

Licensing Sub-Committee 1

Date: Tuesday, 19 October 2021

Time: 10:00

Venue: Cathedral Room

Present: Councillor Mrs Marilyn Bowman, Councillor Mrs Linda Mitchell, Councillor Miss Lee Sherriff

Also Present: Councillor Nedved

Officers: Assistant Solicitor
Licensing Manager
Regulatory Compliance Officer (Apprentice)

There were no objections to the three Members of the Licensing Sub Committee.
Councillor Nedved left the meeting.

LSC1.01/21 APPOINTMENT OF CHAIR FOR THE MEETING

It was moved, seconded and

RESOLVED – That Councillor Mrs Bowman be appointed as Chair of the Licensing Sub-Committee 1 for this meeting. Councillor Mrs Bowman thereupon took the Chair.

LSC1.02/21 APOLOGIES FOR ABSENCE

There were no apologies for absence submitted.

LSC1.03/21 DECLARATIONS OF INTEREST

There were no declarations of interest affecting the business to be transacted at the meeting.

LSC1.04/21 PUBLIC AND PRESS

It was agreed that the items of business in Part A be dealt with in public and the items of business in Part B dealt with in private.

**LSC1.05/21 APPLICATION TO REVIEW A PREMISES LICENCE BY CUMBRIA
CONSTABULARY - CUMBERLAND INN**

The Licensing Manager submitted report GD.71/21 regarding an application to review the premises licence of the Cumberland Inn, Botchergate, Carlisle (PL171)

In addition to the Council's Licensing Manager, Assistant Solicitor and Democratic Services Officer, the following people attended the meeting to take part in proceedings:

Applicants

Sergeant Blain, Cumbria Constabulary
PC Dodd, Cumbria Constabulary

Licence Holders

Mr Warne, TLT
Mr Donaldson, Punch

Representations

Mr Mohtashami, Leaseholder
Mr Payne, Licensing Lawyers
Ms Hetherington, DPS Cumberland Inn

Freddie Humphreys, Kings Chambers on behalf of Licensing Authority

Stuart Strange, Environmental Health, Carlisle City Council

The Assistant Solicitor outlined the procedure for the meeting.

The Licensing Manager reported that, in accordance with Section 51 of the Licensing Act 2003, an application had been received from Cumbria Constabulary for a review of the premises licence relating to The Cumberland Inn, Botchergate, Carlisle.

The Licensing Manager explained that Cumbria Constabulary had stated that the grounds for the application for the review were the current risks to the safety of the public and staff in the premises in relation to increased crime and disorder. It was stated that the management of the premises, specifically by Mr Mohtashami was inadequate, unprofessional and had led to risk of harm to customers and staff. The review application had detailed 28 incidents since July 2020, this period had included two national lockdowns when the premises had been closed.

Carlisle City Council as the Licensing Authority, was satisfied that the Applicant was a person as defined under the Act, as being entitled to make such an application and that the application was not frivolous or vexatious. The Authority was also satisfied that the administrative requirements of Section 51(3) (a) and (b) had been met and that the application was therefore properly made.

The Licensing Manager drew the Sub-Committee's attention to the timeline for the nomination of a Designated Premises Supervisor (DPS) since May 2020, Mr Mohtashami had been the DPS for the premises from 11 May 2020 until 23 October 2020. He was the current leaseholder of the premises from Punch.

The Licensing Manager reported that the application to review the premises licence had been advertised in accordance with statute. Four representations had been received and included as appendices to the report, in addition a summary of the representations was set out in section 3 of the report. The application detailed a number of incidents of disorder at the premises, failed attendance at prearranged meetings by Mr Mohtashami, breaches of Covid regulations and concerns that the licence holder, Punch, had failed to direct and control accordingly the actions of the leaseholder.

Sergeant Blain, on behalf of the applicant, addressed the Sub-Committee setting out details of the application:

- The review had been requested under the licensing objectives of failing to prevent crime and disorder and concerns over public safety;
- Cumbria Constabulary understood that the constant changes to Covid-19 regulations had been difficult for publicans and their staff. However, throughout the pandemic the Constabulary had used the 4 E's (engage, explain, encourage, enforce) as the guiding principles in relation to Covid breaches;
- Cumbria Constabulary and Regulatory Services met on a weekly basis to ensure the approach to dealing with breaches was fair, however, where there were clear breaches of public safety, positive action had to be taken against the Cumberland Inn;

- Cumbria Constabulary rarely had to take a public house to review, on this occasion they felt there had been no other option;
- Punch held the premises licence for the Cumberland Inn, a reputable company who had also attempted to support the leaseholder to the best of their ability;
- A previous DPS, who had been very competent in her role, left the post due to Mr Mohtashami's behaviour and actions;
- On one occasion Mr Mohtashami's actions almost led to staff being injured after he allowed a group to re-enter the premises after they had been previously been asked to leave by another member of staff;
- Mr Mohtashami had stated he would not have involvement in the day to day running of the pub. Cumbria Constabulary strongly believed this would not be the case, they believed he would continue to manage the pub either in person or via the CCTV system which could be monitored remotely from home;
- It was clear from the incidents and evidence presented that Mr Mohtashami was unprofessional in his approach to managing a licensed premises. Sergeant Blain felt Mr Mohtashami was not a fit and proper individual to be involved in any management responsibilities of a licensed premises;
- It was apparent that the policies in place for the premises were not being adhered to and there was no evidence of how the policies had been introduced to staff and there was no record of staff training.

PC Dodd then addressed the Sub-Committee:

- She had first met Mr Mohtashami at a Carlisle Pubwatch meeting, he had been new in post so she made arrangements with him and the Licensing Officer to meet at the premises on a set date in August 2020 at 11.00am. The day of the meeting Mr Mohtashami did not attend and contacted PC Dodd at 2.00pm asking if they were meeting that day;
- Before the meeting could be rearranged, social media footage came to light showing a suspected Covid breach at the premises. Environmental Health were made aware of the footage and it was agreed that they would accompany Cumbria Constabulary and Licensing Officers to a visit in September 2020;
- At the meeting Licensing Officers carried out a licence inspection, during the inspection it became apparent that Mr Mohtashami had very limited knowledge in relation to the management of the premises or the requirements under the Licensing Act 2003. He had been unable to produce policies or a fire risk assessment. The premises had not been registered with the Information Commissioners Office in relation to their CCTV, this was a requirement by law;
- Environmental Health had questioned Mr Mohtashami under caution in relation to the suspected Covid breach and he admitted to being on the premises at the time the social media footage was filmed. The head of door security had been present at the meeting and he could be seen in the footage. As a result the premises was issued with a Prohibition Notice.

The Sub-Committee adjourned at 10.25am due to a fire alarm and reconvened at 10.38am.

Some parties had not been able to view both of the videos which had been circulated, the Sub-Committee adjourned at 10:39am to allow the parties to view the video. It reconvened at 10:43am.

PC Dodd played the social media footage for the Sub-Committee. The footage showed several people dancing to loud music, several men had no tops on.

- At the time of the footage restrictions were in place which required table service, no dancing and background music only;
- The Cumberland Inn had a Dress Code Policy produced for the hearing which stated 'clothing must be kept on inside the premises. Removal of clothes could result in customers being asked to leave.';

- A follow up meeting had been arranged but Mr Mohtashami failed to attend claiming he knew nothing of the meeting;
- On 17 October 2020 police EGT captured further Covid breaches whereby customers were being served at the bar, the same day further breaches were witnessed. A Fixed Penalty Notice (FPN) was issued by Environmental Health and issued to Mr Mohtashami;
- No other premises had received more than one FPN for Covid breaches;
- Cumbria Constabulary had provided details of all the calls for service to the premises. Staff and management had correctly reported incidents, however, the calls for service to the Cumberland Inn were significantly higher than any other premises in the given time frame, the nature of the calls were concerning. In addition, the premises had been closed for several months during the time period;
- A number of staff members had raised concerns about Mr Mohtashami and believed that his poor management had put them and members of the public at risk;
- An incident occurred in June when Mr Mohtashami was said to have allowed a rowdy group back into the premises after they had caused earlier issues. A fight broke out and two female staff members had to intervene as there were no door supervisors on duty. The member of staff who had called the Police was later sacked by Mr Mohtashami, however, Mr Mohtashami claimed this was due to financial irregularities which she refutes.

PC Dodd played the video for the Sub-Committee. The footage showed the fight which was broken up by two female staff members.

- In August 2021 PC Dodd and a Licensing Officer attended the Cumberland Inn to meet with the previous DPS and requested to see the Door Supervisor Register, a condition attached to the licence and an offence not to have one. They did not have a register and stated it had been removed when Elite Security left the premises;
- Since then the Cumberland Inn had purchased a register, an inspection in September listed two Door Supervisors, checks showed that both individuals had worked at the premises whilst unlicensed;
- Since the submission of the application there had been three further calls for service to the premises.

Mr Humphreys, on behalf of the Licensing Authority, addressed the Sub-Committee:

- The Licensing Authority's submission had been included in the report;
- Three key themes in the submission:
 - the review had been the last resort. Multiple services, including the licence holder, had attempted to advise and support Mr Mohtashami, however, incidents continued.
 - the nature of the incidents showed a general failure across many areas;
 - all of the issues stemmed from the failure of management. There was a recurring problem which had not been corrected by a change in DPS. The proposed condition that the licence holder had put forward reflected the concerns of all Responsible Authorities that Mr Mohtashami was not fit to be involved in the running of the premises.
- Mr Mohtashami had submitted a statutory declaration which set out what he would and would not do moving forward which included distancing himself from the day to day operation of the premises. He would, however, retain general management responsibility as the leaseholder. There was evidence within Punch's submission that showed that Mr Mohtashami could not achieve such a separation;
- Mr Mohtashami had been identified as the problem element and the proposed condition would not resolve the situation;
- The premises licence holder had already tried, unsuccessfully, to remove Mr Mohtashami and was now repeating the process.

Mr Strange, Environmental Health, addressed the Sub-Committee. He stated that the interaction with the premises had been limited until Environmental Health were charged with Covid restrictions, including night time economy. The fast changing restrictions had impacted

the whole licensing sector and Environmental Health provided advice to premises. As the restrictions began to lift the advisory role changed to enforcement. There had not been an expectation that every premise would be 100% compliant, however, there was an expectation that there would be general compliance including table service. A Prohibition Notice had been served to the Cumberland Inn following the breach of regulations, as seen in the social media footage. Following further changes to regulations evidence had been presented and a FPN had been served which Mr Mohtashami had paid and therefore admitted to the offence.

Mr Strange reminded the Sub-Committee that national infection rates were very high and there was a possibility that further restrictions would be introduced for the winter. He commented that he wanted to be assured that premises within the City would meet any restrictions moving forward, most premises had followed advice, the Cumberland Inn had been one of the exceptions.

Mr Payne, Licensing Lawyers, addressed the Sub-Committee on behalf of Mr Mohtashami:

- It was an unusual hearing as the person running the premises was not the licence holder, Mr Mohtashami was the leaseholder;
- He admitted that there had been problems at the premises due to a lack of understanding and a lack of management;
- Mr Mohtashami had not been at the premises when the social media footage had been filmed;
- It had been regrettable that a fight had broken out, however, the video showed that it happened very quickly and that staff intervened relatively quickly in the circumstances.

Mr Mohtashami addressed the allegation that he had allowed people back into the premises after they had previously been asked to leave. He explained that a group of approximately 10 people had come to the premises from Scotland, another group of 5 or 6 people were already in the premises and it appeared that they knew each other. Mr Mohtashami stated that he had been in the office watching on CCTV. After 2 hours of service people were not adhering to the restrictions and staff had a hard job asking people to remain at tables. He had watched this and told staff to stop serving, this was about 10 or 15 minutes before the video. Mr Mohtashami had been in the bar helping to serve and the smaller group asked for one last drink before they left, he had not seen any issue and served them. Five minutes later the group came back. Mr Mohtashami clarified that he had not brought them back into the premises, they had not been co-operating with staff or remaining seated so he would not have brought them back.

Referring to the fight, Mr Mohtashami informed the Sub-Committee that he had been behind people to make some leave, he believed the fight had been started by new local customers. He explained that security had not been due to start until 5pm that evening and the fight had occurred before this time. He added that he had been very careful with regard to Covid and sent people back to their seats, he had asked all groups to leave.

Mr Mohtashami stated that the allegation that he had poured drinks into the mouths of customers was not true.

Mr Payne noted that the evidence presented from Cumbria Constabulary was hearsay evidence that had been reported and not experienced first hand. Mr Mohtashami questioned PC Dodd on the meetings he had missed, PC Dodd confirmed the arrangements and date and the written evidence she had to support the arrangements. Mr Mohtashami apologised for missing the meetings.

Mr Payne continued:

- Mr Mohtashami had attended other meetings and taken advice;
- Mr Mohtashami proposed to step back from the operational day to day running of the

business;

- A management structure was in place at the premises with the DPS at the top of the structure;
- The policies contained within the document bundle were inherited, however, the DPS had improved some of them;
- The 'Refusal of Service' policy showed that the responsibility fell to the DPS;
- Three incidents had occurred since the start of September, this was evidence of an improvement;
- The statutory declaration made a clear division of responsibility, it was a legal document and was an agreement that Mr Mohtashami would step away from the day to day side of the business;
- Mr Mohtashami agreed with the licence holders proposed condition;
- He highlighted case law which called for proportionality and a decision which was appropriate and necessary to achieve the objectives;
- Mr Mohtashami had invested in the business by engaging new security, who were responsible for Door Supervisors, provided a new in house radio system and employed additional security to monitor behaviour in the bar.

Ms Hetherington, DPS, informed the Sub-Committee that she joined the Cumberland Inn in August, she had been told by staff that Mr Mohtashami was not allowed in the premises when it was open. She confirmed that Mr Mohtashami came to the premises on Mondays, when it was closed, to pay staff and make orders. She could not comment on previous incidents, she stressed that she was trying to improve the premises and she dealt with all the day to day management, polices and safety.

In response to a question Mr Payne clarified that the Covid risk assessment contained within the report had been the template that the premises had used to create their risk assessment, he did not have a copy of the completed risk assessment.

Mr Warne, TLT, set out Punch's position:

- He questioned why the operator of a premises would need to excuse themselves from the running of a premises and why they would need to make a statutory declaration to that affect;
- The previous DPS had been considered a good DPS / manager had had given up the position due to the ongoing interference from Mr Mohtashami;
- The period between Mr Mohtashami taking the premises to Punch taking action to remove him was a period of 5 and a half months, this included the lockdown period when the premises was closed;
- Punch had agreed with the previous DPS that Mr Mohtashami would not be involved, there were no improvements and the DPS left as per the timeline in the report;
- Punch felt they had no other options left and began forfeiture proceedings;
- The previous DPS continued as a well respected DPS in the City. The events in the videos gave Punch Tavern serious concern and the previous DPS had given a different account of the situation. She had stated that staff told Mr Mohtashami not to serve the group, he had continued. Mr Warne questioned why Mr Mohtashami was even in the bar;
- In a meeting with Punch, Mr Mohtashami had agreed that the DPS should be allowed to run the premises without his interference and Mr Mohtashami admitted that he watched the bar on CCTV from his phone and took decisions on closing/opening hours if it was quiet;
- Throughout July 2021 Punch received a number of complaints from members of the public and other sources regarding the condition of the premises and erratic closing times. One complaint gave rise to serious concern, it reported that Mr Mohtashami had threatened and sworn at a customer when he raised the issue of cleanliness and quality of the beer;
- Mr Mohtashami's statutory declaration stated that he had not been involved in the day to day management of the business for a least four months, there was evidence within the report that this had not been the case;

- This is the first time that Punch had not supported their tenant in such a review;
- The court process had been severely delayed due to Covid, there was no date set for the forfeiture proceeding at this time. He asked that the Sub-Committee suspend the licence for three months and not revoke or place conditions on the licence so Punch could operate under a different lease holder in the future without restrictions.

In response a question Mr Donaldson, Punch, explained that all new lease holders had to meet a number of criteria including the provision of a business plan and completion of training.

The Licensing Manager outlined the relevant Legislation and the options open to the Sub-Committee

At 11.52am, all parties, with the exception of the Sub-Committee Members, Assistant Solicitor and the Democratic Services Officer withdrew from the meeting whilst the Sub-Committee gave detailed consideration to the matter.

The parties returned at 12.31pm to hear the Sub-Committee's decision.

The Sub-Committee's decision was:

This matter concerned the review of the premises Licence of the Cumberland Inn, Botchergate, Carlisle. In accordance with section 51 of the Licensing Act 2003 an application was received by Cumbria Constabulary.

The Sub-Committee had considered the application and had taken into account the evidence before it. In particular, it had listened to the submissions made by:

1. Sergeant Blain and PC Dodd, Cumbria Constabulary
2. Mr Humphreys, on behalf of the Licensing Authority
3. Mr Strange, Environmental Health, Carlisle City Council
4. Mr Payne, Licensing Lawyers
5. Mr Mohtashami, Leaseholder
6. Ms Hetherington, DPS Cumberland Inn
7. Mr Warne, TLT

And watched video evidence today.

After careful consideration, the Sub-Committee had unanimously decided to revoke the Premises Licence.

The Sub-Committee gave the following reasons for the decision:

1. The Sub-Committee had regard to the provisions of the Licensing Act, the National Guidance and the Local Licensing Policy and the Licensing objectives in particular the prevention of crime and disorder and public safety.
2. The Sub-Committee considered the option of removing the DPS but felt that this would be an inadequate response because DPS had been removed recently and it felt that there was a deeper issue within the management of the business.
3. The Sub-Committee considered the option of modifying the conditions of the licence, in particular, addressing the opening hours, adding a specific number of door staff and removing the playing of music. However, it did not feel that this would adequately address the issues because it had no confidence in the management, due to the history, that the conditions would be complied with.
4. The Sub-Committee considered the option of suspending the licence, but felt that due to the level of seriousness of the breach of the licensing objectives and the potential

consequences to public safety, crime and disorder that this was not a sufficient measure to address the severity of the problems.

The decision would be confirmed in writing including the details of rights of appeal.

The Meeting ended at: 12:34