

**APPLICATION FOR A PREMISES LICENCE REVIEW UNDER SECTION 51
OF THE LICENSING ACT 2003 IN RELATION TO**

**King George V
Wallows Lane
Walsall
WS2 9BZ**

**HEARING BEFORE THE LICENSING SUB COMMITTEE AT 10.00 a.m. on
Monday 15th March 2021**

The matter was heard by:

**Councillor Samra – Chairperson
Councillor P Kaur
Councillor Ward**

For the applicant:

Jennifer Mellor – West Midlands Police

Responsible Authorities:

**John Harvey – Environmental Health
Kirsty Steward – Community Protection**

For the Licence Holder:

Neal Barnes Admiral Taverns

Also Present:

**Mr S Alom – Licensing Team Leader
Mr M Powis – Clerk to the Committee
Mr D Patouchas – Legal Advisor**

Determination

This is an application for a review of a premises licence under s51 of the Licensing Act 2003. Where a premises licence has effect a responsible authority may apply to the relevant licensing authority for a review of the licence. In this case the application is made by West Midlands Police.

The premises licence is held by Admiral Taverns Piccadilly Limited. The licensable activities authorised by the licence are the exhibition of films, indoor sporting events, live music, recorded music, facilities for making music, facilities for dancing, late night refreshment and alcohol sales on and off the premises. The hours the licence authorises the licensable activities are primarily Sunday to Wednesday 10.00 – 00.00 and Thursday to Saturday 10.00 – 01.00, with the exhibition of films having different hours. There are also non-standard hours around public holidays.

At the time of the committee hearing there was no designated premises supervisor (DPS) named in the licence and so the premises did not have a current DPS. All references to the DPS are to the DPS who had been named in the licence previously.

By virtue of s52 of the Licensing Act 2003 the licensing authority must, having regard to the application for review and any relevant representations, take such of the steps mentioned in section 52(4) (if any) as it considers appropriate for the promotion of the licensing objectives.

The steps, set out in section 52(4) of the Licensing Act 2003, are to:

- modify the conditions of the premises licence (conditions of the licence are modified if any of them is altered or omitted or any new condition is added) either permanently or for a period not exceeding three months
- exclude a licensable activity from the scope of the licence, either permanently or for a period not exceeding three months
- remove the designated premises supervisor,
- suspend the licence for a period not exceeding three months;
- revoke the licence.

A determination does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

The licensing authority must also have regard to its statement of licensing policy and the Guidance in carrying out its licensing functions.

Walsall Councils Statement of Licensing Policy states at page 8,

“In particular the licence holder will be made fully aware of the allegations made in respect of their licence, and any evidence supporting the said allegations or representations in order that they or their legal representatives have the opportunity of rebutting such allegations.”

On determining a review, the licensing authority may choose to exercise a wide range of powers as permitted by the Act and which it considers proportionate and necessary for the promotion of the licensing objectives. In deciding which of these powers to invoke, the licensing authority will so far as is possible seek to establish the cause or causes of the problem which has been substantiated on the evidence before them. The remedial action taken will be directed at those causes. These powers include;

- i) Taking no action;
- ii) Issuing an informal written warning to the licence holder and/or recommending an improvement within a specified period of time;
- iii) Attaching conditions to the licence either temporarily, for a period of up to three months, or permanently;
- iv) Exclusion of a licensable activity from the scope of the licence, either temporarily, for a period of up to three months, or permanently;
- v) Removal of the designated premises supervisor if applicable;
- vi) Revocation of licence

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The police are expected to be the Licensing Authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective.

Amended Guidance Issued under s 182 April 2018.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf

“Para 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority’s main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should usually therefore be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective.

Reviews are dealt with in Part 11 of the Guidance.

“Part 11.16 deals with powers.

11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

In the application for review West Midlands Police stated that the following licensing objectives were undermined;

The prevention of crime and disorder
Public safety
The prevention of public nuisance

In the application West Midlands Police explained that Admiral Taverns had a working relationship with the designated premises supervisor (DPS) then in post. There was a pre-purchase agreement.

The grounds for the application for review the Police said arose from the repeated failures of the DPS to work within the confines of the premises licence, the boundaries of statutory nuisance together with his mismanagement of the procedures throughout the Covid pandemic. This included criminal breaches of the Covid Regulations.

The Police stated that this has been done for the purposes of profit and financial gain for the premises.

The Police stated they had applied the principles of good regulation and employed a graduated response in following their 4 E approach. It was now appropriate to enforce.

The Police included the following information in support of their application.

Police received a call from staff at the venue on the 26th of January 2020 stating customers whom they had ejected were trying to get back in. On the 28th of January 2020 a telephone conversation took place between PC Tolley and the DPS regarding 19 incidents since October 2019. Most of these incidents occurred on a Saturday evening into Sunday morning. Measures including the employment door staff were agreed

On the 13th of March 2020 the police received an anonymous letter, given to them by local MP Valarie Vaz regarding anti-social issues connected to the King George V. The letter speaks about loud music, youngsters fighting after 3.00 am causing mayhem, distress and fear. In checking with Walsall Council community safety team they confirmed they had also received several letters of complaint going back to 2019.

On the 20th of March 2020 PC Tolley spoke with the area manager for Admiral Taverns Neal Barnes to make him aware and followed it up with a further call.

The 3rd of August to 2020 police received a report of a vehicle ramming the premises with males in and outside the premises.

On the 7th of August 2020 a fight outside the pub was reported. On officer's attendance no one was present was making themselves known.

On the 9th of August 2020 at 02:59 intelligence received stated that the pub with still open and trading which is outside of permitted hours on the premises licence.

On the 13th of August 2020 the licensing officer started to receive correspondence and video footage of noise complaints and disorder at the King George V.

On the 15th of August 2020 a further disorder incident was reported with customers leaving the venue at 01: 28. When the Police Licensing officer spoke with the DPS he replied "I'm just trying to make a living". The police

licensing officer advised that it is his responsibility to ensure he disperses customers in an orderly manner. This is undermining the crime and disorder, public safety and public nuisance licensing objectives.

On the 21st of August 2020 a meeting was held between the DPS, Kirsty Steward, Community Protection officer, Walsall Borough Council and the police licensing officer. The reason for the meeting was due to the number of noise complaints, crime and disorder incidents occurring at the venue when customers were leaving the venue and the reports of licensable activity carrying on past the permitted hours. There were a number of recordings from neighbours evidencing statutory nuisance. The DPS confirmed that there had been occasions during the first lockdown, the venue had been open, selling alcohol and playing recorded music outside the permitted hours.

On the 25th of August 2020 a further licensing visit took place with the DPS, his mother and Kirsty Steward after further noise complaints and report of a fight. It was established the DPS had been showing a boxing fight on the TV screen inside with this customers watching from outside which had resulted in the excessive noise. CCTV was checked on the DPS mobile phone at 23: 45 hours but no fight was evidenced. It has since been discovered that the main CCTV is an hour out and officers were not shown the correct footage for the time requested.

The police licensing officer continued to receive noise complaints throughout August 2020 until on the 12th of September 2020 intelligence was received of people still in the pub at 03:30 that evening. The Police licensing officer was able to view a Walsall Council anti-social multihead camera which showed the car park full at 02: 06 and a number of persons leaving the venue at 02:30 and van leaving at 03:17.

Due to this incident on the 14th of September 2020 Neal Barnes, area manager was called to discuss the ongoing issues and non-compliance. Mr Barnes agreed to speak with the DPS.

On the 16th of September 2020 the police licensing officer and Mr. Barnes spoke again. The DPS had told Mr Barnes the lock ins were in the past and were a few months ago. After giving Mr. Barnes the dates he said he would phone the DPS again. The police licensing officer suggested setting up a meeting to discuss in person at the venue.

On the 19th of September 2020 police attended due to an incident of disorder occurring at the car wash next door to the King George V. When the police licensing officer was back on duty she viewed the council ASB camera. At 01: 32 twelve males can be seen leaving the pub to become involved in the disorder. Further fighting continues at 01: 36 and at 01: 32 a car mounts the central reservation to cross the carriageway. Males are seen re-entering the licensed premises the disorder. At 01: 46 a further car reverses back down the carriageway and then at 01: 46 police arrive. At 01: 58 males are seen leaving the King George V. Males are seen re-entering the licensed premises after the disorder and are allowed to re enter

On the 15th of October 2020 a meeting was held at the request of the police licensing officer. In attendance was Neal Barnes from Admiral, the DPS and a number of Walsall Council officers. The responsible authorities it appears wished to watch the premises CCTV in relation to specific incidents at the licensed premises but were unable to do so and so instead viewed footage from the weekend of the 10th and 11th October 2020 which showed the requirement for table service was not being complied with.

On the 20th of December 2020 police officers attended the pub and saw a glimpse of a light behind a curtain at one of the front windows. Officers heard numerous voices and music playing inside the premises. One officer could see multiple people through a very small gap in the curtain but it was too small to tell exactly how many. It was clear however they were more than 2 people inside. Officers knocked on the door and window but there was no initial response. When officers did gain entry there was no trace of any person. However upon discovering a rear open door that leads to a side gate it is highly likely that the persons inside exited the pub as officers entered. Officers have since revisited the pub to view CCTV but were told by the DPS that the CCTV system only records for two weeks. However on the 15th October 2020 the police state that footage over two weeks old was viewed.

On the 24th of December 2020 police officers noticed downstairs lights on and vehicles parked up at the King George V pub. As officers approached the front door they were greeted by staff who were very reluctant to let the officers in. The DPS's mother initially held the door shut. As officers entered 8 persons in total were in the bar, 2 staff, and 6 customers. The visitors were from 5 different households. The DPS was given a fixed penalty notice.

On the 31st December 2020 Walsall Council served a prohibition notice on the DPS.

The application stated that the police have no confidence in the management of the premises and that Admiral Taverns have a lack of control of their tenant. The police sought a revocation of the premises licence.

West Midlands Police also provided evidence in support of the application for review which supported the above information. CCTV was made available to view the events on the 19th September 2020.

West Midlands Police made the following representations at the sub - committee.

West Midlands Police were no longer seeking revocation of the licence but asked the Sub Committee to exercise other powers. The police said they had worked with Admiral Taverns and they believed that they have moved on. Admiral Taverns had worked with the police. The DPS was very difficult.

West Midlands Police explained that Admiral Taverns were the premises licence holders but that the DPS had business interest including take away food from the premises.

There is a tenancy agreement which was due to expire on the 5th of March 2021. Admiral Taverns had refused an extension. The DPS has been served with a notice and he has until the 19th of March 2021 to make an offer. However the DPS will hand over the keys today. The police describe this as a positive outcome. The DPS was responsible for the fights, disorder, breach of the Covid Regulations, fear and nuisance. He prevented the business operating within the premises licence and caused the statutory nuisance.

The police referred to the evidence set out above and said there was a national lockdown from the 23rd March 2020 and that Walsall was in tier 3 in August 2020. They referred to calls from neighbours of the licenced premises who felt afraid and dreaded each weekend. The licensed premises has a beer garden surrounded by houses. The DPS exceeded the hours the licensed premises could be open.

The DPS admitted lock ins, being open and selling alcohol after the hours permitted by the premises licence.

The Police described the DPS as evasive and that trying to get information and the correct CCTV footage from the DPS was a painful experience. The DPS frustrated the process.

From the 5th November 2020 to the 2nd December 2020 there should have been take away only at the licensed premises.

The police said the DPS was very difficult to deal with and they said that Admiral Taverns also found the DPS hard to deal with.

The police asked for the premise licence conditions to be modified to include requirements relating to CCTV, a requirement to close the beer garden early, to employ door staff and a condition that the DPS and his family should have no involvement in the licensed premises.

The police confirmed that they had had a number of conversations with Neal Barnes from Admiral Taverns and that Admiral Taverns were warned that a review application could be made and send details of what was alleged by the police. Mr Barnes said that when he was informed of issues he would speak to the DPS. The police confirmed that it appeared that Mr Barnes had raised issues with the DPS as a dialogue ensued.

Mr Barnes did not receive the police's additional evidence for the Sub Committee hearing but he was given time to read the evidence and watch the video footage. The Sub Committee confirmed that Mr Barnes was happy to proceed. Mr Barnes said that he was happy to proceed and that he was not contesting any of the evidence anyway.

Walsall Council Community Protection made representations relating to the premises undermining the prevention of public nuisance licensing objective. They summarised their representation as follows. Noise complaints stemming from customers leaving the premises, revving car engines, alleged fighting and using the large garden patio area at the rear in a manner which is a nuisance to residents who live adjacent to the premises. Also loud music and loud sporting events played from televisions and speakers placed near the garden entrance.

In brief, on the 15th July 2020 a complaint was received alleging serious nuisance had been occurring since 4th July 2020. Further complaints of serious nuisance were received on the 24th July 2020, 27th July 2020, 3rd August 2020, 7th August 2020, 10th August 2020, 18th August 2020, and 19th August 2020. In all 13 residents called or emailed from about 10 different properties at varying distances from the licensed premises. The issues were affecting the area generally.

Walsall Council Environmental Health made representations that the licensed premises undermined the prevention of crime and disorder objective and public safety.

They stated, in summary, that on the 26th March 2020 the Health Protection (Coronavirus Restrictions)(England) Regulations came into effect prohibiting the sale of food and alcohol for consumption on the premises.

On the 1st April 2020 general warning letter was sent about breaching the above Regulations.

On the 6th July 2020 an amendment to the Regulations allowed the hospitality sector to re-open.

On the 26th September 2020 the Health Protection (Coronavirus, Restrictions)(Obligations of Hospitality Undertaking)(England) Regulations 2020 came into force preventing groups of more than six persons sitting together and required table service only. CCTV was viewed which showed these Regulations were breached.

On the 14th October 2020 the Health Protection (Coronavirus, Local COVID-19 Alert Level)(High)(England) Regulations 2020 came into effect. Walsall was in Tier 2. This required table service.

On the 5th November 2020 the Health Protection (Coronavirus Restrictions)(England)(No. 4) Regulations came into effect. These again prohibited the sale of food and alcohol for consumption on the premises.

On the 2nd December 2020 Walsall was placed into tier 3 under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020. These regulations required the closure of any premises, or part of a premises, in which food or drink are provided for consumption on those premises and the providing of food or drink for consumption on the premises to cease.

It is an offence to breach the all the above Regulations. The Regulations were an emergency response to control the pandemic

On the 31st December 2020 a prohibition notice was served under the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 on the DPS and the premises licence holder Admiral Taverns. The police also serve a fixed penalty notice on the DPS as set out above.

In summary it was said that the premises had not complied with the Covid Regulations which was a criminal offence and this undermined the crime and disorder objective.

On behalf of the premises licence holder Mr Barnes stated the following.

Admiral Taverns operate over nine hundred pubs, 99% of which are tenanted. Admiral Taverns hold the premises licence for 99% of the premises. The pubs are community pubs run by the tenants with Admiral Taverns support. Tenants have a business development manager. The George V was purchased in December 2013. It needed investment. Admiral Taverns decided not to invest in the premises and want to dispose of it. Mr Barnes explained that his job was to dispose of premises. The former DPS put an offer in to purchase the premises but did not at that time have the funds. A pre purchase sale agreement was made. This is not usual. The parties agree a value for the purchase of the premises and a tenancy and an agreement to purchase are entered into, in this case on the 6th March 2018. The former DPS was an independent tenant with full obligations to repair. He was not supported as a tenant would be normally.

The agreement was that the former DPS must pay a percentage of the value of the premises during the tenancy, pay a large deposit and complete the sale by the 5th March 2021. The former DPS would lose a lot of money if he breached the agreement.

There were no issues until contact was made by PC Tolley in 2019. Mr Barnes spoke to the former DPS. He accepted that as the premises licence holder Admiral Taverns had a responsibility but stated that the DPS was very difficult to deal with.

Mr Barnes met the former DPS twice with the police and gave advice which he thought was being followed. The former DPS stood to lose his business and a large deposit.

In January 2021 the DPS was removed. Admiral Taverns considered this to be the right thing to do. The pre purchase sale agreement ended on the 5th March 2021 with the tenancy agreement. Admiral Taverns now have to serve a notice requiring the sale to be completed. An extension has been refused.

The former DPS did not take advice. He is no longer the DPS. The premises is back in the possession of Admiral Taverns and will not be transferred to the DPS or his business associates. Admiral Taverns will not reopen the premises. The premise will be sold.

Admiral Taverns have worked with West Midlands Police and others. Mr Barnes said it was a shame that the former DPS had not listened. Mr Barnes had contacted the former DPS every time he had been contacted. The advice was put in writing and sometimes was sent via text or given by phone.

Mr Barnes was asked why action was taken only after the service of the prohibition notice. It was accepted that the pre purchase agreement had been allowed to expire on the 5th March 2021 with no action taken to end the tenancy earlier.

Mr Barnes said that there were discussions about removing the former DPS earlier but Admiral Taverns thought that the former DPS would just put the DPS in another name, or transfer it to a member of his family. After the prohibition notice it was said the DPS could not trade anyway.

Decision.

On the balance of probabilities the Sub Committee are satisfied that the evidence, which is not contested by the premises licence holder, establishes that the crime and disorder, public nuisance and public safety licensing objectives have been undermined. The former DPS accepted the premises had operated outside the premises licence granted to it and there have been breaches of the Covid regulations.

There is evidence of serious public nuisance affecting the area generally and disorder involving the patrons of the premises including patrons being re admitted to the premises after being involved in disorder adjacent to and within sight of the premises. The evidence substantiates that public nuisance and public safety have been undermined.

Admiral Taverns hold the premises licence and are responsible for the premises. There have been multiple breaches first raised by PC Tolley and issues have been raised with Admiral Taverns regularly since. Admiral Taverns took no appropriate action and allowed the premises to continue to operate and undermine the licensing objectives.

The premises licence holder had every opportunity to act and were put on notice there would be a review. They could have taken effective action earlier.

The cause of the concerns raised was the now former DPS but the premises licence holder should and could have done more, earlier. The Sub Committee finds the premises licence holder in dereliction of their duty to run premises in such a way that they do not undermine the licensing objectives.

The Sub Committee do not accept the view of West Midlands Police that to revoke is not appropriate. The evidence on the balance of probabilities establishes the culpability of the premises licence holder. The review was submitted on the basis that the premises licence holder was culpable and this is supported by the evidence.

Having regard to the application for review and any relevant representations, the Guidance and the statement of licensing policy the Sub Committee considers it appropriate for the promotion of the licensing objectives revoke the licence.

The applicant for the review, the holder of the Premises Licence, or any other person who made representation relating to the application have a right of appeal to the Local Magistrates' Court under Section 181 of the Licensing Act 2003.

The appeal must be commenced by notice of appeal within the period of twenty one days beginning with the day in which the appellant was notified by the Licensing Authority of the decision appealed against.