

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held remotely via Microsoft Teams on **Tuesday 12 January 2021 at 1.30 pm**

Present:

Councillor P Crathorne (Chair)

Members of the Committee:

Councillors D Bell, L Brown, A Hopgood and L Kennedy

Also Present:

Mrs G Proud (Council's Solicitor)

Ms H Johnson (Licensing Team Leader)

Sgt C Dickenson (Applicant – Durham Constabulary)

PC C McNaney (Applicant – Durham Constabulary)

Mr J Kemp (Barrister – Licence Holder)

Mr I Kadeh (Applicant)

Interpreter

1 Apologies for Absence

No apologies for absence were received.

2 Substitute Members

There were no substitute Members in attendance.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The minutes of the meeting held 27 October 2020 were confirmed as a correct record and would be signed by the Chair.

5 Application for the Review of a Premises Licence - Best Kebab, 4 South Street, Crook

The Chair welcomed everyone to the meeting and explained that only three Members would be deliberating the application.

The Council's Solicitor explained why only three Members deliberated the application and ran through the procedure for the meeting.

The Sub-Committee considered the report of the Corporate Director of Neighbourhoods and Climate Change regarding an application from Durham Constabulary to review the premises licence in respect of Best Kebab, 4 South Street, Crook, County Durham (for copy of report, see file of minutes).

A copy of the application and location plan had been circulated together with additional information provided by the Applicant.

The Licensing Team Leader was in attendance to present the report and outlined the options open to the Sub-Committee.

The Licensing Team Leader then advised the Sub-Committee that Durham Constabulary had provided video footage that contained members of the public and asked if the public could be excluded from this part of the hearing under regulation 14 of the Licensing Act 2003.

The Council's Solicitor advised that Regulation 14 of the Licensing Act 2003 (Hearings) Regulations indicated that hearings should take place in public, however, there was provision under Regulation 14(2) that the licensing authority may exclude members of the public from all or part of the hearing where it considered that the public interest in doing so outweighed the interest of the hearing taken place in public. It was a matter for the Sub-Committee to determine whether to exclude the public from the hearing when it considered that the public interest in doing so outweighed the public interest in the hearing.

The Sub-Committee considered the request and the Chair moved and Councillor L Brown seconded that members of the public be excluded from the hearing during the viewing of the footage.

There were no questions of the Licensing Team Leader.

PC McNaney addressed the Sub-Committee on behalf of Durham Constabulary and outlined the reasons for the referral as set out in the report.

The Sub-Committee moved to In Private to view the bodycam footage referred to in the report.

The Chair indicated that the meeting was now in public and PC McNaney continued to address the Sub-Committee.

In response to questions from Mr Kemp, the Licence Holder's Solicitor, Sergeant Dickinson confirmed that there was evidence of an illegal worker at the premises and the procedure under Section 182 guidance was to go straight for a review of the licence and that a warning was not suitable in this case.

Mr Kemp referred to the grounds for review and that Durham Constabulary deemed that workers who do not have the right to work in the United Kingdom, suspected tampering of the CCTV evidence and COVID issues to be the more serious. PC McNaney responded that failure to promote the licensing objectives was also listed in the grounds for review and they were in no particular order of importance.

Mr Kemp asked if PC McNaney deemed the employment of illegal immigrants in terms of the licensing act to be the same seriousness as not wearing a face mask. PC McNaney confirmed she deemed both to be very serious.

Durham Constabulary responded to various questions from Mr Kemp and confirmed that they had encountered the illegal worker before Mr Kadeh was listed as the Premises Licence Holder. PC McNaney also confirmed that the illegal activity referred to in her report was the employment of an illegal immigrant. Sergeant Dickenson confirmed that all operational visits by Immigration Enforcement were suspended due to the pandemic and Mr Kadeh would have been fully aware that visits were not taken place and he took advantage of this. Mr Kemp indicated that the illegal worker had been working at the premises prior to the pandemic and prior to immigration investigations ceased. PC McNaney stated that the Mr Kadeh had employed an illegal immigrant at these premises regardless of when he was employed, which was serious.

Mr Kemp responded that there was no evidence of their investigation into the employment of an illegal worker, they had not interviewed Mr Kadeh or the illegal immigrant. PC McNaney referred Mr Kemp to Section 182 Guidance that recommended that you go straight for a review due to the seriousness of employing an illegal immigrant and there was no mention in the guidance of conducting an interview. She confirmed that Durham Constabulary had not interviewed Mr Kadeh or the illegal immigrant and indicated that the interview of the illegal immigrant would be something that would be carried out by the UK border agency and indicated that the illegal immigrant had since fled.

Mr Kemp asked PC McNaney if the investigation into the employment of an illegal immigrant was the result of body camera footage. PC McNaney indicated that this was incorrect and she had encountered the illegal immigrant working at the premises and conducted inquiries with UK border agency directly and confirmed via photographic footage and witnessing him in person that this was indeed the same male as was in fact an illegal immigrant. She believed that Mr Kadeh had admitted to this in his first statement as shown in the papers.

Mr Kemp stated that there was a difference between working and the act stated that someone should be employed under a contract of employment or services and asked if PC McNaney was aware of this distinction. PC McNaney confirmed that she was not aware of this distinction.

Mr Kemp stated that no investigation had taken place and it was an inference that he was employed. PC McNaney confirmed that she referred the matter to immigration whose job was to investigate the employment of an illegal immigrant. Her role as licensing officer was to refer the matter to the licensing committee where she believed that the premises had failed to promote the licensing objectives and had engaged in criminal activity in the employment of an illegal immigrant.

Mr Kemp referred to paragraph 10 on page 24 of the papers where the immigration act was mentioned. PC McNaney responded that it was her duty as a licensing officer to be aware of all those tools available at her disposal and the requirements of a premises licence holder to adhere to the licensing act and promote those licensing objectives. It would be remiss of her not to be familiar or not reference the licensing or immigration act that formed part of the licensing act.

In response to further questions from Mr Kemp, Durham Constabulary confirmed that three specific licensing visits had been carried out and five incidents had been reported to the police by members of staff at Best Kebab since Mr Kadeh had taken over as the Premises Licence Holder.

Mr Kemp referred to the statement by PC Jackson and asked PC McNaney if she was aware that those visits were going to be taking place and if she had spoken to PC Jackson prior to her visit to the premises and was she aware there had been incidents of potential illegal immigrants being employed within the premises. PC McNaney confirmed that she was aware of the visits but had not spoken to PC Jackson and the visit was made as a result of her request for a review of the premises via the Neighbourhood Inspector.

Mr Kemp continued that PC Jackson did not investigate the employment of illegal immigrants during her licensing check. If she had found workers at the

premises, who did not have the right to work, this was absent from her statement.

PC McNaney responded that PC Jackson was a neighbourhood officer and not a licensing officer and assumed she was not familiar with the licensing act and she was unable to answer question on her behalf. Her task was merely to present the licensing review papers. Mr Kemp commented that the neighbourhood officer should be aware what was going on in the neighbourhood, specifically a premise with a late-night refreshments licence. PC McNaney again stated that she was unable to answer for PC Jackson.

Mr Kemp then referred to the 3.00 am bodycam footage and asked PC McNaney a number of questions. In response to the questions PC McNaney confirmed that the premises were accessible to members of the public but there was no evidence on the bodycam footage that food was being served just a drunk male trying to purchase a bottle of water. However, best practice was to lock the door when no longer serving food and that the tampering of the CCTV was just suspected and that Mr Kadeh had confirmed on the 17 June 2020 that the CCTV system was now in operation and confirmed that the CCTV system had not been checked until PC Jackson visited the premises. At the time of the alleged offences by the manager, the CCTV footage was not working or they were unable to obtain access to the footage but the licence stated that the majority of staff would be trained to operate the CCTV system to include viewing and downloading of the system and footage be kept for at least 28 days and made available to officers and responsible authorities when requested. She also confirmed that signage had now been put into place asking patrons to leave the premises quietly and was presented in the evidence by the Licence Holder as this was not disputed.

Mr Kemp referred to the statement of Mr Haigh and that he gave advice to those working at the premises but did not issue a fine or prosecution and asked if COVID regulation breaches was a great concern to Durham Constabulary and why did they not check the premises again. PC McNaney responded that Mr Haigh was not authorised to issue a fine for non-wearing of face coverings and that PC Jackson visited the premises on 1 November 2020 and found good practice for COVID regulations. The grounds for the review were written prior to her having the opportunity to view the visit by PC Jackson and commented that she was pleased to see there was good practice in relation to COVID regulations.

Mr Kemp asked if enquiries were made if anyone was exempt from wearing a face mask at that time. PC McNaney indicated that Durham Constabulary did not carry out follow up enquiries for the Council, but they would not automatically issue a fine, they would engage in the four 'E's.

Councillor Kennedy referred to the video footage of a young man trying to buy a bottle of water that later showed him with bottles of water in his back pocket. She stated that she could not imagine many places been open at 3.00 am and sought clarification if he had purchased this elsewhere as it looked as if he had obtained the bottles of water from Best Kebab.

Sergeant Dickenson indicated that the sale of cold water was not a licensable activity, but the premises were clearly open at 3.00 am and people gathering around the premises led to the incident.

Mr Kemp was then asked to make his representations on behalf of the Premises Licence Holder.

Mr Kemp advised the Sub-Committee that Mr Kadeh was in attendance with an interpreter. He then referred to the statements supplied by the Premises Licence Holder contained within the circulated papers which Members confirmed they had read.

In response to questions from Mr Kemp, Mr Kadeh confirmed that the CCTV equipment was working perfectly and was able to record for 28 days and all staff had received the adequate training to use the CCTV system, the screen upstairs was now working and training records were kept. Mr Kadeh confirmed that the incident logbook could not be found when PC Jackson visited the premises as they were in the process of cleaning and the book was located at the back of the shop and all staff were trained on how to complete the incident log. He also confirmed that his sign asking patrons to leave quietly was still working.

Sergeant Dickinson asked why the training documents Mr Kadeh provided to them were not up to date.

Mr Kemp asked when that occurred.

Mr Kadeh indicated that he had tried his best.

Sergeant Dickenson then asked if the training records were completed when the licence was granted on the 28 December 2019.

Mr Kadeh confirmed that he had been unwell at the time.

Sergeant Dickenson indicated that Mr Kadeh had offered these conditions in order for the licence to be granted but had not completed the records.

Mr Kadeh confirmed that the records were not completed.

Sergeant Dickenson then referred to the Licensing Act and a mandatory condition was the right to work checks and asked what right to work checks he had carried out when applying for the licence.

Mr Kadeh responded that all staff he employed were in the book and had been checked apart from one employee where he was not aware of the circumstances.

Sergeant Dickenson asked for confirmation which employee had not been checked as to their right to work.

Mr Kadeh indicated that all employees he was aware of had been checked properly, any employees not checked he must not have been made aware of.

Sergeant Dickenson asked why there had been a delay in providing the right to work documentation that PC McNaney requested on the 16 June 2019 and were not received until 9 September 2019.

Mr Kadeh responded that he thought he had responded to the message.

PC McNaney indicated that she had asked for the right to work checks for all 13 employees of staff but only 4 had been provided and asked for an explanation.

Mr Kadeh responded that he did not have 13 employees working for him.

PC McNaney confirmed that Mr Kadeh had provided her with 13 names of staff, details of which were contained in the papers. 11 names were under training records then additional right to work checks for 4 staff that totalled 13 names and no further details were provided for his current manager.

Mr Kadeh responded that he did not have 11 employees at the premises.

Mr Kadeh was referred to page 40 of the papers that contained the training records that he provided for 11 employees together with resident permits and an additional name but there was no right to work documentation or training record for the current manager totalling 13 staff.

Mr Kadeh responded that there had been some confusion with previous staff and current staff and there should be six names.

Sergeant Dickenson sought confirmation that the documentation submitted for the premises licence to be granted on the 28 December 2019 were incorrect.

Mr Kadeh stated that he could not recall the e mail giving details of 11 employees and that some of the names must be previous staff who were no longer working at the premises. He had never had 11 or 13 employees working for him. Sergeant Dickenson indicated that the licensing condition asked for staff training records for current employees.

In response to questions from Sergeant Dickenson in relation to the CCTV footage, Mr Kadeh indicated that he did not know why there was no CCTV footage as he had paid for a technician and did not know why the screws had been removed from the equipment as he was not at the premises. He could not recall the date the CCTV system was installed and that his manager carried out the checks.

Sergeant Dickenson stated that no training records had been provided for the manager and asked the reason for this.

Mr Kadeh responded that he must have missed his name.

Councillor Hopgood stated that the licence was until 2.00 am, so why did he have a sign on the door advertising open late with no designated times. This would lead the public to wonder what hours you were open and may encourage people to try and enter the premises after the licensing time.

Mr Kadeh indicated that he would correct this tomorrow.

Councillor Brown asked when Mr Kadeh had taken over the ownership of Best Kebab. Mr Kadeh responded that it was the 1 October 2018.

The Licensing Team Leader confirmed that the license was granted on 28 December 2019. Before that the licence was in the name of Best Kebab Ltd that was dissolved so the licence was no longer valid. A new application was submitted by Mr Kadeh and was issued on the 28 December 2019.

The Licensing Team Leader asked Mr Kadeh to confirm that he had full control of the premises, as there seemed to be managers in place. She believed the illegal immigrant had been at the premises for a period of 3 months and asked if he delegated to a manager.

Mr Kadeh indicated that it was his business and he was fully in control of the premises and he had a manager as he could not be present at the premises 24 hours a day.

The Chair indicated that the premises did not open until 4.00 pm and asked how often Mr Kadeh attended the premises while it was open to customers and to make the necessary checks.

Mr Kadeh stated that he now attended the premises more often and was six or seven times a week and he spent quite a few hours ensuring everything was working.

The Council's Solicitor referred to reference in the papers to a manager as MM and AK and asked if this was correct.

Mr Kadeh confirmed that MM was the only manager at present and AK had been the manager from 2018 to 1 September 2020.

In response to further questions, Mr Kadeh confirmed that AK mostly took care of the business as he had health issues at that time, but he owned the business. He would have visited the premises two or three days a week. He also confirmed that he had not seen the illegal immigrant when he visited the premises.

The Council's Solicitor then referred to the CCTV system and asked when the current system was put into place and how long they had been operating without CCTV.

Mr Kadeh responded that he was not sure of the date, but he had been operating without any CCTV for approximately a week after the incident.

The Chair asked who trained the staff and had they completed the course to do this and had the necessary certificate.

Mr Kadeh indicated that MM carried out staff training and had the necessary certificate.

The Licensing Team Leader asked for clarification that the illegal immigrant had not worked for him at any time. Mr Kadeh confirmed that he had never employed him.

The Licensing Team Leader then asked Durham Constabulary if they had been waiting for right to work documentation for MM.

Sergeant Dickenson advised that they had never received right to work documentation for the illegal worker as he had no right to work in the UK, the training records received had not been signed by MM.

The Council's Solicitor asked for the date when all staff were trained and if it was after the new CCTV system was installed or after November 2020.

Mr Kadeh stated that all staff had been trained to access the CCTV equipment, he thought this was around June 2020.

In response to a question from the Licensing Team Leader, Mr Kadeh confirmed that MM was still employed by Best Kebab and he had never seen the illegal worker or employed him unless his manager at that time employed him who was also responsible for carrying out the checks. He assured Members going forward he would be in control and responsible for everything at the premises and be present at the premises every night.

All parties were then given the opportunity to sum up.

PC McNaney indicated that there was a lot of information to digest but asked Members to focus on the employment of an illegal immigrant, suspected tampering of CCTV evidence and CCTV not working, complete disregard of the licencing act and conditions on the licence and complete failure to manage the premises, staff and promote any of the four licensing objectives.

With regard to the employment of an illegal immigrant they knew that an illegal immigrant had been found working at the premises on 30 October 2019, 8 March 2020 and 12 June 2020, this was evidenced in police statements and bodycam footage and a statement from the UK Border Agency. In addition, right to work checks had not been carried out for nine of the 13 members of staff, which was a mandatory condition.

Looking at the CCTV evidence, there was a serious allegation of assault on a member of staff whilst on the premises, the police stated that the CCTV evidence was tampered with and the Crown Prosecution Service (CPS) determined the lack of evidence of CCTV contributed to a breakdown of the investigation. CCTV was relied on for public safety and the prevention of crime and disorder. It also took Mr Kadeh three months to remove the member of staff from his employment once he became aware of the serious allegations of assault.

Non-adherence to conditions on the licence – repeated breaches of licensing conditions had occurred that were CCTV not working on numerous occasions, most recently on the 19 November 2020 the previous manager of over 6 months was not trained to operate the CCTV, even though there was a signed training record stating otherwise. Training records for eight members of staff signed by the same person and incomplete training records and no contact details for staff. There were no training records for June 2020 which Mr Kadeh stated that he had carried out. There were also no training records for two members of staff, one a manager who had worked at the premises since at least March 2020 and was still working at the premises as a manager.

He has failed to provide the police with right to work checks and documents for all members of staff, no incident logs, despite five incidents occurring between March 2020 and October 2020, all reported by staff on the

premises. There were no six-monthly training records as per a condition on the licence.

It was not up to the police to keep visiting premises continually to check CCTV and carry out licensing visits. There were over 3500 licensed premises that the police covered, so this was not feasible.

Poor management of the premises and staff – Evidence had been seen of the premises open to the public one hour after closing, at least seven members of the public were still at the premises upon the police arriving at the premises. Some still trying to purchase items when the police were present, and a crime was recorded occurring inside the premises at 03:00 hours where food purchased from the premises was thrown around inside the premises. CCTV of the incident showed a disturbance outside of the premises. Members had also heard evidence from Durham County Council Licensing Enforcement and after the initial review proceedings were instigated members of staff were not wearing masks nor encouraging customers to do so, despite it being a legal requirement unless exempt. After been given suitable advice about the law the new manager refused to ensure staff were wearing masks. In addition to this, two recent visits by the police revealed that the CCTV was still not working nor were staff training records up to date.

Over the past 12 months the police had spent hundreds of hours dealing with failings of the premises caused by substandard management which amounted to a disproportionate amount of time compared to other licensed premises they dealt with. Given that this was a new licence only granted in December 2019 they would not expect such failure to adhere to the licensing conditions including the conditions that were offered by the Premises Licence Holder when he applied for the licence. It was clear that he had no idea of the conditions on his licence nor had any control over the premises.

Mr Kadeh had produced a new statement throughout the review process which differed to the original statement produced. This was after seeing police evidence, initially he denied employing an illegal worker, later passing the buck to other staff members. It was apparent that he furnished a story to mitigate evidence provided by police rather than based on fact. Mr Kadeh wanted us to believe that he was in charge of the business and a responsible business owner, but it was evident that he had no idea of what was happening at the premises or who was employed. Allowing a business to trade under a premises licence was a privilege and the police felt that to allow Best Kebab to continue to operate with a premises licence would undermine the four licensing objectives and put members of the public at risk.

Mr Kemp in his summing up wished to draw members attention to the guidance that they must take into account, in particular section 11.20. He acknowledged that there had been failings in respect of the running of the premises and Mr Kadeh in his statement acknowledged this and the conditions of his licence were not reached.

In response to the Police in their summing up and the four licensing objectives not being met, their review application only ticked prevention of crime and disorder and public safety and was the only two licensing objectives that members should consider. Durham Constabulary could not now at this late stage suddenly widen the objectives in an attempt to get the licence revoked, that had been their objective from the start.

In his submission, he stated that Durham Constabulary lacked certain objectivity and not dealt with the matter in a circumspect way.

With regard to the illegal immigrant that was the most serious and acknowledged what the guidance stated that the committee should in the first instance consider revoking the licence. He asked members to stand back as it was serious but, in this case, he would ask members to look at how the police had dealt with this. He questioned the police on the difference between someone working and someone employed as this was the legislation under the immigration act quoted in the grounds stated and the police officer did not know the difference and there was a difference between them and was important if an offence had occurred.

He appreciated that members were not here to determine if an offence had occurred or not and they did not need to determine if an offence occurred to revoke a licence. There had been a distinct lack of investigation, Mr Kadeh had not been able to put his side of the story forward as the police officer stated it was not up to the police and was immigration, that had been suspended. He referred Members to paragraph 12 of the review application where the Police had stated the criminal activity coincides with the COVID pandemic. This suggested Mr Kadeh had underhandedly employed the individual knowing that it would not be investigated. The police however, contradicted themselves because they stated that the illegal worker was at the premises in 2019 and March 2020 which was before the pandemic and before any investigations were ceased by border control.

He then referred to the documentation from border control that stated they had no reports of any criminal activity at the premises, although enquiries appeared to have been made if the illegal immigrant was able to work the police had not stated that a criminal offence had been committed. Durham Constabulary were asking for a licence to be revoked and someone's livelihood ended and was serious and should be treated serious. The police

appeared to have gaps as to how they had dealt with this, but the illegal worker was no longer at the premises.

He then referred to the evidence of PC Jackson and he could not believe as a beat officer that she did not know what was going on in her area. There were no checks by the police at that stage and did not ask to see if any right to work checks had been carried out. The police in their summing up, suggested that the police could not check every premises all the time which was right but then she stated that they had spent hundreds of hours, so there was the opportunity for them to investigate at the same time, but there was nothing.

He accepted it was serious but was it so serious that the licence needed to be revoked and his answer was no.

He then referred to the suspected tampering of the CCTV evidence and there was no evidence that any tampering had taken place by a member of staff and the system was replaced very quickly and was operational today. He did accept the utopian ideal was not reached when PC Jackson visited the premises, CCTV evidence was important as it does deter crime and assist the police. To say there was a serious assault on the premises and the CPS discontinued the case due to lack of CCTV evidence, no evidence had been produced from the CPS to confirm this. Nobody was aware of where the alleged assault took place, so this may or may not have been covered by CCTV.

It appeared that training records and incident logs had not been undertaken as they should have been done and this should be easily rectifiable, they were important and were in place to assist the police.

Mr Kadeh at some point had taken a step back from the premises letting his manager run the business and they had in some respect put him in the position he finds himself. There had been a finding of poor management but in his submission, it was forward looking and these aspects in relation to records could be and should be easily rectifiable.

The police then criticised Mr Kadeh's statement and the two versions, there was no questioning of this by the police and they did not put it to him why, if there was a difference in evidence and no answer had been given for that.

He referred to the opening hours on the door that could be a condition on the premises licence and again could be easily rectifiable.

He then referred to the incident at 3.00 am captured on the bodycam and there was no evidence that any food was being served. He suggested that the premises did not have to be shut when the licencing hours end as they

were entitled to clean up. As soon as an incident happened people started to congregate, and this does not mean that they were breaking the licensing conditions.

There was no large-scale public disorder, no drunken behaviour that the police were called to on a regular basis, the premises had a high hygiene rating and good references that were contained in the papers.

He asked members to consider the financial impact on Mr Kadeh as stated in the guidance and asked Members to stand back. There had been failings, but they were powers to rectify these and to make sure that the premises was managed in an appropriate way that complied with the licensing conditions that Mr Kadeh had and should have and could have.

The Council's Solicitor referred to paragraph 11.23 of the guidance that Mr Kemp referred to and asked Members to consider what control Mr Kadeh had over the premises at the time and what control he had now demonstrated that he has at the premises. Consider whether the decision you make is appropriate and proportionate to promote the licensing objectives and for the prevention of illegal working. She stated that the Licensing Authority do not have the power to judge the criminality of an offence, their role is to promote the licensing objectives. She then referred to the Immigration Asylum and Nationality Act and suggested that a contract of employment, could be an oral or written contract.

The Chair thanked everyone for their attendance and at 4.15 pm the Sub-Committee Resolved to retire in private to deliberate the review application. Councillors Crathorne, Brown and Kennedy retired to make the decision.

In reaching their decision the Sub-Committee had taken into account the report of the Licensing Team Leader and the written and verbal representations of the Applicant and the written and verbal representations of the Premises Licence Holder. Members had also considered Durham County Council's Statement of Licensing Policy and Guidance issued Under Section 182 of the Licensing Act 2003.

Resolved: That the Premises Licence be revoked.