

## **Minutes of Licensing Sub-Committee**

**9 December 2022**

### **Present:**

Councillor R.W Sider BEM  
Councillor C. Bateson  
Councillor O. Rybinski

### **In attendance for the applicant:**

Leslie Spearpoint, Senior Environmental Health Officer

### **In attendance for the Local Licensing Authority:**

Tracey Willmott-French, Senior Environmental Health Manager

### **In attendance for the Responsible Authorities:**

Lucy Catlyn, Principal Licensing Officer  
Laura McCulloch, Licensing Officer  
PC Inder Singh 41809, Surrey Police

### **In attendance for the respondent:**

Bobby Dhunay, Director of Vegan Pind Ltd, the Premises Licence Holder  
Satpal Heir, Representee for Vegan Pind

### **Other parties in attendance:**

Deborah Hunt, representee in support of the applicant  
Dr Sacha Grimes, representee in support of the applicant

## **7/22      Disclosures of Interest**

There were none.

## **8/22      To consider an application for review of the Premises Licence at Vegan Pind, 21B Clarence Street, Staines-upon-Thames TW18 4SU**

The Chairman introduced the members and officers present and welcomed everyone to the meeting.

The Chairman asked all parties present to introduce themselves. He then explained the procedure to be followed at the hearing.

The Council's Senior Environmental Health Manager summarised the application which was set out in full in the report of the Deputy Chief Executive.

The hearing continued in accordance with the procedure.

Having heard the evidence presented, the Sub-Committee retired to consider and determine the application, having regard to the licensing objectives on prevention of public nuisance, prevention of crime and disorder, and public safety.

Upon reconvening, the Chairman gave the Sub-Committee decision.

The full decision with reasons would be notified to the applicant and other parties within five working days of the hearing.

**Resolved** that the Premises License at Vegan Pind, 21B Clarence Street, Staines-upon-Thames TW18 4SU be revoked in accordance with the decision notice attached.

**SPELTHORNE BOROUGH COUNCIL**

**DECISION NOTICE**

**in accordance with the LICENSING ACT 2003 s.52**

**Licensing Sub-Committee – 9 December 2022**

**Application for Review – Leslie Spearpoint, Senior Environmental Health Officer**

**In respect of – Vegan Pind, 21B Clarence Street, Staines-upon-Thames TW18 4SU**

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**SUB-COMMITTEE DECISION WITH REASONS**

**Revocation of Premises Licence**

**With effect from the end of the period given for appealing against the decision or, if the decision is appealed against, the date on which the appeal is disposed of.**

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1. This Sub-Committee has before it an application for Review of the Premises Licence at Vegan Pind, 21B Clarence Street, Staines-upon-Thames TW18 4SU. The Review is brought by Leslie Spearpoint, Senior Environmental Health Officer.
2. The Respondent is Vegan Pind Ltd which are the Premises Licence Holder at Vegan Pind.

**ATTENDANCE**

3. A number of people have attended the Sub-Committee hearing this morning to make representations. They are:
  - a. Leslie Spearpoint, Senior Environmental Health Officer- Applicant for the Review
  - b. Tracey Willmott-French, Senior Environmental Health Manager

- c. Bobby Dhunay, Director of Vegan Pind Ltd, the Premises Licence Holder
- d. Satpal Heir, representation for Vegan Pind
- e. Deborah Hunt, member of public
- f. Dr Sacha Grimes, member of public
- g. Responsible authorities:
  - *Lucy Catlyn, Principal Licensing Officer*
  - *Laura McCulloch, Licensing Officer*
  - *PC Inder Singh 41809, Surrey Police*

## **EVIDENCE**

- 4. The Licensing Sub-Committee has considered all of the relevant evidence made available to it, and in doing so has taken into account the regulations and national guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

## **Applicants for Review**

- 5. Leslie Spearpoint, Senior Environmental Health Officer, explained the circumstances which had resulted in the submitting of the application for review under the prevention of public nuisance.
- 6. The Applicant explained that the current premises licence has 32 conditions on it which related to noise control, door staff, staff training, CCTV, customer entry times, and record keeping.
- 7. Environmental Health began receiving complaints regarding noise and use of the balcony at the premises in late January and on 9 February 2022 a Noise Limiter was installed and calibrated to ensure that music was inaudible within a nearby premises.
- 8. Noise complaints resumed in April 2022, which included noise after hours and use of the balcony beyond 23:00.
- 9. On 6 August 2022, the Applicant visited Aldous House to review the level of music from Vegan Pind. Music from Vegan Pind could be heard despite doors

and windows being closed. The music was also monitored from other spots in the Town Centre and was completely audible. The Applicant concluded that the level of music coming from Vegan Pind was a statutory nuisance. The Applicant demonstrated the level of noise he observed through noise recordings taken after 23:00.

10. On 10 August 2022 a Noise Abatement Notice was served on Vegan Pind.
11. Complaints about the noise level continued to be received after the Noise Abatement Notice was served.
12. On 23 September 2022, a noise recalibration was carried out on the noise limiter. Noise complaints have continued to be received after this.
13. The Applicant concluded that the premises is unsuitable for night club-type activities due to its proximity to residential properties and stated that Environmental Health has no faith in the management. Environmental Health asked for the licence to be revoked.
14. Upon questioning, the Applicant confirmed that despite multiple visits and advice given, no improvements had been made by the premises licence holder. The abatement notice was served as a last resort.

## **Responsible Authorities**

### Licensing Authority

15. Lucy Catlyn, Principal Licensing Officer, presented the representation on behalf of the Licensing Authority.
16. On 4 February 2022 the Licensing Authority, accompanied by Environmental Health, visited Vegan Pind and identified that many of the Licence Conditions were not being adhered to and there were breaches of the Licensing Act 2003.
17. On 28 February 2022, the Licensing Authority was informed by the police, that they had visited on 27 February and had observed over 50 people within Vegan Pind at 03:20. CCTV was obtained, along with till receipts, which showed sales of alcohol beyond the terminal hour of 01:30. The CCTV also showed that the balcony was being used outside of the hours set out in the conditions.

18. The Sub-Committee were informed that when the CCTV was viewed it was observed that the time on it was incorrect by 1 hour.
19. Mr Dhunay and Mr Laila were PACE interviewed on 14 June 2022 and 14 July 2022 respectively. In the PACE interviews, both parties admitted that sales of alcohol had taken place on the night in question but that a private party was taking place.
20. On 23 September 2022, Licensing and Environmental Health carried out a full licensing check and further breaches of the licence conditions were identified.
21. A meeting was scheduled with Mr Dhunay on 26 October 2022 by the Licensing Authority. Mr Dhunay did not attend. Further breaches of the licence conditions were observed. It was also explained that the manager present, Raj Heir, was unable to operate the CCTV upon request.
22. The Licensing Authority identified that the SIA Door Supervisor Log Book and CCTV had been requested but had not been received. A number of reasons had been given by the premises for not being able to provide CCTV upon request.
23. The Licensing Authority outlined the visits they had made to the premises since it opened and explained that at each visit to the premises, breaches of the licence were observed. This includes visits on 4 February 2022, 3 March 2002, 20 May 2022, 23 September 2022 and 26 October 2022. Advice was given to the Premises both verbally and in writing and stated what needed to be corrected and the consequences of not doing so.
24. The Committee members asked if the Licensing Authority could clarify if the incident on 27 February 2022 was a private party and if so was the sale of alcohol allowed. The Licensing Authority stated that the premises licence allows the sale of alcohol from that premises for a specific time period, and any sales outside of that time, even if to friends and family, would not be permissible.
25. The Licensing Authority explained that there is a staged enforcement policy. They had visited, wrote letters, interviewed both Mr Laila and Mr Dhunay regarding their roles as DPS and that there were only so many times that they can advise. They were concerned that the licensing objectives were not being upheld.

26. Upon clarification regarding the CCTV, it was explained to the Sub-Committee that there had been many conversations about the incorrect time on the CCTV. The Licensing Authority had been told by the premises licence holder that if he were to change it and get it fixed, he would lose the CCTV footage. However, the Licensing Authority told the Sub-Committee that Mr Dhunay had won awards for being a CCTV engineer in the past but despite this, there was an issue with the CCTV.
27. The Licensing Authority supported the application by Environmental Health and requested that the Licence be revoked.

### Police

28. The Police representation covered three of the Licensing Objectives; prevention of Crime and Disorder, Public Safety, and prevention of public nuisance.
29. Prevention of Crime and Disorder:
- At the Licensing Authority visit on 4 February 2022, CCTV covering the rear door was missing and staff were unable to provide historical recordings or demonstrate that recordings were being kept for the required 31 days.
  - On 7 August 2022, police received a call from Vegan Pind and were informed that a drunk customer was refusing to leave the premises. Police were informed there was no door supervisor on duty. This was in breach of the licence conditions.
  - The police advised that Vegan Pind's CCTV system had not been registered with the Information Commissioner's Office Website, as of 7 November 2022.
30. Public Safety:
- 24 February 2022, police were called to an incident outside Vegan Pind. Police observed a lack of staff at Vegan Pind to deal with the number of customers coming out of the premises.
31. Public Nuisance:

- 27 February 2022, Police attended at 3:20am and found that there were over 50 persons on site. The police were informed it was a family party.
32. PC Singh stated that on routine visits to the premises, staff have not been receptive to the police's presence.
  33. PC Singh identified that the premises were accepting photos of identification on phones rather than the physical documents and as such had no way to check if the ID was real or not.
  34. PC Singh concluded stating that at every licensing check the police have carried out, Mr Dunhay had not been receptive to the visit and had been uncooperative. Surrey Police supported the application by Environmental Health and requested the licence be revoked.
  35. The Committee members asked if any further breaches of licence conditions had been found on any further visits. PC Singh explained that when Surrey Police attended on 15 October 2022, Mr Dhunay had produced an incident book upon request. Records began from 26 September 2022 and pages were not completed properly. Advice was given that all sections should be filled out correctly.
  36. The Committee asked for PC Singh's view on the Nitrous Oxide canisters that had been found at the premises. PC Singh explained that there is a Public Space Protection Order in place in Spelthorne in relation to legal highs.

### **Other persons**

37. The Sub-Committee received written representations from three other parties: Deborah Hunt, Dr Sacha Grimes, and Dr Rikesh Patel.

#### Deborah Hunt

38. Ms Hunt explained that she started to keep a log of incidences of noise in June 2022 after contacting the Council, however she added that she was aware of the noise being an issue from the early months of the year.
39. Ms Hunt explained that the noise was a problem mostly on Friday and Saturday nights, but some weeks Thursday was an issue as well. The noise would start



from 9:00pm and continue until 1:30am. On occasions it would continue past 1:30am.

40. The noise disturbance was mainly from the music being played by the venue, but would sometimes include customers on the balcony talking, shouting and using their phones. Ms Hunt described the noise as thumping drum and base and stated that she would experience four and a half hours of constant thumping noise with no break.
41. Ms Hunt explained that the noise was so loud it could be heard over the TV and that it was impossible to go to sleep, even with windows and doors closed. It resulted in her dreading the end of the week, not knowing if she would have one, two or three nights of noise. Ms Hunt went on to say that she found it really difficult to relax and that you should be able to relax in your own home without dreading these days.
42. Ms Hunt stated that she had not noticed any improvement in the noise.

#### Dr Sacha Grimes

43. Dr Grimes supported the evidence provided by Ms Hunt and added that residents were very distressed about the ongoing noise and the lack of sleep caused by it. Dr Grimes stated that she dreaded the weekends and that is sometimes occurred on random weeknights. She stated that it made getting up for work extremely difficult after being up until 1.30am or even later. She explained she first began to experience disturbances in January 2022.

#### **Premises Licence Holder**

44. The current premises licence holder is Bobby Dhunay.
45. Mr Dhunay apologised to residents and stated he had not received their complaints, as they had never been in contact directly and that he would have done something about it if they had. Mr Dhunay stated that he has seen other premises that are louder than Vegan Pind.
46. Mr Dhunay explained that the problem with the time on the CCTV had now been rectified. There had been a problem with the chip and had to go to the manufacturer for help. He also explained that the security staff have been told to

fill in the log books but there has been an issue with the books, as the space in the books is not big enough to log their full numbers.

47. Mr Dhunay stated that the event the police referenced as taking place on 27 February 2022, was a private function for friends and family and that payment was not taken for alcohol.
48. Mr Dhunay went on to state that he is new to the hospitality industry and still needed to learn what needed to be done in respect to the conditions on the licence. He explained that he had made a mistake, and that he had hired an experience DPS, but that DPS did not guide him in the correct way. He explained that he has become the DPS but is still adapting.
49. Mr Dhunay explained that he could not afford to have the number of security persons as stated in the conditions on the licence. He described how he was under a lot of stress financially due to the premises, although stated that it did not excuse the failure to follow the licence conditions.
50. He stated that he did not want to annoy his neighbours and reiterated that no one had contacted him directly. He declared that the noise level was kept to the level of the noise limiter but that it was obviously not enough.
51. The Applicant asked Mr Dhunay whether the premises was a restaurant or a night club. Mr Dhunay stated that it was a restaurant and bar, not a night club and that it is not promoted as a night club. However, upon Mr Dhunay asking what the difference was between a bar and a night club, the Applicant asserted that night club activities were being carried out at the premises in the form of loud music and dancing, as a bar would have background music.
52. Mr Dhunay was asked by the Applicant why music was being played beyond 1:30am. Mr Dhunay explained that it would have been a mistake if music had gone past 1.30am. He stated that music was played while clearing up but it would be at a much lower volume.
53. Mr Dhunay was then asked why the side panel was missing from the noise limiter. Mr Dhunay responded that the box that contained the noise limiter also contained the wi-fi router which they needed access to. The Applicant stated that

it appeared the noise limiter had been re-set to a significantly louder volume than it should have been. Mr Dhunay responded saying that they play music to the maximum volume of the noise limiter and that the DJ cannot override it.

54. Mr Dhunay was asked by the Licensing Authority if he knew what the closing time for the premises was and why on CCTV viewed of 20 November 2022 and 26 November 2022, the premises was still open 30 minutes past closing time. Mr Dhunay stated that he knew the closing time was 1:30am but admitted that on occasions it took a long time to get customers of the premises.
55. Mr Dhunay was asked why the Incident Logs, SIA Logs and the Training Logs had not been provided. Mr Dhunay claimed he was unaware that he needed to provide them. The Licensing Authority drew the Committees attention to a series of e-mails to Mr Dhunay requesting these items.
56. In respect of why training logs were not available when the Licensing team visited, Mr Dhunay stated that it was a mistake and that the logs should have been updated. The Licensing Authority explained that she had observed staff on CCTV that there were no training records for. Mr Dhunay explained that when he was short staffed, his friends would sometimes work at the premises and would have been given training on the day.
57. When asked to clarify how many door supervisors he had. Mr Dhunay repeated that he was unable to afford the number of door supervisors as outlined in the licence conditions and stated that on days when he had no door supervisors, alcohol was not sold.
58. PC Singh pointed out to Mr Dhunay that on 7 August 2022, the police had been called by Raj Heir at Vegan Pind who stated that there was an intoxicated customer on site who refused to leave and that there was no door supervisor on the premises. Mr Dhunay refuted this claim and explained that Mr Heir was new at the time and may have been confused.
59. Mr Dhunay was questioned by the Committee members who enquired whether Mr Dhunay was aware of the four Licensing Objectives and whether he felt they were being followed. Mr Dhunay stated he was aware of the objectives and in the case of the noise complaints felt that the objectives had not been met.

60. Mr Dhunay was asked what strategies would be put in place to deal with the issues that had been identified. Mr Dhunay stated that they would turn on the lights earlier to indicate to customers it was nearing closing time. Bi-weekly checks would be carried out to ensure everything was working properly and Mr Raj Heir was being trained to manage the premises in Mr Dhunay's absence.
61. Mr Dhunay was asked to address his statement regarding complaints from members of the public by Dr. Grimes. Dr Grimes explained that she sometimes called the premises 2-3 times an evening to complain about the noise to the manager, and was aware that her neighbours had done the same. Mr Dhunay stated that if he was aware of a noise complaint, he would request the music to be turned down.
62. Mr Dhunay was asked in relation to the incident on 15 September 2022, as outlined in the Licensing Authorities representation, if he was aware of RIDDOR. Mr Dhunay admitted that he was unaware until the Licensing Authority had brought it to his attention.
63. Mr Dhunay was asked how he familiarised himself with what the Council required when the licence was granted. He explained that he was unaware of the conditions imposed on the licence when it was granted as this had been done through an agent. He attempted to familiarise himself with the conditions. The premises was intended to mainly serve food, but profited mainly from its sales of alcohol, particularly from patrons who have visited another local licensed premises.
64. Mr Dhunay was asked how he reacted to the visits from the Council and what steps were taken to resolve the identified issues. Mr Dhunay stated that the premises were under the supervision of the previous Designated Premises Supervisor and he had been shown the letter and asked to address the issues. Mr Dhunay stated that he did not follow-up to ensure that everything had been addressed. He said when a further visit was made in March, he realised that the issues were not being addressed and applied for his own personal licence to become the designated premises supervisor. He was still getting used to how to run a business. He realised he should ask for help but he could not afford to do so.

65. Mr Dhunay was asked about the levels of noise emitting from Vegan Pind and if he recognised the amount of distress he was causing neighbouring residents. He replied that he felt that people were complaining because they had a personal agenda against the premises. When asked to address the representations from residents, Mr Dhunay explained that he only recently had found out about the calls.
66. Mr Satpal Heir spoke on behalf of Mr Dhunay and apologised to the residents. He explained that his son works for Vegan Pind and has offered to work as a consultant at no cost to help put the business back in shape and to ensure the conditions are being met.

## **FINDINGS**

67. The Licensing Sub-Committee has carefully considered all of the evidence before it, including the written and oral representations made by the Applicant, the Responsible Authorities, other persons and the Premises Licence Holder.
68. In considering all of the evidence put before it, the Sub-Committee has had regard to the Council's Statement of Licensing Policy and the Secretary of State's Guidance issued under the Licensing Act 2003 ("National Guidance"). The Sub-Committee finds as follows:
69. The Sub-Committee is mindful of its duty to promote all the licensing objectives and on the basis of the evidence it has heard, considers that the licensing objectives of the prevention of public nuisance, prevention of crime and disorder and public safety have been engaged.
70. The Sub-Committee notes that three Responsible Authorities have supported the revocation of the premises licence and each have spent considerable time and effort in trying to assist the Premises Licence Holder. Despite this, the Premises Licence Holder has failed to take notice of this advice.
71. The Sub-Committee finds the Responsible Authorities have exhausted their expertise in guiding the Premises Licence Holder to comply with the licence conditions and adhere to the licensing objectives. With regard to the Premises Licence Holder's failure to adhere to the licence conditions in respect of record keeping, the Sub-Committee viewed this to be a display of poor management.

72. The Sub-Committee is of the view that Mr Dhunay has failed to demonstrate that he has any plan in place to alleviate the concerns raised before the Sub-Committee. Along with failing to adhere to the many warnings of the Responsible Authorities over the course of the past year, Mr Dhunay was ill prepared for the Sub-Committee hearing and failed to set out an action plan or sufficient measures as to how he would resolve the issues raised. The Sub-Committee has no sense of confidence that Mr Dhunay would rectify any of the issues raised or adhere to the licence conditions.
73. The Sub-Committee is sympathetic to the pleadings of Mr Heir in relation to this son and his offer to help, however no details were provided in terms of how he would assist. It was also unclear as to what would happen if Mr Heir's son no longer worked at the premises.
74. The Sub-Committee is also conscious of human rights implications when considering and balancing licensing issues, in particular, Article 1 of the First Protocol and Article 8. Article 1 relates to the peaceful enjoyment of possessions and Article 8 provides that every person has the right to respect for their private and family life and home.
75. The Sub-Committee notes that the evidence relates to the prevention of public nuisance, public safety and crime and disorder. Taking each of those licensing objectives in turn, the Sub-Committee finds as follows:

### **Crime and Disorder**

76. The Sub-Committee are persuaded by the evidence of the Police and the Licensing Authority that the premises is not being run in accordance with the Licensing Objectives in relation to the prevention of crime and disorder due to the ongoing issues relating to CCTV, lack of drugs policy and the acceptance of ID's on phones over originals.
77. The Sub-Committee considers the premises ongoing failure to provide access to CCTV recordings upon request to be contrary to the conditions on the existing licence and evidence of serious mismanagement of the Premises Licence Holder. CCTV is a means of deterring crime and disorder, however, the effectiveness of it as a tool will be seriously undermined if Responsible

Authorities are unable to retrieve it on request or the footage contains incorrect timings.

78. The Sub-Committee further considered that by not checking patron's ID correctly and instead just viewing photos of ID, the Premise Licence Holder was not upholding the principles of Challenge 25, which is an incredibly serious and dangerous matter.
79. The Sub-Committee is extremely concerned that cannabis was found in the possession of customers at the premises by the Police, along with Nitrous Oxide canisters. The discovery of this during spot checks is evidence of ill-practice at the premises in the view of the Sub-Committee. This is supported by the lack of drugs policy in place, which demonstrates that the Premises Licence Holder has not taken this issue seriously.
80. The Sub-Committee has also given regard to the fact that Surrey Police, who are the main source of advice in relation to the prevention of crime and disorder licensing objective, have not only submitted a representation but verbally confirmed their support for the revocation of the premises licence.

### **Public Nuisance**

81. The Sub-Committee considering the National Guidance at paragraph 2.15 focussed on the effect of the licensable activities at the premises. It is persuaded by the evidence of the Applicant that the premises is not being run in accordance with the Licensing Objectives in relation to the prevention of public nuisance, due to excessive noise from music and from customers using the balcony outside the permitted time and the frequency of the noise complaints received.
82. The Sub-Committee considers there is consistency in the evidence of noise disturbance provided by the Applicant, the Licensing Authority and the Other Persons and finds that these disturbances have arisen as a result of the operation of the premises.
83. The Sub-Committee upon hearing the recordings of the noise generated from the premises, along with the representations provided, is persuaded that the premises has caused a statutory noise nuisance which has continued after and in despite of, a Noise Abatement Notice having been issued and the application for review being submitted.

84. The Sub-Committee notes that the numerous conditions contained on the premises licence to prevent public nuisance have been ignored.
85. The Sub-Committee is persuaded by the Applicant's assertion that the premises is acting as a night club in the guise of a restaurant and bar.
86. The Sub-Committee is sympathetic to the representations of the Other Persons and finds the effect on the residents due to noise from music to be disproportionate and unreasonable.

### **Public Safety**

87. The Sub-Committee is persuaded by the evidence of the Police and the Licensing Authority that the premises is not being run in accordance with the Licensing Objectives in relation to public safety due to the lack of awareness of management relating to RIDDOR, and the lack of commitment to engaging the use of the correct number of Door Supervisors.
88. In respect of the failure to report and record the incident that occurred at the premises, the Sub-Committee considers the failure of management to be aware, understand or accept their requirements under RIDDOR to be a very serious issue. It is the view of the Sub-Committee that Mr Dhunay grossly underestimates his responsibilities for the safety of people while they are on the premises.
89. The Sub-Committee considered the lack of the correct number of door supervisors, in violation of the conditions of the licence, to put public safety at risk. The Sub-Committee are concerned that Mr Dhunay relies on potentially intoxicated patrons arriving from other licensed premises to financially bolster his business, whilst not understanding his health and safety requirements. It is the view of the Sub-Committee, that this appears to be a risk that Mr Dhunay is willing to take, but it is to the detriment of everyone else around him.

### **CAUSES OF CONCERN**

90. The Sub-Committee is advised by National Guidance paragraph 11.20, to identify the causes of concern established by the representations. Remedial



action can then be directed to those causes. In this case the causes of concern may be summarised as follows:

- (a) There is poor management and supervision of the premises by the Premises Licence Holder;
- (b) The DPS is not controlling or adequately managing the premises and those attending;
- (c) The Licensing Objectives are not being addressed so that residents suffer from public nuisance.

## **LEGAL POSITION**

91. By virtue of the Licensing Act 2003 the Sub-Committee is entitled to consider on a review application whether it should:

- ⇒ Modify the conditions
- ⇒ Exclude a licensable activity
- ⇒ Remove the Designated Premises Supervisor
- ⇒ Suspend the licence for up to 3 months
- ⇒ Revoke the licence

## **Written Warnings**

92. The Sub-Committee considered the advice set out in the National Guidance at paragraph 11.17 that a Sub-Committee could consider written warnings to a Premises Licence Holder and to recommend improvement within a particular period of time.

*“It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warning should be issued in writing to the holder of the licence.”*

93. A written warning was sent to the Premises Licence Holder by the Licensing Authority on 17 May 2022. The letter advised Mr Dhunay that he was still under caution and outlined how the licence was being breached. The letter advised Mr Dhunay to seek independent legal advice.

94. The Sub-Committee finds that advice and guidance had been given to Mr Dhunay both verbally and in writing at numerous visits to the premises by the Licensing Authority and Environmental Health, which detailed the points he needed to address in order to comply with the premises licence conditions.

## **OPTIONS**

95. The Sub-Committee has considered which of the remedies available to it would be most proportionate and appropriate to meet the Licensing Objectives on prevention of public nuisance, public safety, and prevention of crime and disorder to address the concerns outlined above.

### **Modification of conditions**

96. The Sub-Committee considered if the problems at this premises could be remedied by the imposition of conditions.
97. Given that so many of the current conditions on the licence are not being complied with and the serious concerns about the lack of proper management at the premises, the Sub-Committee finds that the addition of further conditions would neither be effective, appropriate or sufficient to promote the licensing objectives.

### **Exclusion of Licensable activity**

98. The Sub-Committee then went on to consider the removal of a licensable activity. There are 3 licensable activities at the premises; sale by retail of alcohol; provision of regulated entertainment; and the provision of late night refreshment.
99. The Sub-Committee views that there is serious evidence of mismanagement of the premises and has such little confidence in the Premise Licence Holder rectifying those issues. It does not consider the removal of a licensable activity as an appropriate or proportionate step to address the concerns raised by this review application and promote the four licensing objectives.

### **Removal of DPS**

100. The Sub-Committee is persuaded a cause of public nuisance at the premises has been a lack of proper control by the DPS.
101. The Sub-Committee considered if removal of the DPS would be an appropriate response. The Sub-Committee is of the view that Mr Dhunay recognised there were issues with the premises and that in becoming the DPS on 16 June 2022, he believed it would be sufficient to put things right. However, despite personal

intervention, he failed to remedy the many violations that had been highlighted to him in his time as the DPS.

102. The Sub-Committee views that Mr Dhunay appears not only inexperienced but also incapable of getting to grips with the issues highlighted by the Licensing Authority in their various letters.
103. The Sub-Committee notes paragraph 11.22 of the National Guidance and finds that the problems observed are as a result of poor company practice and that the removal of the DPS would not correct the issues presented.

### **Temporary Suspension of Licence**

104. The Sub-Committee also considered temporary suspension of the premises licence.
105. A suspension serves as a severe form of warning to the Premises Licence Holder that there is a risk that if things do not improve then more serious action is warranted. The Premises Licence Holder has had warnings since February 2022 about the numerous breaches of the licence conditions and he has not taken the opportunity to remedy these.
106. Mr Dhunay failed to persuade the Sub-Committee with any confidence as to the measures he would put in place to rectify the causes of concern and adhere to the licence conditions. The Sub-Committee are not convinced that by imposing a temporary suspension, that Mr Dhunay will do anything to change the current situation.
107. The Sub-Committee notes Mr Dhunay's comments that he is aware that he needs help but cannot afford to do so. The Sub-Committee is of the view that Mr Dhunay has failed to seek help and that he is bending the rules to keep the business afloat.
108. The Sub-Committee is of the view that Mr Dhunay had sufficient time to adhere to the licence conditions and yet he has continued to run the premises in breach of those conditions, at the expense of the residents which is unacceptable.
109. The Sub-Committee therefore considers a suspension to be neither an appropriate or proportionate step to promote the licensing objectives.

### **Revocation of Licence**

110. The Sub-Committee is mindful that three Responsible Authorities are in favour of revoking the premises licence. When looking at the evidence placed before it, the Sub-Committee views that the Licensing Authority has clearly not taken this decision lightly. The communication with the premises licence holder has been measured, constructive and designed to show him a path to put things right. Yet sadly, he appears either unwilling or incapable of taking advice.
111. The Sub-Committee is mindful of the seriousness of revocation, not only in removing an amenity from the community but in the detrimental financial impact that may result. However, this must be balanced against the massive impact this premises is having on residents and also Responsible Authorities. The Sub-Committee is of the view that this premises is severely impacting the residents home life and is straining the resources of the Responsible Authorities.
112. Despite ample opportunity to rectify the issues that have been put before the Sub-Committee, the Premises Licence Holder has failed to provide evidence of how the situation can be improved. The Sub-Committee notes paragraph 11.23 of the National Guidance which states:
- “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.”*
113. On the evidence presented, the Sub-Committee considered whether revocation of the premises licence was appropriate and proportionate. It has concluded that on the basis of the evidence before it that revocation is the only option available that is both appropriate and proportionate.

## **DECISION**

114. The Sub-Committee has reached a decision about this matter and in doing so has taken into account the National Guidance on Reviews, paragraph 11.20, which encourages Sub-Committees to identify the problems at licensed premises and then to take a proportionate view to the remedies which are available and might be necessary to promote the licensing objectives.

115. The Sub-Committee has decided to revoke the premises licence, as set out at Paragraph 113 above.

### **Conclusion**

116. You have the right to appeal against this decision to the Magistrates' Court within 21 days of receipt of this decision notice. The relevant provisions are set out in section 181 and Schedule 5 of the Licensing Act 2003.

117. If you decide to appeal, you will need to submit your appeal to Guildford Magistrates Court. You should allow sufficient time for your payment of the relevant appeal fee to be processed. For queries, Guildford Magistrates Court can be contacted on 01483 405 300.

Councillor R.W. Sider BEM (Chairman)

Councillor O. Rybinski

Councillor C. Bateson

Date of Decision: 9 December 2022  
Date of Issue: 16 December 2022

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