

## Statutory Licensing Sub Committee

A meeting of Statutory Licensing Sub Committee was held on Tuesday, 28th July, 2020.

**Present:** Cllr Paul Kirton (Chairman), Cllr Ken Dixon, Cllr Eileen Johnson,

**Officers:** Jonathan Nertney (HR,L&C), Peter Bell, Nigel Hart, Leanne Maloney-Kelly (MD)

**Also in attendance:** The Premise Licence Mr Mark Garry represented by Mr Charles Holland, Barrister at Law, Designated Premise Supervisor Mr Paul Kushnirenko, Sergeant Paul Higgins and PC Sanderson (Cleveland Police) represented by Miss Joan Smith, Barrister

**Apologies:** N/A

### **SLS 5/20**      **Declarations of Interest**

There were no declarations of interest.

### **SLS 6/20**      **Exclusion of the press and public**

**To consider passing a Resolution Pursuant to Paragraph 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005, excluding the press and public from the meeting during consideration of the following item on the grounds that if present there would be disclosure to them of exempt information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.**

RESOLVED that under Resolution Pursuant to Paragraph 14 (2) of the Licensing Act 2003 (Hearings) Regulations 2005, the press and public be excluded from the meeting for the reasons as detailed above.

### **SLS 7/20**      **LICENSING ACT 2003 APPLICATION FOR EXPIDITED REVIEW OF A PREMISE LICENCE JOKERS, 11 YARM LANE, STOCKTON-ON-TEES TS18 3DR**

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee were asked to consider an application for an expedited review of a premise licence from Cleveland Police on the grounds of the prevention of crime and disorder and public safety for the licensed premise Jokers, 11 Yarm Lane, Stockton on Tees, TS18 3DR.

A copy of the report and supporting documents had been provided to all persons present and to members of the Committee.

The Chair introduced all persons who were present and explained the procedure to be followed during the hearing. It was noted that this was a remote meeting and all parties were in attendance via Microsoft Teams either by video link or via the telephone. All parties confirmed that they could see and/or hear each other.

Members of the Statutory Licensing Sub Committee of the Council's Statutory Licensing Committee considered the above application, full details of which

appeared before Members in their agenda and the background papers.

Members noted that in accordance with the requirements of Section 53A(2) of the Act, a meeting was held on 07/07/20 to consider the application for a Summary (Expedited) Review by Cleveland Police. At that hearing the Committee resolved to suspend the premises licence as an interim step. A copy of the Committee Decision Notice was sent to all parties to the hearing on 08/07/20.

Since the agenda for this Committee Meeting had been circulated, Members noted there had been additional information submitted on behalf of Cleveland Police and circulated to the parties to the hearing, this included the following: -

- Statement of Sergeant Higgins dated 24/07/20;
- Copy of the Decision Notice from the Statutory Licensing Sub Committee held on 17/10/17 which concerned a Review of the Premises Licence;
- Statement of PC Sanderson dated 23/07/20;
- Sketch plan showing the layout of the upstairs of the premise;
- Copy of the Tenancy Agreement between Mr Kushnirenko and the tenant including a photocopy of the tenant's passport; and
- Photographs from Google street view showing the front, side and rear of the premise

Submissions prepared by Miss Joan Smith of Counsel dated 27/07/20 had also been circulated to all parties to the hearing. The Committee were invited to consider those, and the previous written submission of Miss Joan Smith dated 07/07/20.

Members noted that on 27/07/20 an application had been received by the Licensing Section requesting the transfer of the Premises Licence from Mr Paul Kushnirenko to Mr Mark Garry, a copy of which had been circulated to all parties to the hearing.

The Members noted that since the review process had commenced the situation at the premise had developed and that Mr Garry, who owned the freehold of the premise, had secured possession of the premise and transferred the Premises Licence into his name. Mr Garry had instructed Mr Holland to represent him at the hearing.

Discussion had taken place with the Police representative, and Members noted that given this was a review of a premises licence they had to be satisfied that such proposed amendments were a necessary and proportionate way in which to deal with the outcome of the review.

Members also noted that the decision rested with them and they would hear submissions from all parties summarising the discussions that had taken place between them.

Miss Joan Smith addressed the Committee and drew their attention to the submissions which she had prepared and had been circulated to all parties.

Miss Joan Smith invited Sergeant Paul Higgins to address the Statutory Licensing Sub Committee. Sergeant Higgins stated that cannabis farms supported organised crime and posed a risk to life.

Sergeant Higgins was of the view that the removal of the Designated Premise Supervisor (DPS) and attaching conditions addressed the issues which had led to the Police seeking a review.

Members of the Committee and Mr Charles Holland were invited to ask questions of the Police.

Mr Charles Holland addressed the Committee on behalf of Mr Mark Garry.

Mr Garry's sole interest in the premise was as a Landlord as he owned the freehold. Mr Kushnirenko had been the Designated Premises Supervisor and Mr Garry had not had any involvement in the running of the premise for the last few years. Mr Garry had been informed that Mr Kushnirenko had entered into a sub-lease agreement of the flats within the premise, however he had not been involved in that matter other than being informed. Since the review process had commenced Mr Kushnirenko agreed to surrender the lease and it was at that point that Mr Garry then became involved in seeking the transfer of the Premises Licence into his name. Mr Garry confirmed that he had no objection to Mr Kushnirenko being removed as the DPS and the proposed conditions. Mr Holland wished to make it clear that Mr Garry had no knowledge of the cannabis farm.

Members of the Committee and Miss Smith were invited to ask questions of Mr Garry.

All parties present were given an opportunity to sum up with Mr Charles Holland invited to speak last on behalf of his client. All parties were also invited to address the Committee on whether the interim steps should continue.

Members had regard to the Committee papers, additional evidence and written submissions, which had been circulated prior to the hearing and presented to them, in addition to the oral submissions made by those present at the meeting. The Committee decided the matter based on its merits.

Having carefully considered those matters brought before them and in reaching their decision, Members had full regard to both the provisions of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), the Guidance Issued under Section 182 of the Licensing Act 2003 (as amended) and the Council's Licensing Policy.

The Committee were mindful of their previous findings at the interim steps hearing held on 07/07/20. The Committee had regard to the additional evidence presented to them by Cleveland Police and were satisfied on the balance of probabilities that: -

- At the time the cannabis farm was located above the premise Mr Kushnirenko

was the Premise Licence Holder and Designated Premises Supervisor;

- Mr Kushnirenko received the rent for the flats above the premise and had entered into a tenancy agreement with a tenant;
- A large cannabis farm was located within the flats above the premise. The drugs seized had an estimated street value of several hundred thousand pounds. The smell of cannabis was evident outside the premise.

The Committee were satisfied based on the information presented by the Police that the flats above the premise which Mr Kushnirenko had rented out and for which he received rent were linked or connected to serious crime.

The Committee expressed some concern that G Leisure 5 Limited, of which Mark Garry was a Director, was the Premise Licence Holder at the time of a review in 2017. The Committee had questioned the parties on this issue and were given assurances by the Police and Mr Garry's representative that the historic issues from 2017 had been adequately addressed. The Committee noted those assurances and took them into consideration when considering their decision.

Despite having some reservations that Mr Garry was now the Premise Licence Holder they noted that the premise would not reopen until a suitable Designated Premises Supervisor had been identified. It was also noted that some works would be required to make the premise safe given the issues with the bypassing of the electrical supply.

The Committee were satisfied that the review could be dealt with in the manner as suggested by the parties and that this did address the issues which had led to the commencement of the review by the Police and the concerns they had over the management of the premise.

The Committee were satisfied that this was a proportionate way to deal with the review.

The Committee considered that it was both necessary and proportionate to remove Mr Kushnirenko as the Designated Premises Supervisor.

The Committee resolved that the conditions also be amended to ensure that Paul Kushnirenko had no further involvement in the operation of the premise. Also, as David Oram had acted as a witness to the signing of the tenancy agreement that Mr Kushnirenko had entered into. it was felt appropriate to ensure that David Oram should not be appointed as Designated Premises Supervisor at the premise.

The Committee amended the Premise Licence and attached the following conditions: -

- Paul Kushnirenko (also known as Fred Kushnirenko and/or Fred Kush) is prohibited from working for, on or with the premises situated at 11 Yarm Lane, Stockton-On-Tees. Further he is prohibited from any involvement with the premises, including but not limited to any management, supervision, consultancy, or promotion of the premises; and

- David Oram must not be the Designated Premises Supervisor at the premise situated at 11 Yarm Lane, Stockton-On-Tees.

Finally, the Statutory Licensing Sub Committee determined whether it was necessary to continue the interim steps applied following the hearing held on 07/07/20. It was determined no longer necessary to continue with the interim step of suspending the licence and this was lifted.

RESOLVED that:

1) the Premise Licence for Premise Licence Jokers, 11 Yarm Lane, Stockton on Tees, TS18 3DR be amended with conditions as detailed above and:

2) Members agree to lift the interim suspension applied following a hearing on 7th July 2020 for the reasons as outlined above.

**SLS  
8/20**

**LICENSING ACT 2003  
APPLICATION FOR EXPIDITED REVIEW OF A PREMISE LICENCE  
JOKERS, 11 YARM LANE, STOCKTON-ON-TEES TS18 3DR**

This item included the confidential information in relation to the item 'Licensing Act 2003, Application For Summary Review of a Premise Licence, Jokers, 11 Yarm Lane, Stockton on Tees, TS18 3DR'. Please refer to the above for the Committee's decision.