

**THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
SUMMARY DECISION OF THE LICENSING SUB-COMMITTEE
("Committee")
THURSDAY 28 JANUARY 2021**

Committee: Councillors McVeigh (Chair), Evans and Spalding

Officers: - Paul Phelan (Licensing)
Heidi Titcombe (Legal)
Anne Wright (Governance)

**CASA CRUZ, BASEMENT, GROUND AND FIRST FLOOR SOUTH, 123a
CLARENDON ROAD, LONDON, W11 4JG ("the Premises/Restaurant")**

The Committee has considered an application for the review of the Premises Licence ("Licence") in relation to the above Premises under Section 51 the Licensing Act 2003.

The Committee recognised that there has been widespread publicity about this application in the media as the party was held by a celebrity. The Committee wish to make it abundantly clear that the Committee has no power to levy a fine against the Premises in relation to these licensing review proceedings. The Committee noted that there are ongoing Police investigations which may lead to other actions being taken.

The review was requested by the Metropolitan Police ("Police") who sought the revocation of the Licence on the grounds of the prevention of crime and disorder and the prevention of public nuisance licensing objectives, because the Premises hosted a private party on 28 November 2020 for around 17 persons during the national lockdown and in breach of the Coronavirus Regulations¹; the Premises also refused entry to the Police investigating the incident and turned off its CCTV before the party started and was unable to produce any CCTV recordings for the 31 day period prior to the incident, in breach of the conditions of its Licence.

The Licensing Authority and Environmental Health supported the review application because of the seriousness of this matter and the failure of the Premises to promote the prevention of crime and disorder and the prevention of public nuisance licensing objectives. If the Committee was not minded to revoke the Licence, the Licensing Authority asked for a number of additional conditions to be attached to the Licence as specified on pages 2 and 3 of the main Committee papers.

The Licence is held by Casa Cruz London Limited, the Premises Licence Holder. Mr Fallows is the sole director of that company. Mr Grant, the barrister representing Casa Cruz, unequivocally and unconditionally condemned the serious incident which occurred in breach of the COVID-19 Regulations on 28 November 2020. However, Mr Grant contended that this was caused by the Manager and Designated Premises Supervisor, Mr Scottie Bhattarai, acting

¹ The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020

alone, in allowing the event to take place. The Premises had arranged to supply food to a celebrity at her home, however, the Committee were told that on the day of the event, paparazzi started to gather outside her home and the celebrity's representative asked Mr Bhattarai whether the party could take place at the Restaurant for £5,000. Mr Grant advised that Mr Bhattarai made "a spur of the moment decision" to allow the event and also agreed to turn off the CCTV, at the request of the celebrity's representatives. Mr Grant stated that Mr Fallows did not know until after the event, that Mr Bhattarai had agreed to host the party. He also confirmed that the £5,000 offered was not received. The Premises Licence Holder acknowledged the importance of all licensed premises obeying the COVID-19 Regulations in order to protect the entire community. Within four days of Mr Fallows finding out about the incident, he had removed Mr Bhattarai from the Restaurant and appointed a new Designated Premises Supervisor.

The Committee recognised that 44 representations have been received from local residents, supporting the Restaurant, including one from Councillor Elnaghi, who is a Ward Councillor and the Chair of the local Residents' Association. Many of the supporters urged the Committee not to revoke the licence because they considered that over the last six years since the Restaurant took over the Licence it had become an important valuable community asset. Residents felt more secure with its presence and the doorman in the street, and some of the 39 people employed at the Restaurant were local people.

The Committee noted that it did not receive any representations from residents supporting the revocation of the licence

The Committee recognised that the proceedings set out in the Licensing Act 2003 for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. The Act provides the Licensing Authority with a range of powers in determining a review that it may exercise where it considers them appropriate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

In determining this application, the Committee must have regard to the representations and may take any of the following steps as it considers appropriate and proportionate for the promotion of the licensing objectives. The steps are:

- (a) Take no further action.
- (b) Modify the conditions of the licence.
- (c) Exclude a licensable activity from the scope of the licence.
- (d) Remove the Designated Premises Supervisor.
- (e) Suspend the licence for a period not exceeding three months.
- (f) Revoke the licence.

The Committee has carefully considered the review application, the representations made, together with the large volume of evidence submitted and the submissions made by all of the parties, both orally and in writing.

In reaching its decision the Committee has had regard to the relevant legislation, the Secretary of State's Guidance, the Authority's Statement of Licensing Policy and The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020.

In Summary, the Committee concluded that the Police were right to apply for this review and seriously considered revoking the Licence because it agreed with the Police, that breaching the COVID-19 Regulations was not only unlawful, it also put the community at risk. This does not promote the licensing objectives, particularly in relation to the protection from crime and disorder. The situation was compounded by the failure to allow the Police entry to investigate the incident on the evening in question; the fact that the CCTV was switched off in breach of condition 21 of the Licence and the CCTV recordings over the previous 31 day period, had not been preserved. This was extremely serious as it hampered the Police's and the Licensing Authority's ability to investigate the incident which is contrary to the prevention of crime and disorder licensing objective.

Mr Bhattarai was the Designated Premises Supervisor at the time of the incident and allowed the party to take place. As the Designated Premises Supervisor, he was responsible for the day to day management of the Restaurant, but the Committee considered that this does not absolve the Premises Licence Holder – Mr Fallows - from responsibility. The incident happened during a pandemic lockdown and Mr Fallows should have ensured that the Restaurant was complying with both the COVID-19 Regulations and the conditions on its Licence, despite his assertion that Mr Bhattarai was acting alone. The Committee also considered that the Premises Licence Holder should have taken a more proactive role in investigating the incident, especially checking and preserving the CCTV once he found out what had happened on Sunday 29 November 2020.

The Committee recognised that as no CCTV recordings were available there is a question as to what may or may not have taken place, but there is no question that there was a gathering there contra to the lockdown regulations at the time. It was also acknowledged that the Police sought the review with the support of the Licensing Authority and Environmental Health.

Having considered all the above, the Committee also recognised that the Police accepted that this would appear to be an isolated incident; the Premises Licence Holder was not aware, in advance, that the party was taking place; the breaches of the law and the conditions have been admitted; the former Designated Premises Holder has been replaced; and the Premises Licence Holder has agreed a number of conditions which include, preventing Mr Bhattarai from managing or working at the Restaurant again; along with other conditions which will help to encourage good management and the promotion of the licensing objectives. Furthermore, this was the first time this Licence has been reviewed; there have been no substantive issues raised by local residents in the last two years which have not been addressed by the operators who were receptive to residential

concerns. Further, the residents supporting the Restaurant, living above and adjacent to the Premises regarded the Restaurant to be an improvement on the previous licensed premises, and some felt its very existence made the streets safer and they were keen that the Licence was not revoked. The Committee also considered that it was unusual on a review, not to have one local resident complaining about the Premises, whereas here, 44 residents were supporting the Premises. The Committee was also told that the Restaurant provided employment opportunities for up to 39 staff, some of which were local residents.

The Committee has weighed up all of the above evidence and considers it was necessary and proportionate for robust steps to be taken against the Premises Licence Holder and for a deterrent message to be sent to this and other licensed premises that these sorts of breaches are totally unacceptable. Whilst the former Designated Premises Licence Holder may have allowed the incident to occur, and removing him and adding conditions addresses some causes of the breach, this does not absolve the Premises Licence Holder from responsibility, especially during a lockdown and further steps needed to be taken. to address the breaches which have occurred. The lack of monitoring and the failure of the Premises Licence Holder to preserve the CCTV once he found out about the event, necessitated further steps being taken.

The Committee concluded that having regard to the merits of this particular case, the Licence should not be revoked, but instead, the Licence should be suspended for 6 weeks from the date the fully **Reasoned Decision** takes effect, in addition to attaching all the conditions specified in this **Summary Decision**.

In summary, the Committee has decided it is necessary and proportionate, having carefully considered the individual merits of this case and the promotion of the licensing objectives:

1. To suspend the Premises Licence for a period of six weeks from the date the full **Reasoned Decision** comes into effect.
2. To modify the existing Licence by adding the following conditions to the Licence:

A. conditions requested by the Licensing Authority and agreed by the Premises Licence Holder

(1) The former Designated Premises Supervisor, Mr Scottie Bhattarai, shall not be permitted to enter or remain on the licensed premises at any time. Nor shall he be employed by, or act on behalf of the Premises or the Premises Licence Holder in any capacity whatsoever whether directly or indirectly or provide any services for the Premises (directly or indirectly and whether for reward or otherwise).

(2) The Premises Licence Holder shall draw up a policy to ensure that the former Designated Premises Supervisor, Mr Scottie Bhattarai shall not be permitted entry into the Premises. The policy shall be implemented within 7 days from the date of this hearing and complied with by the Premises Licence Holder and his staff (whether employed or self-

employed) at all times. The policy must be supplied to the Police and Licensing Authority officers within 14 days from the date of this hearing and thereafter, immediately upon request.

(3) A Noise Dispersal and External Management Plan ('the Plan') shall be submitted to the Royal Borough of Kensington and Chelsea's Environmental Health Department, Licensing Authority and the Police for consultation within 7 days from the date of this hearing. The Plan shall detail the procedures, management controls and practical steps including all measures to control any noise generated by patrons entering or leaving the Premises that will be taken to ensure that Public Nuisance does not arise at any time when licensable activities are taking place on the Premises. The Premises Licence holder shall incorporate any recommendations of the Licensing Authority, Police and Environmental Health into the Plan. Once the revised Plan has been finalised the Premises Licence holder shall implement and comply with the plan at all times. A copy of the revised Plan shall be sent to the Licensing Authority, Police and Environmental Health within 5 working days of it being revised. Any further amendments to the Plan shall be submitted to the Licensing Authority within 28 days of the revision.

(4) The Premises Licence Holder shall organise and accommodate meetings to discuss the operation of the premises with residents at least two times per calendar year. The details of the proposed meeting shall be clearly displayed on a window or door visible to people outside the premises and the Premises Licence Holder shall directly notify local residents' associations of the meeting date at least two weeks before the meeting. The Premises Licence Holder shall take the minutes of meetings with residents that shall be circulated to all attendees and to the Licensing Authority and copies shall be readily available at the premises upon request.

B. conditions requested by the Committee and agreed by the Premises Licence Holder

(5) The current new Designated Premises Supervisor shall attend and pass a duly accredited level 3 Designated Premises Supervisor course and shall send the original certificate to the Licensing Authority for verification within 28 days of attending the course and before the suspension period comes to an end.

(6) There shall be a minimum of one personal licence holder on duty on the Premises at all times when the Premises are authorised to sell alcohol.

C. conditions offered by the Premises Licence Holder

(7) An incident log shall be kept at the premises and made available on request to an authorised Officer of the Council or the Police. It must be completed within 24 hours of the incident and shall record the following:

- a. all crimes reported to the venue
- b. all ejections of patrons
- c. any complaints received concerning noise or crime and disorder

- d. any incidents or disorder
- e. all seizures of drugs and offensive weapons
- f. any faults in the CCTV system
- g. any refusal of sale of alcohol
- h. any visit by a relevant authority or emergency service.

(8) The Premises Licence Holder shall instruct and engage a comprehensive and independent risk assessment within 28 days and shall implement the actions prior to the Premises re-opening.

- 3.** To modify the Licence by removing condition 24 (telephone condition) and replacing it with the following the condition, as agreed with the Premises Licence Holder:

“The Premises Licence Holder shall provide and maintain a dedicated telephone number of the Designated Premises Supervisor or the duty manager for use by any person who may wish to make a complaint during the operation of the licence, which shall be provided to the Licensing Authority and local residents' associations. Any change to the number shall be notified to the Licensing Authority and to local residents' associations within 7 days of the change.”

- 4.** To modify the Licence by removing condition 21 (CCTV condition) and replacing it with the following the condition, as suggested by the Premises Licence Holder and agreed by the Responsible Authorities:

“There shall be CCTV in operation at the Premises and;

- a) a member of staff who has been nominated in writing and who is conversant with the operation of the CCTV system shall be on the Premises at all times when the Premises are open to the public.
- b) if the Premises are not open, and subject to the tests set out by virtue of the Data Protection Act, within 24 hours of a request for access to the CCTV system from either the Police or the Licensing Authority, this staff member must be able to show a Police, HMRC or authorised Council Officer recent CCTV data or footage with the absolute minimum of delay when requested.
- c) all recordings shall be securely stored for a minimum period of 31 days with date and time stamping on a hard drive or cloud-based system to the satisfaction of officers of the Metropolitan Police.
- d) all cameras shall continually record whilst the Premises are open for licensable activities and during all times when customers remain on the Premises and shall ensure all areas of the licensed Premises are monitored including all entry and exit points, and the street environment which enable frontal identification of every person entering the Premises in any light condition.
- e) recordings shall be made available immediately upon the request of a Police Officer or a Licensing officer throughout the preceding 31-day period and the Police and the Licensing Authority shall be provided with the facility to view the recordings, in real time.
- f) the CCTV system shall be maintained according to the current Home Office specification for Premises of this type.

g) should the equipment become faulty then the Metropolitan Police will be notified by e-mail and all reasonable efforts made to have any fault rectified within 24 hours.”

5. The Committee considers the conditions amended and added to the Licence are appropriate and proportionate to promote the licensing objectives.

6. The varied Licence shall be subject to any relevant mandatory conditions which are applicable to the Licence.

7. The existing conditions on the Licence shall apply, in so far as they have not been varied by this Summary Decision.

This is the **Summary Decision** reached by the Licensing Sub-Committee. The fully **Reasoned Decision** will be circulated to all the Parties as soon as possible. The 21day period for appealing will not start to run until the fully **Reasoned Decision** has been sent to the Parties.

This determination does not take effect until the end of the period given for appealing against the full **Reasoned Decision**, or if the **Reasoned Decision** is appealed against, until the appeal is disposed of.

Licensing Sub-Committee
28 January 2021