



BURNLEY BOROUGH COUNCIL LICENSING ACT 2003 SUB COMMITTEE

BURNLEY TOWN HALL

Wednesday, 6th September, 2023

PRESENT

MEMBERS Councillor Anne Kelly (in the chair)

Councillors M Townsend and D Whitaker

OFFICERS

Sajada Khan	–	Litigation and Regulatory Solicitor
Lisa Tempest	–	Licensing Compliance Officer
Carol Eddleston	–	Democracy Officer
Michelle Coogan	–	Licensing Officer
Thomas Bracewell	–	Environmental Health Officer

Also in Attendance

Applicant Party:

Sergeant Steve Dundon

Sergeant Gary Henningan

Megan Tollitt – Legal Counsel

Respondent Party:

Jason McQuoid – Premises Licence Holder

Rebecca McQuoid – Designated Premises Supervisor

Samantha Faud – Associate Solicitor

Kristian Torgerson – Paralegal (observer)

Ben Williams – Legal Counsel

Annalise Hodgson – Pupil (observer)

Responsible Authorities:

Licensing Authority:

Mark Walker – Workplace Compliance Officer

Public Health:

Andy Ascroft – Representative of the Director of Public Health for Lancashire,
Stephanie Duxbury – Senior Public Health Practitioner (observer)

12 Apologies for Absence

There were no apologies for absence.

13 Minutes of the last Meeting

The minutes of the meeting held on 3rd August 2023 were approved as a correct record and signed by the Chair.

14 Additional Items of Business

There were no additional items of business.

15 Declarations of Interest

There were no declarations of interest.

16 Exclusion of the Public

It was determined that the hearing would be held in public.

17 Review of a Premises Licence Application

Lisa Tempest presented a report which outlined an application for review of Premises Licence No PLA0345, (Mode, 77 Hammerton Street, Burnley), under Section 51 of the Licensing Act 2003 which had been submitted by Lancashire Constabulary on 12 July 2023.

In summary, the application for review had been submitted because it was the view of Lancashire Constabulary that the licensing objectives relating to the Prevention of Crime and Disorder, Public Safety, the Prevention of Public Nuisance and the Protection of Children from Harm were not being observed at the venue.

Following presentation of the report all parties had an opportunity to ask questions of Ms Tempest.

There were no questions.

Megan Tollitt presented the case for Lancashire Constabulary.

All parties had an opportunity to ask questions of Ms Tollitt.

All members of the sub-committee and Mr Williams asked a number of questions, to which responses were provided by Ms Tollitt, with supporting information provided by Sergeants Dundon and Hennigan where appropriate.

At 12:12 members RESOLVED to adjourn until 12:25 for a comfort break.

The meeting reconvened at 12:26.

Andy Ascroft presented the case on behalf of the Director of Public Health for Lancashire.

All parties had an opportunity to ask questions of Mr Ascroft.

There were no questions.

Mark Walker presented the case on behalf of the Licensing Authority.

All parties had an opportunity to ask questions of Mr Walker.

All members of the sub-committee and Ms Tollitt and Mr Williams asked a number of questions, to which responses were provided by Mr Walker.

At 13:35 members RESOLVED to adjourn until 14:15 for a lunch break.

The meeting reconvened at 14:19.

Ben Williams presented the case on behalf of the respondent.

All parties had an opportunity to ask questions of Mr Williams.

All members of the sub-committee and Parties asked a number of relevant questions, to which Mr Williams replied, with supporting information provided by Jason McQuoid and Rebecca McQuoid where appropriate.

Each party was given an opportunity to sum up.

At approximately 16:45 members RESOLVED to adjourn for five minutes to agree the next steps.

The meeting reconvened at 16:50 and the parties were informed that the hearing would close at this point and that members of the sub-committee would meet in private at 10:30 the next morning to deliberate and to receive legal advice, where appropriate, before coming to a decision. The Legal Advisor and Democracy Officer would also be in attendance. The decision would be communicated in writing to all parties within five working days.

The meeting closed at 16:51.

At 10:30 on Thursday 7th September, members of the sub-committee met in private, with the Legal Advisor and Democracy Officer in attendance, to consider all of the representations and evidence that they had heard and to take legal advice, where appropriate. This meeting closed at approximately 12:50.

DECISION AND REASONS FOR DECISION

DECISION

Being the licensing authority on 12th July 2023 received an application for review of a premises licence in respect of a premises known as Mode, 77 Hammerton Street, Burnley, BB11 1LE.

The Licensing Sub-Committee heard the application for review of a premises licence regarding Mode night club in Burnley on the 6th September 2023. Upon detailed consideration of all relevant representations made to the Sub-Committee by the parties and taking into account guidance relating to HM Government's Licensing Act, 2003 the Sub-Committee specifically bore in mind all four licensing objectives and took account of Burnley Council's Licensing Policy and the Guidance published by the Secretary of State under Section 182 of the 2003 Act the decision of the Committee is to **revoke** the premises licence PLA0345.

REASONS FOR THE DECISION

The reason(s) for the decision is that after considering the application in length the Sub-Committee found numerous breaches of conditions attached to the premises licence PLA0345 and that the licensing objectives are clearly being undermined, namely that: -

- (1) **Prevention of Crime and Disorder** objective is undermined – according to the Lancashire Violence Reduction Network Report (LVRNR) presented by the Police as part of their representations Mode Nightclub is said to be the single highest repeat location for violent crime in Burnley between July 2021 and June 2023. There was an average of four violent offences recorded in Mode nightclub per month during the period July 2021 and June 2023 and of all single locations/premises identified for violent crime in Burnley during this time period (excluding the Police station), Mode night club ranked highest in terms of the harm committed. As a result, the estimated cost to the public sector from this premises was £1.3 million. The Sub-Committee accepted the findings of the LVRN Report and concluded that the findings in this report are indicative of the above objective being undermined.

The Sub-Committee heard and accepted the written evidence of Clare Platt, Chartered Environmental Health Practitioner, presented by Mr Ascroft at the hearing on behalf of the Director of Public Health, Lancashire County Council as a Responsible Authority in support of the Police's application for review of premises licence. It was accepted by the Sub-Committee that the Police application demonstrated that Mode is having a negative impact on the licensing objectives. As well as that it was noted between June 2021 and May 2023 there were 14 attendances at Accident and Emergency Department by individuals who had been assaulted and stated that the assault took place at Mode nightclub, Burnley. Based upon the evidence presented by the Police Application and within Ms Platt's statement the Sub-Committee felt that existing conditions agreed following previous reviews of the premises licence had not been met and agreed that any further amendment of conditions was highly likely to be an ineffective course of action.

The Sub-Committee further noted that the Police have investigated offences of violence at the premises and at least one of those cases is with the Crown Prosecution Service for a decision. However, the Police stated that there were occasions when CCTV footage was requested within 48 hours in line with licence conditions but was not provided in this time frame. The Police stated that this delay in preserving evidence affected its ability to investigate criminal incidents in a timely and effective manner thus undermining the prevention of crime and disorder objective.

Mr Walker provided written representations and gave evidence on behalf of the licensing authority in support of the Police Application. The Sub-Committee accepted the evidence of Mr Walker with regards to breaches of licence conditions and licensing objectives being undermined. The Sub-Committee noted that on a number of occasions where the Licensing Authority has visited the premises, neither the DPS Rebecca McQuoid nor the premises licence holder was present at the venue, namely on 15th July 2023, 18th February 2023 and 26th March 2023. At the visit on 15th January 2023 the Welfare Officer, a male, was working behind the bar area operating in a dual role in breach of licence conditions. Issues around staffing/supervision, staff training, monitoring of CCTV and young children gaining access to the premises appear to be prevalent at the premises and contributing to undermining licensing objectives. The Sub-Committee accepted that there is clear evidence of persistent breaches of licence conditions and a failure to comply with the Licensing Act 2003 as stated by Mr Walker.

The Sub Committee expressed concern about Rebecca McQuoid who has been involved in the premises since 2016 and having held the premises licence until her recent bankruptcy on 30 May 2023 when the licence lapsed. She is currently the DPS (person having day to day control) for the premises and given her experience in the industry she ought to know exactly what is expected from her from a regulatory perspective. The issues with Mode are long standing. Over the years there are numerous examples of a lack of compliance, however earlier this year on 25th January 2023 Mark Walker and Rebecca McQuoid met and agreed an Action Plan with regards to the premises to ensure that licensing conditions were being upheld and various timescales were agreed for compliance with a final date of 31st March 2023. It was of real concern to the Sub-Committee that it took until 4th May 2023 to produce the requested documentation and that was when Rebecca McQuoid attended an interview under caution with the Licensing Authority.

- (2) **Public Safety** is undermined due to the number of incidents reported to the Police, including serious allegations of assault/ violence and or sexual assault, drugs, underage children being at the premises, welfare officer carrying out a dual role as opposed to being always the designated welfare officer during licensable activities. CCTV footage not being provided to the police within 48 hours upon request, failure to use ID Scanner that should be used to scan customers entering the venue together with the search policy not being properly adhered to, lack of staff training records available at the premises and failure/delay to provide upon request of officers, dispersal of people not being dealt with in line with internal policy and as per Annex 3 (Conditions attached after a Hearing) to premises licence PLA0345.

Mr Walker attended the premises to conduct a licensing visit on 18th of February 2023 and spoke to a member of staff working behind the bar. The female stated she had been working at the venue behind the bar for four months. The female confirmed that in terms of training she had been shown how to pour drinks and respective measures. The female did not know anything about the "Challenge 25" policy and or what it meant or referred to. The Sub-Committee found it concerning that a member staff who is solely working behind the bar had not been trained with regards to this policy. On numerous occasions the DPS and personal licence holder were found not to be present at the venue when licensing visits took place on the 15th January 2023; 18th February 2023 and 26th March 2023 which is clearly detrimental to this objective.

- (3) **Prevention of Public Nuisance** is undermined due to breach of the dispersal policy in that people have been seen on the CCTV footage to be leaving the premises after 6.30am when it should be 06.00am in accordance with licence conditions. The Sub-Committee accepted evidence provided by the Police that criminal incidents involving high levels of alcohol gave rise to violence outside the premises and found that it was likely that drug usage was taking place in and outside the premises causing public nuisance within the vicinity.
- (4) **Protection of children from harm** – the Sub-Committee found it very alarming that there are several incidents reported involving underage children gaining entry and access to Mode nightclub. On 17th March 2023 intelligence had been received that an underage male gained entry and spent most of the night there and not challenged by staff who had been working behind the bar. It is said that on the 9th March 2023 a social worker reported that an underage child gained access to Mode. The lack of proper use of the ID scanner at all times at the premises which is supposed to be one of the key safeguards and the inadequate number of door staff on duty within smoking area/premises is likely to be a contributing factor and enabling children to gain access into the premises.

The Sub Committee noted that this review is the third review of the Mode premises licence, it was previously reviewed in 2017 and in 2020. At the last review on 21st May 2020 stringent conditions were added and agreed at Annex 3 of the premises licence PLA0345, however it appears to have made little difference as there is clear evidence of a breach of various conditions. Therefore, to add or modify conditions is not considered appropriate given the history of lack of compliance.

The Sub-Committee stated there is a persistent pattern of behaviour that shows lack of compliance, consistent disregard of rules together with the undermining of licensing objectives clearly suggests that those managing the premises are unable to do so properly and safely. The Sub-Committee noted that Rebecca McQuoid is currently subject to prosecution proceedings under section 136 (1) (a) of the Licensing Act 2003 at Burnley Magistrates Court.

Mode night club requires careful regulation and needs to consider putting in place an improved management plan/structure although it was noted that the Respondent stated they could for example hire extra door staff and another DPS in addition to Rebecca McQuoid. The Sub-Committee took the view that such measures would make little difference if any and, in their view, not adequate nor sufficient in the circumstances to address all the concerns raised by the Responsible Authorities and concluded that the current management structure was indeed weak and needed addressing from the top to the bottom to promote licensing objectives.

The Sub Committee in the absence of further evidence was unable to conclude that any allegations of potential fraud against Mr Jason McQuoid with regards to whether he sent and an e-mail or not to the Police in connection with an under 18s event and whether the Police received it or not were not found. Also, with regards to an allegation by Mr Walker that training records were potentially being falsified was not found based on the evidence presented.

The decision to revoke is appropriate, necessary, and proportionate in the circumstance for the promotion of all four licensing objectives as stated above.