



26th October 2017

Notice of decision

Application reference:	17/00246/PRMREV – Prem532
Application type:	Premises Licence (review application)
Applicant(s) name:	Metropolitan Police
Premises:	Cafe Estrelícia, 59 Stockwell Green, London SW9 9HU
Summary of decision:	Licence revoked

Decision details:

1. The LSC heard an application for a review of the premises licence held by Maria Idalina Carvalho Lemos Mendes and Jose Nelio Marques Baroca for Café Estrelícia, 59 Stockwell Green, London, SW9 (“the Premises”). The review was brought by the Metropolitan Police and was supported by the Licensing Authority, Lambeth Trading Standards, a ward councillor, the Larkhall Ward Safer Neighbourhood Panel, the Stockwell Village Association and six residents. The Premises were said to be undermining the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.
2. Prior to the hearing Mr. Dadds sought an adjournment on the basis that there were criminal proceedings pending against the brother of one of the licence holders and that discussing this case would risk prejudicing those proceedings. He also suggested that he had documents he would want to refer to and submissions he would wish to make and would be unable to do so even if the LSC exercised its power to exclude the public under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005. The application to adjourn was opposed by the parties who had made representations and had appeared before the Sub-Committee.
3. The Legal Adviser gave the LSC legal advice on the application. The advice was that there was no risk of committing a contempt of court or of causing serious prejudice to the criminal proceedings in these circumstances and he outlined the legal test to be met in that regard. He also reminded the LSC that it could nonetheless adjourn the hearing under Regulation 12 of the Hearings Regulations if it thought it necessary to consider any representation by any party and that the LSC might find the outcome of the criminal proceedings to be useful information.
4. The LSC refused the adjournment. It was not satisfied that there was any risk of committing a contempt of court or of seriously prejudicing the criminal proceedings nor did it consider that it needed to await the outcome of those proceedings. If the licence holders needed to make reference to documents that ought not to be referred to in public because they could risk prejudicing the criminal proceedings the LSC considered that any risk would be suitably addressed by invoking its powers under Regulation 14. The Statutory Guidance at paragraph 11.25 states that *“[r]eviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings.”*
5. The LSC called this case on for hearing at about 21:00 hours and was informed by the Licensing Officer that the licence holders and their representative had chosen not to take part in the hearing and had left the meeting.
6. The LSC heard first from PC Mike Constable of the Lambeth Police Licensing Team and PC Anthony Knapman of the local Safer Neighbourhoods Team. PC Constable explained that a firearms warrant had been executed at the Premises on 4th August 2017 and three pepper sprays had been intercepted, which had been addressed to the brother of one of the licence holders. A search of the Premises revealed a substantial quantity of foreign cigarettes and tobacco within both the Premises and the flat above, which the LSC understood to be accessible from within the Premises. Some were hidden in a washing machine in the kitchen in the Premises and much more was upstairs. PC Constable informed the LSC that the Premises had been inspected about two weeks prior to that and foreign cigarettes had been found behind the counter, which the

licence holder had said were their own. A warning had been given on that occasion and PC Constable was concerned about the possibility of the tobacco having been smuggled in to the UK without tax and other duties being paid.

7. PC Constable was also concerned that the search revealed items that could be used as weapons. There was a golf club hanging up above the bar but no sporting memorabilia or anything to indicate it was merely a sporting trophy. A craft knife and axe were also found although it was clear from the reports that these were in the garden area and not within the building itself.
8. PC Knapman told the LSC that he had been the ward officer since 2010 and that the problems with the Premises had started in about 2011, when a substantial quantity of duty-free alcohol had been discovered in the Premises. A responsible retailer's agreement had been signed in 2011 and again in 2013. Neither had had any effect and the Premises continued to generate complaints. He told the LSC that it was a magnet for street drinkers and Class A drug users and he suspected that dealing took place within the Premises. He did not attribute that to the licence holders and suggested it was likely to be linked to gangs on the local estates. He accepted that he had only ever witnessed drug dealing outside the Premises and that arrests for drug dealing had only been made outside the Premises but he told the LSC that exchanges had been made by people coming out of the Premises.
9. PC Knapman reminded the LSC that drug users often caused public nuisance, particularly by urinating and defecating in public and there was also a risk caused by used needles being left on pavements and in public areas.
10. He did not consider Mr. Baroca to be someone he could work with to address problems and referred as an example to an incident on 23rd January 2014 when a drugs warrant was executed at the Premises. On that occasion Mr. Baroca was aggressive towards the police and took his shirt off and threw it on the floor. There was a further incident on 4th March 2014 when patrons had been detained outside for smoking cannabis and Mr. Baroca denied that they had been in the Premises, even though one had entered, retrieved a pool cue, and exited the Premises. Both of these incidents were detailed on Page 162 of the reports pack.
11. He commented that the quantity of tobacco products found suggested an element of organised crime and that these products could be sold considerably cheaper than legitimate products.
12. PC Knapman did not consider that steps short of revocation could be implemented because there was no way of engaging with the licence holders. The problems had existed since 2011 and had got worse.
13. Esther Jones addressed the LSC on behalf of the Licensing Authority. She told the LSC that there had been considerable contact with the Premises since about 2006 and that they had tried to engage although their last involvement with the Premises had been in 2015. They supported the police review.
14. The LSC heard from Bernie Conmy of Lambeth Trading Standards. He told the LSC that he recalled the finding of a large quantity of illicit alcohol referred to by PC Knapman and that he was concerned that the quantity of tobacco found on 4th August suggested the selling of it, which was often an organised criminal activity. He submitted that the licence holders had to have known about this.
15. Mr. Conmy referred to the report of his visit on page 190 of the report pack. That detailed a visit on 19th July 2017 following a report that illicit tobacco was being sold at the Premises. Ms. Mendes was present during that visit. Mr. Conmy's report states that two packets of Portuguese Marlboro cigarettes were found by the till, which Ms. Mendes said was her own. She was asked if there was other tobacco on the Premises, to which she said "No." In the washing machine in the kitchen officers found a pouch of rolling tobacco on which duty had not been paid. She was asked again if there was more tobacco, to which she again said "No." In the same kitchen officers then found nine packets of twenty Marlboro cigarettes which were UK Duty Free. Ms. Mendes then said that she bought the tobacco from someone at Brixton Market.
16. Councillor Andrew Wilson addressed the LSC. He had been informed in 2014 of the problems with the Premises. He expressed the view that the Premises appeared to not engage with the authorities. He suggested that the LSC should revoke the premises licence as he could have no faith in the ability of the management to comply with conditions.
17. Diana Linskey, Chair of the Larkhall Ward Safer Neighbourhood Panel told the LSC that the Premises had been an issue discussed at the Panel at every meeting. The Premises was believed to be a magnet for crime and anti-social behaviour, drug use and dealing, highway obstruction, noise, and for the use of the Premises after permitted hours.

18. Ms. Linskey told the LSC that local people felt intimidated and threatened by the Premises and that the management simply did not care. The number of representations made in support of the review showed the strength of feeling.
19. Attempts to engage had been made by the various authorities and, when they did, that might achieve respite for perhaps three months. Consequently she and the Panel had no confidence that any conditions that might be imposed would be adhered to.
20. Eric Craig spoke on behalf of the Stockwell Village Association and made reference to the use of the rear garden for lighting fires and the fact that the Premises appeared to be using a neighbouring garden as it did not have one of its own. Loud music and noise was a frequent issue.
21. Joe McCulloch told the LSC that he and his partner had tried to engage with the Premises and with its patrons. Each time they did so they would be met with abuse from management, staff and from patrons. He also told the LSC that the owner had been aggressive towards them. He expressed concern about what appeared to be the commercial use of a furnace in the rear garden of the Premises. The Premises appeared to be hosting parties in the garden, with late drinking and selling food. This impacted on his and his partner's ability to use the rear garden for relaxation or drying clothes and he was concerned about the fumes generated as they had a chemical smell to them. He also confirmed that he had witnessed drug-dealing outside the Premises.
22. This application engages the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance, and public safety. The LSC had heard the oral submissions made by the various parties and had also read all the written material that was before it.
23. The LSC did not consider it to be at all helpful that the premises licence holders and their representative had left. Whilst the LSC does not count that against them it did mean that the LSC was unable to hear what they might have said against the application and the representations. The LSC found the information presented, both orally and written, to be credible and compelling.
24. It should be noted that the LSC is not tasked with determining guilt or innocence; its function is to promote the licensing objectives. The LSC was told and accepted that there had been considerable engagement attempted with the Premises over a long period of time and that the Premises' management had failed to engage in any meaningful way or to address its operation so as to ensure that it did not disrupt and disturb the local community.
25. The public nuisance aspects were many and varied but included the obstruction of the highway by patrons, the use of the rear garden for burning material, the noise generated from the Premises, litter generated by patrons. The LSC accepted that the management had not only ignored repeated and reasonable efforts by authorities and local residents to address this but had, particularly in relation to residents, been rude, aggressive and abusive. That was a particular aspect that was recorded in several of the written representations.
26. The public safety concerns were, in large part, linked to both the public nuisance and the crime and disorder objectives. Concerns of drug use and dealing clearly had the potential to engage the public safety licensing objective. The LSC accepted that it appeared that patrons of the Premises were dealing drugs outside. If so, that clearly had the potential to risk the safety of local residents and other patrons who might, for example, be caught up in disputes or altercations. There were also concerns that students residing in nearby accommodation experienced harassment from patrons.
27. The crime and disorder concerns were of paramount importance to the LSC. Leaving aside the incident that gave rise to this review (and which, under the Statutory Guidance, would by itself suffice to justify revocation) the LSC was satisfied that the operation of the Premises undermined that licensing objective. The LSC need not determine whether or not there was an organised criminal element to the illicit tobacco. What was clear was that it was on the Premises, in the flat above the Premises, and it was concealed within the Premises. There was a substantial quantity found. When officers had visited in July Ms. Mendes had not been honest with them about the tobacco found on that occasion. It also did not escape the LSC's attention that on both occasions some tobacco was found concealed in a washing machine.
28. The LSC does not know and cannot know whether some patrons are in fact dealing drugs. The information presented, from numerous different sources, suggests that they are. What is clear is that the Premises has done nothing to address this. There are also reports of fights at the Premises and the threats made to some of the residents could well be criminal offences as well.

29. The LSC has paid careful regard to the Statutory Guidance, which sets out the approach to be taken:

“11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority’s duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- for the sale and distribution of illegal firearms;*
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- for prostitution or the sale of unlawful pornography;*
- by organised groups of paedophiles to groom children;*
- as the base for the organisation of criminal activity, particularly by gangs;*
- for the organisation of racist activity or the promotion of racist attacks;*
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- for unlawful gambling; and*
- for the sale or storage of smuggled tobacco and alcohol.*

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.”

30. The LSC has carefully considered all the available options. Doing nothing is clearly not an appropriate option here. Removing a licensable activity from the scope of the licence would not achieve very much, if anything, since there was no reason suggest that it would be adhered to or that it would stop the troublesome patrons from attending.

31. The licence itself contained no conditions. Were it not for the seriousness of the issues raised in this review or if those issues had not been ongoing for so long the LSC might have been minded

to impose conditions to promote the licensing objectives and to perhaps have combined that with a period of suspension and/or the removal of the DPS. The DPS would appear to be not merely ineffective in that role but a contributor to some of the problems arising. Given the long history and the attempts at engagement the LSC shared the concerns expressed by many, which was that there could be no faith that any conditions imposed would be complied with.

32. The LSC was not satisfied that suspending the licence for the maximum three months permitted would have any effect. It had no confidence in the management of the Premises and was not satisfied that any such suspension would be complied with or, if it was, that it would prevent the problems from arising in the future.

33. This is clearly not a case where the problems are arising in spite of the best efforts of the management and staff. It appears to the LSC that the cause of some of the problems are the management. The Premises' management has had ample time to address the problems, to make changes to their operation, and to ensure that they integrate with the community. They have demonstrated that they cannot or will not do so and that they will continue to operate as they choose, regardless of the detrimental impact it has on the local community. The use of the Premises for the storage of smuggled tobacco is alone sufficient to justify revocation at the first instance. When the other issues are added to that it simply gives greater weight to the need for tough action. The LSC is satisfied that the only appropriate and proportionate option open to it to ensure the promotion of the licensing objectives is to revoke the premises licence.

Date of issue:

27th November 2017

Appeal information

If you wish to appeal a decision made by the Licensing Sub-Committee you must give written notice of appeal, within the period of 21 days beginning with the day on which you were notified by the licensing authority of the decision you wish to appeal, to:

The Appeals Officer
Camberwell Green Magistrates' Court
15 D'Eynsford Road
London
SE5 7UP

Please note that there is no power to extend the time limit for an appeal.

On appeal a magistrates' court may:

- Dismiss the appeal;
- Substitute for the decision appealed against any other decision which could have been made by the licensing authority;
- Remit the case to the licensing authority to dispose of in accordance with the direction of the court.

The court has wide discretion and may make such order to costs as it thinks fit.

The table below sets out each party's entitlement to appeal a decision:

<i>Appeal entitlement: Review of a premises licence</i>		
Nature of decision	Applicant's appeal rights	Other parties appeal rights
Any	The applicant may appeal against the decision.	The holder of the premises licence may appeal against the decision. Any other person who made relevant representations in relation to the application may appeal against the decision.