

LEGISLATIVE & COVID REGULATIONS UPDATE

Committee	Licensing Committee
Officer	Glen Egan, Office Managing Partner, Legal Services
Wards	All

HEADLINES

This report advises Licensing Committee of some decisions made by licensing committees where breaches of the Coronavirus legislation has taken place and of a recent decision of Uxbridge Magistrates' Court concerning The Office Public House, Northolt within the London Borough of Ealing.

RECOMMENDATION

That the Committee notes the report.

SUPPORTING INFORMATION

The Public Health (Control of Disease) Act 1984 enables the Secretary of State to make regulations that restrict activities from being carried out in order to "prevent or protect against the spread of infection". Over the last year a number of such regulations have been made, the general effect of which have been to restrict businesses from carrying out certain activities or to only carry out activities in a specified manner (for example by enforcing social distancing measures) or to require business to close or restrict their hours of opening.

Any breach of the regulations constitutes a criminal offence, punishable by an unlimited fine. As an alternative to prosecution, the police or local authority may serve a fixed penalty notice (FPN) offering the business the opportunity to avoid prosecution by paying the FPN. For a first offence the level of an FPN is generally £1,000, rising to a maximum of £10,000 for the 10th offence.

In addition to prosecuting under the Coronavirus legislation, legal action can also be taken under other legislation (for example, a Closure Order where the premises are associated with serious crime and disorder). In addition, a business breaching the legislation is liable to enforcement action from the licensing authority.

The cases listed below detail decisions made by local authorities and the courts.

Kate & Luc Café Restaurant, Manchester

In January 2021 Greater Manchester Police received reports of the Café being open for the consumption of Food & Drink inside the building, in breach of the Coronavirus legislation. An enforcement visit showed the Cafe to be "rammed serving over 30 people indoors without social distancing measures or mask wearing". It was also claimed that the Cafe was being advertised on anti-lockdown Facebook groups.

In early March 2021 Manchester City Council made a Closure Order for 48 hours on the premises pursuant to section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 because the premises were contributing to public disorder.

Any closure beyond 48 hours must be authorised by a Magistrates Court and following an application by Manchester City Council on 10 February 2020 Manchester Magistrates' Court ordered the closure of the premises for three months for their "complete disregard" of the Coronavirus legislation, finding also that use of the premises was undermining the licensing objectives of preventing crime and disorder, public nuisance and public safety.

Subsequently, Manchester City Council revoked the premises licence for a period of 3 months.

Caza Cruz Restaurant, Notting Hill

Breaches of the Coronavirus legislation came to light when pictures of Rita Ora's birthday party were published on social media. This led to a request by the Metropolitan Police for the revocation of the premises licence in order to prevent crime and disorder and public nuisance. In addition, the premises had refused entry to the Police investigating the incident and had turned off CCTV before the party started; being unable to produce any CCTV recordings for the 31 day period prior to the incident – all of which constituted breaches of the premises licence.

At a hearing before the Licensing Sub Committee of the Royal Borough of Kensington and Chelsea, the Restaurant stated that they had arranged to supply food to the celebrity's home but that when paparazzi gathered outside her home the restaurant was asked whether a party could take place at the restaurant. The Designated Premises Supervisor (DPS) made a spur of the moment decision to allow the party and agreed to switch off the CCTV. The Sub Committee received 44 representations from local restaurants supporting the restaurant, including 1 from a ward councillor. It did not receive any representations from residents supporting the revocation of the licence.

The Sub Committee concluded that the police were right to apply for the review and stated that it had seriously considered revoking the licence. The DPS was responsible for day-to-day management of the Restaurant and, although this was an isolated event, the Sub Committee suspended the licence for 6 weeks.

Melin Restaurant, Woodford

On 3 November 2020 the Metropolitan Police attended the Merlin Restaurant and found a large event taking place. The doors were locked and the windows had been blacked out, but through a gap officers could see that people inside were not wearing face coverings and were standing at the bar. There were also 2 DJs. The Police were denied entry and access and fire doors remained locked for 10 minutes. A post on Facebook showed a party taking place with 70-100 people inside, approximately 50 people dancing and the owner of the premises shouting "**** the lockdown".

At the time all hospitality businesses had to provide table service, with patrons and staff required to wear face coverings unless seated. Customers were not allowed to stand at the bar and DJ music was prohibited.

On an application by the Metropolitan Police for revocation of the licence, the Licensing Sub Committee of the London Borough of Redbridge found that the premises had operated as a dance

venue on at least 5 occasions in breach of the Coronavirus legislation and that the premises had operated with “complete disregard for the safety of staff, customers and the public at large” and also that on 3 occasions there were serious breaches of the premises licence conditions in respect of CCTV.

The London Borough of Redbridge therefore revoked the Licence.

The Office Public House, Northolt, London Borough of Ealing

On 7 October 2020 the Metropolitan Police applied to the London Borough of Ealing for a summary review of the Premises Licence because they considered that the premises were associated with “serious crime or serious disorder or both”. This followed visits to the premises from March 2020 onwards during which social distancing was not in place, the premises supervisor was inebriated, the premises were open at 1AM (as opposed to the permitted time of 10PM) and loud music, singing and chanting was taking place. In addition, the Police had been refused entry and been subject to abuse with the door barricaded to prevent them gaining entry.

On 9 October 2020 the Licensing Sub Committee of the London Borough of Ealing suspended the premises licence as an interim step pending a full decision of that committee. The full hearing took place on 2 November 2020 at which both the police and premises licence holder were represented. The Licensing Sub Committee decided that it would be disproportionate to revoke the premises licence because the licence had been transferred a few days previously to J & D Properties (London) Ltd. The Sub Committee removed the Designated Premises Supervisor (Mr Walsh) and restricted the hours of operation to 11PM Monday - Saturday and 10:30PM on Sundays. In addition, the outside area of the premises was not be used for any purpose after 10PM.

However, the Licensing Sub Committee did not lift the interim step of suspending the licence, meaning that the public house could not open for licensable activities until an appeal to the Magistrates’ Court was determined. The Pub’s appeal against Ealing’s decision not to lift the suspension appeal was heard on 22 December 2020. District Judge Wright gave judgement on 13 January 2021. In her judgement she held as follows:

1. An appeal to the Magistrates’ Court operates as a hearing de novo and the burden of showing that the decision of the Sub Committee is wrong rests with the appellant.
2. In deciding whether to take an interim step of suspending the licence, Ealing were entitled to consider all licensing objectives whether or not the activities taking place comprised serious crime or disorder.
3. The reasons given by the Sub Committee on 10 October 2020 (when it suspended the licence) “were not as full as they might have been” but “by this time all of the licensing objectives were engaged and they were entitled to look at public safety as it is abundantly clear, even from the brief reasons they gave, that they did. I could not say that the decision was wrong”.
4. The reasons given at the hearing on 2 November 2020 “ could have been fuller” and modification of the conditions on the premises licence were justified because “all of the licensing objectives were engaged and I cannot say their decision in this respect was wrong”.
5. However, the Licensing Sub Committee “gave no reasons for continuing the interim step of suspension and it is clear that they intended for the licence to be modified in a way that

enables J & D Properties (London) Ltd to continue to undertake licensable activities at The Office. In the light of their clear determination that the revocation of the licence was not necessary, it seems to be illogical for them to determine that the interim step of suspension should continue and so I determine that this part of their decision was wrong”.

6. Having considered the position de novo and applying the statutory guidance, the District Judge held that: “since the beginning of the pandemic Mr Walsh was operating the premises in breach of coronavirus regulations, first by opening when he was not supposed to at all during the first national lockdown and subsequently by allowing customers on the premises after the time there were supposed to have left in September and October. Covid 19 is a potentially deadly virus which has presented a very significant threat to the lives of many, the health of many others and its control is something governments all over the world are striving for, at great cost, in every conceivable sense of the word. It is evident that not only Mr Walsh, but also his customers failed to recognise the seriousness of the threat to public health that Covid 19 represents and the importance of behaving in accordance with both the legislative provisions and government guidance in order to control its spread. We ignore those steps not just at our own peril, but at the peril of others we come into contact with. The Police have experienced hostility and abuse in trying to prevent breaches of the regulations. The noise nuisance has persisted. It is true that the local authority were well aware of the problems and appear to have done little to address the issue over a long period of time. That is not a good reason to say the local residents should continue to endure difficulties whilst the substantive appeal is pending.
7. The Judge continued: “whilst I am of the view that it is not appropriate to continue the interim step of suspension, I am satisfied that it is appropriate to impose interim steps to prevent further nuisance and breaches of Coronavirus regulations. The steps which I am taking are more restrictive than those imposed by the licensing authority.... because the Licensing Sub Committee gave insufficient weight to the problems being encountered by local residents.”
8. The Judge therefore removed Mr Walsh as Designated Premises Supervisor and ordered that no licensable activities were to take place whilst he or any of his relatives had any legal interest in the premises or business. The Judge restricted licensable activities to 10:30 PM and for the outside area of the premises to be closed after 9PM every day.”

Conclusion

The appeal concerning The Office, Northolt appears to be the first reported case of an appeal from a decision of a Licensing Sub Committee following enforcement action taken for breaches of the Coronavirus legislation and suggests that courts will take a firm stance in respect of such breaches in order to protect public health and uphold the licensing objectives.

BACKGROUND PAPERS

Magistrates Court Judgement