

LICENSING PANEL MINUTES

13 DECEMBER 2016

Chair: * Councillor Krishna Suresh

Councillors: * Mrs Chika Amadi * Stephen Wright

* Denotes Member present

104. Appointment of Chair

RESOLVED: That Councillor Krishna Suresh be appointed Chair of the Licensing Panel Hearing.

105. Declarations of Interest

RESOLVED: To note that there were no declarations of interests made by Members.

106. Minutes

(See Note at conclusion of these minutes).

107. Licensing Procedures

The Chairman asked the Panel Members, officer/s, Responsible Authority/ies and other attendees at the meeting to introduce themselves and then outlined the procedure for the conduct of an oral hearing, which was set out in the agenda.

RESOLVED ITEMS

108. Application for review of the premises licence for The Shaftesbury, 3 Shaftesbury Parade, Shaftesbury Avenue, South Harrow, Middlesex, HA2 0AJ

In attendance:

Legal Advisers:	Baljeet Virdee, Andrew Lucas
Licensing Officers:	Jeffrey Leib, Ash Waghela, Samina Khan
Metropolitan Police:	P A Moran
Applicant's Representative:	Did not attend
Applicant:	Did not attend

RESOLVED: To

- (1) remove Mr Craig Daniel as the designated premises supervisor ("DPS");
- (2) suspend the licence for a period of three months.

REASONS: The Panel carefully considered all the relevant information including:

- Written and oral representations by all the parties
- The Licensing Act 2003
- The Guidance issued under section 182 of the Licensing Act 2003
- Harrow Council's Licensing Policy
- Human Rights Act 1998
- The considerations in s.17 of the Crime and Disorder Act 1998

At the outset of the hearing the Panel heard that the DPS, Mr Craig Daniel, had been in touch with the officers of the Licensing Authority to ask that the hearing be adjourned. The Panel heard that Mr Daniel had been admitted to hospital following an assault that had taken place in January of this year. The Panel also heard that the Licensee, Mr Anton Van Niekerk, was in South Africa, could not be contacted, and it was not known when he would return to the UK. The Panel heard from the Police and the Licensing Officers that all papers concerning the review had been properly served at the address given for Mr Van Niekerk, being that of the Licensed Premises.

The Panel carefully considered this request and were mindful of Mr Van Niekerk's right to a fair hearing. However, the Panel concluded that they would hear the review in the absence of both Mr Van Niekerk and Mr Daniel. Their reasons for doing so were that:

Mr Daniel was no longer the Licensee. Therefore, the review was not for him to answer, but Mr Van Niekerk, who had become the licensee on 14/10/16.

- (1) Although the injuries suffered by Mr Daniel were unfortunate, the injuries had been suffered 11 months ago and Mr Daniel had continued to run the Premises notwithstanding the injuries;
- (2) there was no information before the Panel as to how long Mr Van Niekerk had been in South Africa for, when he was likely to return to the UK, or might be able to attend before the Panel;
- (3) similarly, there was no information before the Panel as to when Mr Daniel had been admitted to hospital or how long he might be admitted for. The Panel noted that this was not a new medical problem; Mr Daniel had not been suddenly taken ill;
- (4) the Panel were satisfied that the papers had been properly served and that Mr Van Niekerk should be aware of the review hearing. Neither Mr Van Niekerk nor Mr Daniel had made any written representations in respect of the review, nor had anyone been instructed to represent Mr Van Niekerk at the hearing;
- (5) the Panel therefore considered it to be appropriate to proceed with the hearing.

The Panel then heard from the Police in respect of their application for a review. The Police took the Panel through the review application and the key points in their evidence. The Police emphasised the detrimental effect having to dispatch so many officers to deal with crowd trouble at the premises on 29/10/16 had had not only on policing within the borough, but on neighbouring boroughs who had provided units to support Harrow officers. The Police also emphasised how difficult it was for officers to either identify or speak to the DPS who should be the key liaison between the Licensee and the Police and other relevant bodies. The Police also submitted that when Mr Daniel was available to be spoken with he was in their professional opinion, intoxicated. The Police concluded that Mr Daniel was not a fit person to be the DPS and should be removed from the position.

The Panel then heard from the Licensing Authority in their capacity as a party making representations. The Licensing Officer explained that although he was not qualified to make a professional judgment, in his opinion Mr Daniel had been intoxicated whenever the officer had met him. The Officer highlighted Mr Daniel's apparent disregard for ensuring that, on a day to day basis, either the terms of the Licence or other relevant law were complied with, referring to the prevalent smell of smoke within the premises. The Officer explained Mr Daniel's previous failure to adequately comply with the terms of licences at other premises in both Harrow and Watford. The Officer also explained his concerns over Mr Van Niekerk's apparent lack of interest in the Premises, such as failing to contact the authority, or participate in the review at all which, it was said, did not reflect well on Mr Van Niekerk as the licence holder and person with ultimate responsibility for the Premises. The

Officer agreed with the Police's recommendation and concluded that Mr Daniel should be removed from the position of DPS.

The Panel were concerned that Mr Daniel did not appear to be an appropriate person to be a DPS. The Panel did not consider that being intoxicated, or even appearing to be intoxicated something that would encourage confidence in the ability of an individual to be a DPS. In addition, the Panel were extremely concerned that, while Mr Daniel had been on the premises acting as the DPS, there had been three serious disturbances at the premises, two of them occurring on one evening. The Panel concluded that Mr Daniel had failed to effectively control the Premises. Given other failures, such as trading when the CCTV recorder had been seized by the Police (the provision of working CCTV being a term of the Licence) and appearing to allow smoking in the premises, it appeared to the Panel that Mr Daniel was not running the Premises well on a day to day basis. With these factors in mind, and given that Mr Daniel had previously had similar difficulties being a DPS which had led to him standing down in 2009 and being removed in 2010, the Panel concluded that Mr Daniel was not fit to be a DPS. The Panel decided that it would be appropriate to remove Mr Daniel as the DPS in order to prevent the licensing objectives from being further undermined.

The Panel determined that the licence should be suspended for a period of three months in order to allow the Licensee to identify and appoint a new DPS and also to take stock of how the Premises were being run and to prevent the licensing objectives from being further undermined.

(Note: The meeting, having commenced at 7.15 pm, closed at 8.55 pm).

(Signed) COUNCILLOR KRISHNA SURESH
Chair

[Note: Licensing Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chair for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Licensing Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chair and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].