

Licensing Sub-Committee (Chelsea Bar & Brasserie)

Friday, 19th August, 2016
10.00 - 11.40 am

Attendees	
Councillors:	Diggory Seacome (Chairman), Mike Collins and Pat Thornton
Officers:	Phil Cooper and Fiona Samuda
Also in attendance:	PC Steve Kiernan, Licensing Officer, Gloucestershire Constabulary; PC Jaine Simner, Licensing Manager, Gloucestershire Constabulary; DC Sarah Stewart, Avon and Somerset Constabulary seconded to Home Office Immigration; Mr Tim Burnham, Chief Immigration Officer, Home Office; Mr Michael Parrott, Director Gregg Latchams Solicitors; Mr Abdul Mannan, Licence Holder and Designated Premises Supervisor, Chelsea Brasserie; Ms Sammy Badat, Manager Chelsea Brasserie.

Minutes

- 1. ELECTION OF CHAIRMAN**
Councillor Diggory Seacome was elected as Chairman.
- 2. APOLOGIES**
None
- 3. DECLARATIONS OF INTEREST**
None
- 4. DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE**
Licensing Officer, Phil Cooper, introduced the report regarding an application received on 29 June 2016 from Gloucestershire Constabulary to review the premises licence of Chelsea Bar and Brasserie, 60 St Georges Place. This establishment has a premises licence authorising the sale of alcohol, the performance of recorded music and the provision of late night refreshment.

The Licensing Act 2003 allows any responsible authority or other person to apply to review a premises licence at any time, if their grounds relate to the premises and to one or more of the licensing objectives, which are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm

Gloucestershire Constabulary had applied to review the premises licence following a visit by home office immigration officers in February 2016. During

the visit the officers carried out immigration checks on persons present and concluded that they were employed illegally at the premises.

The matter was subsequently referred for consideration of a civil penalty, after which the constabulary made their application to review the premises licence on the grounds of the prevention of crime and disorder and public safety.

Further reasons for the constabulary's application to review the licence were outlined in their application, which was attached as Appendix A to the report.

The Officer continued that the civil penalty had been disputed and informed members of the Sub-committee, that they had to consider whether, in light of the facts presented, the operation of the premises was adversely affecting the licensing objectives and if so, what action to take. The options available to the Sub-committee, if they determined that action must be taken, were:

- To modify the conditions on the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period of up to 3 months
- Or revoke the licence

The decision of the Sub-committee carried with it the right of appeal to the magistrates' court.

There being no questions to the Officer, the Chair invited the applicant to present the case. PC Steve Kiernan, Licensing Officer for Gloucestershire Constabulary, commenced by stating that the Chelsea Bar and Brasserie was from a policing perspective a well-run established restaurant that had not been in anyway problematic, with no reports pertaining to the premises at all over the last 12 month period. The matter had been brought to committee because they felt that none of the options available for consideration were appropriate to address the gravity of the claim. He explained that as a result of Immigration attending the restaurant in February 2016 and finding two males working there illegally, a civil penalty fine of £15,000 had been served on the premises on 23 June 2016 which had been objected to but maintained. PC Kiernan acknowledged that inevitably the facts presented in the review submission would be contested due to the huge implications on the business, but stated that the illegal employment of workers in licensed premises in Cheltenham was not only detrimental to the licensing objectives but also to the reputation of Cheltenham and thus felt it right and proper to bring before this sub-committee.

The Chair invited a representative of the premises to address the sub-committee. Mr Michael Parrott, Solicitor, representing Mr Abdul Mannan, the Licence holder and Designated Premises Supervisor and Ms Sammy Badat, Manager of Chelsea Brasserie, expressed gratitude for the comments on the well run restaurant over the last 12 months which had been under the new licence holder. He stated the restaurant had 70 covers and was a bar and restaurant with European cuisine.

Mr Parrott informed members that in February 2016 a man, Mr Momin Dawlatzai, had approached the restaurant for work and had produced what appeared to be an Italian passport, which thus gave him the right to work and he was given 2 days unpaid work to see if he was suitable. If he were to have

been taken on, full and further checks on his right to work would have been carried out. It transpired that his documents were not correct and therefore he was not entitled to work, however the raid on the restaurant happened on the second day of his trial period. Mr Parrott continued that Chelsea Brasserie was in a joint venture agreement with Gloucestershire College, whereby many students worked at the restaurant to develop their hospitality careers. Many of these students were from overseas, so the restaurant was accustomed to being approached by foreign students and it was an agreement with the college that the college checked their eligibility to work and papers. The restaurant manager was aware of the procedures and guidance on employing overseas personnel, but Mr Parrott stressed that as seemingly correct ID had been presented, further checks would have been made after his 2 day trial period and he pointed out again that the raid happened on the second day.

Mr Parrott said it would be foolish to say no error had occurred, but lessons had been learnt from this and with no prior or subsequent incidents since the raid and the fact the restaurant didn't have staff shortages due to the students from the college and therefore no need to take on illegal workers, he felt the civil penalty fine was punishment itself. Mr Parrott concluded that, although this was a serious offence from a Licensing Act perspective, this was at the lower end of considerations. This was a solo incident, a severe financial penalty had been issued, a log of payslips showing correct payment and National insurance numbers of staff had been submitted, his clients were now even better informed on worker employment and guidance, and thus Mr Parrott requested members to consider that revocation was too serious a step to be taken for something that happened six months ago.

In response to questions from members, the licensee, manager and their legal representative replied as follows:-

- Momin Dawlatzai was not a student at Gloucestershire College.
- The financial penalty of £15,000 had not yet been paid. An appeal had been turned down, but this would be the subject of a further appeal to the County Court, and whilst awaiting this, the fine would not be paid.
- The restaurant employed 3 fulltime employees in the kitchen and 3 in front of house, with 2 or 3 hourly staff across both areas.
- The building is rented and registered as College Brasserie Ltd with Abdul Mannan as a Director.
- No employees slept upstairs, as this is all offices and there is no accommodation.
- Upon clarification on the link with the college, it was explained that students were taken on for work experience to learn real on hand skills and to experience full shifts. Students were not paid and the restaurant could have different students working on different days. Over 30 students had so far benefitted from this joint venture. The college carried out all the necessary checks on documentation which was necessary in order for them to attend the college in the first instance.

- The Designated Premises Supervisor explained that anyone who approached them for work does a 2/3 day trial period, after which senior staff discuss whether the person will be taken on. If yes, then at this point further checks are carried out and further documentation requested and these checks are carried out before the person starts work. He repeated that Mr Momin Dawlatzai had supplied an EU document, so they had no reason to think he couldn't work in the UK.

The Home Office representative advised that there were conditions around being a student and working and that it would be good practice to in future ensure all documentation was correct and that they should call the Home Office helpline before taking on anyone.

A member referred to correspondence from the Home Office sent to Chelsea Brasserie that had not been replied to. The Manager replied that all post goes to the custodian of the building, who sorts it out and delivers to the 15-30 offices on the upper floors of the building and to the businesses on the ground floor. She confirmed that it had always been like this and that for some reason the letter in question was not received. She has subsequently asked to receive direct post and to have their own post box and this was currently being discussed.

The Council's Solicitor questioned what happened to the second person who was found at the premises. The manager informed members that Kowsar Ahmad was a student in London on a marketing course who wanted some work experience and being the partner of a friend, offered him the opportunity to see how the restaurant was run. He was not paid and she had assumed he had leave to remain in the UK.

One member, although supportive of the link between the college and the business, felt this was irrelevant as neither of the men found at the premises at the time of the raid were from the college. He was more concerned about the production of a bus ticket, which could have belonged to anyone, a copy of a passport being produced rather than the original and concerns about people being taken on, even if only for work experience, without basic health and safety and hygiene checks. He felt the manager had a responsibility to ensure the premises was run properly and wanted to know what would be done to avoid a repeat.

The licensee's Solicitor replied that his clients were now fully aware of the Home Office Immigration guidance and more so of the Home Office helpline. He confirmed they were aware that the original papers had to be produced from which a copy could be taken, and from the lessons learned and financial cost implications, that his clients would be much more aware in future.

In response to a member question, the Home Office representative stated that the visits had been triggered on the basis of information received regarding several premises and was part of a larger scale investigation.

The License holder and Designated Premises Supervisor suggested it felt like someone was against them. They wanted to help the community and the

younger generation of students interested in hospitality to gain an insight into front of house management, being a chef and running a business and he felt someone had wrongly informed on them. He stated that they would now ask for documents straightaway and do full checks on people they take on in future.

There being no further questions, the Solicitor for the licence holder summed up saying that his clients hadn't 'knowingly' employed a person who was unlawfully in the UK as the incorrect form of ID had been produced and it had been an honest error. He felt a number of the clauses in the East Lindsey District Council case, were not appropriate in this case and asked the sub-committee to exercise discretion and to keep the licence as is, as lessons had been learnt and new procedures put in place.

The Police in summing up, stated that they expected the licensing policy to be adhered to and requested suspension or revocation.

The sub-committee adjourned from the Chamber at 10.56 and reconvened at 11.38, when the Chair read out the following statement.

The sub-committee has considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and is confident that the prevention of crime and disorder and public safety matters are engaged. The sub-committee has further considered the evidence and representations before it today.

We have taken into consideration the mitigating factors presented by the respondents, including the contribution they make to the community by offering opportunities to students.

We do find that Chelsea Bar and Brasserie allowed persons whose credentials were not adequately checked to work there illegally. Consequently, we have decided to suspend the liquor licence for 2 weeks.

We also advise that the Designated Premises Supervisor should take a more active role in the running of the premises.

The Council's Solicitor advised that they had the right of appeal for a period of 21 days from the date of the decision being formally notified in writing.

Diggory Seacome
Chairman