.
17. In answer to questions from the Sub-Committee PC Guerra explained what the immediate problems were, and said the Premises was being run completely inappropriately which undermined the licensing objectives.
18. PC Steve Muldoon reiterated that the Premises should be trading as a café because alcohol is to be sold ancillary to a table meal. Only one menu in the entire Premises could be found and there does not seem to be a food offer available for customers as required by condition 17 on the Premises Licence, with the only sign of catering equipment being a grill behind the bar as there is no kitchen facility.
19. The Sub-Committee asked if there are any other issues with the PLH himself, Mr Rankin was not aware of any other issues Mr Brian Kavanagh had.
20. The Sub-Committee asked if they were aware of previous issues with the Premises, and PC Muldoon said they were not aware of any other issues. Police had suspected the Premises were opening past their licensable hours for a number of months now and do not believe they are currently open.
21. The Sub-Committee asked if it had been possible to identify all patrons on the Premises at the time, and they were informed that patrons were starting to leave when officers arrived. Coupled with the lack of internal CCTV, it had made it extremely difficult to identify anyone.

22. The Legal Advisor to the Sub-Committee sought clarification from the Police whether they had or were intending to obtain a closure order of the Premises under the Act from the Magistrates Court. In answer thereto PC Muldoon explained they would deal with the licence first, then potentially apply for a closure order if required.
23. The Chairman of the Sub-Committee invited Mr Rankin to sum up the case on behalf of the Police. Mr Rankin said he had nothing further to add because everything had been covered in his earlier submission.

Submissions by the Premises Licence Holder

24. Mr Brian Kavanagh advised the Sub-Committee that he was not well enough to attend the hearing either in person or by telephone as stipulated by Ms Donovan in Paragraph 3 above and was not prepared for anyone else connected to the Premises to give evidence.
25. The Chairman then adjourned the meeting for the Sub-Committee to deliberate. After a short adjournment the Sub-Committee reconvened at 12:05 to announce its decision.

Conclusions of the Committee

26. The Licensing Authority received a valid application for an expedited review under Section 53 A-C of the Licensing Act 2003, from the Police on 11 November 2022.
27. The Sub-Committee recognised that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder were occurring. The outcome of the review would be determined at the full hearing. However, today the Committee must determine what steps, if any, were necessary to take pending the full review. The Act provided the Licensing Authority with powers that it may exercise as specified in the Sub-Committee report. The Sub-Committee had to decide what interim steps were necessary to take, to address the immediate problems with the Premises, in particular the likelihood of serious crime from occurring pending the full review.
28. The Sub-Committee strongly recommends that Mr Brian Kavanagh obtains independent legal advice in respect of this matter and for the imminent full review hearing.
29. Having carefully considered the application for an expedited review and the evidence presented by the Police both verbally and in writing, the Sub-Committee concluded that the Premises was associated with serious crime and it was necessary to take the following steps:
 1. To suspend the Licence with immediate effect.
 2. To exclude the sale of alcohol from the scope of the licence;
 3. To remove the Designated Premises Supervisor.
 4. In view of the seriousness of this case, it was necessary for this Interim Decision to take immediate effect.

30. The Sub-Committee accepted the evidence of the Police contained within section 4 of the application form giving details of the serious crime at the Premises which read:-

“On Saturday 29 October 2022, Police were made aware that a female had allegedly recently been seriously sexually assaulted within the Premises toilets. Police arrived at the Premises around 02:45. Officers had to make numerous attempts to enter the Premises and once inside, the officers could see licensable activity taking place. They state that the staff and manger were obstructive and unhelpful in their dealings with them. Officers were showed the toilets and the manager told Police that he might know the suspects who had now left. He also stated that the toilets had been cleaned and used since the offence and there would be nothing there. When officers looked inside the toilet, it was dirty and did not appear to be clean. The manager then tried to clean the toilet and Police had to remove him. When officers identified CCTV at the Premises the manager could not operate it and it now transpires that the CCTV was not working. Police Licensing were informed of this serious incident. Looking at the premises licence they noted not just breaches of the licence conditions but also that the Premises had been carrying on licensable activity nearly 3 hours past their premises licence allows. Officers made multiple attempts to contact the Premises Licence Holder and Designated Premises Supervisor. Eventually officers managed to meet with the Premises Licence Holder, the manager at the time of the incident and a City Inspector from Westminster Council on 9 November at the Premises where the incident was discussed along with the various breaches of licence conditions. During this meeting further breaches became apparent, along with a clear lack of management of the Premises. Due to the seriousness of the offence, the multiple breaches of the licence and the clear lack of control of the Premises the Police believe that the Premises have failed to uphold the prevention of crime and disorder licensing objective. As such, the Police believe that the Premises is a risk to the public and it is necessary to suspend the premises licence until the full hearing”.

31. The Sub-Committee considered that taking all these factors into account indicated that the Premises was associated with serious crime. A sexual assault taking place on the Premises was a serious matter and the Sub-Committee concluded that it was necessary and proportionate to suspend the licence to prevent serious crime with immediate effect to promote the licensing objectives and this was confirmed and communicated to Mr Brian Kavanagh shortly after the hearing by way of telephone call.

In summary, the Sub-Committee is satisfied that the Premises was associated with serious crime and it was necessary and proportionate for the interim steps outlined to be taken and for this Decision to have immediate effect in order to prevent serious crime occurring and to promote the licensing objectives.

If the Premises Licence Holder is unhappy with the decision, he is entitled to submit a representation against the interim steps taken by the Sub-Committee. If a representation is received the Licensing Authority would convene a further interim

hearing within 48 hours of receipt of the representation. The premises licence holder and chief officer of Police would receive advance notice of this hearing.

The full review hearing would take place within 28 days of receipt of the Police application to review the licence. Details of this hearing would be provided by the Licensing Authority.

The Licensing Sub-Committee
15 November 2022