

Minutes of the Licensing Sub-Committee**31 March 2022****-: Present :-**

Councillors Ellery, Barbara Lewis and Mills

46. Apologies

It was reported that Councillor Mills was present for this hearing having been substituted by Councillor Barnby at the original hearing on 24 March 2022 which had been adjourned until today.

47. Jackz Bar, Parkham Road, Brixham

Further to the meeting of the Licensing Sub-Committee held on 24 March 2022 (Minute 42/3/22 refers), Members considered a report on an application for a Review of a Premises Licence in respect of Jackz Bar, Parkham Road, Brixham.

Written Representations received from:

Name	Details	Date of Representation
Police	Application and supporting information for a Review Hearing.	1 February 2022
Public Protection Officer	Representation in support of the application for Review.	2 March 2022
Devon and Somerset Fire and Rescue Authority Business Safety Officer	Representation in support of the application for Review.	4 February 2022
Member of the Public	Representation in support of the application for Review.	24 February 2022
Police	Additional information in support of the application for Review.	4 March 2022

Additional Information:

Name	Details	Date of Representation
Police	Additional information in support of the application for Review.	4 March 2022

Respondent	Representation comprising of statements from a builder, Mr Hennessey and Mr Ralph, a photographer and photos of work carried out on the Premises against the application for Review.	Circulated on 24 March 2022
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Following a request from the Police, the Chairman agreed to extend the normal time allowed for oral representations from 10 minutes to 30 minutes for all interested parties in light of the additional information which was circulated at the hearing on 24 March 2022.

At the hearing, Mr Ralph suggested that a further suspension of approximately one month would be appropriate to give him sufficient time to address the outstanding issues to ensure compliance with the premises licence.

Decision:

That in respect of the application for a Review of a Premises Licence of Jackz Bar, Parkham Road, Brixham, Members resolved unanimously to revoke the premises licence with immediate effect.

Reasons for Decision

Having carefully considered all the oral and written Representations, Members resolved unanimously to revoke the Premises Licence, as they could not be satisfied on the evidence before them, that the Premises Licence Holder, Mr Ralph, an employee of Mr Ross Hennessey, had autonomy, capacity nor capabilities to operate these premises in a manner which ensured that the Licensing Objectives would be promoted, and patrons would be kept safe.

In coming to that decision, Members noted the history of events leading to this Review and the continued involvement of Mr Hennessey in these premises, despite conditions in place to prohibit this.

In doing so, Members noted that Ms Harley, an employee of Mr Hennessey, was appointed as the Premises Licence Holder and Designated Premises Supervisor, on the afternoon of the 24 June 2021, following a Licensing Committee decision earlier that same day, to refuse the transfer of these licences to Mr Hennessey. Furthermore, on the 7 October 2021, Members noted under the licences of Ms Harley, these premises were subject to a Review hearing called by the Police, for the reasons outlined in the report before them. Furthermore, on the morning of the Review hearing, Members noted that Ms Harley had resigned from these positions and a Ms Trust, also an employee of Mr Hennessey, took up these positions and attended the hearing, stating that she was aware of the concerns raised within the Review application and agreed to modify the premises licence, to include the conditions proposed by the Police and Public Protection Officers, along with the following two conditions:

- 1) That Mr Ross Hennessey be prohibited from entering the premises during operational hours.
- 2) That Mr Ross Hennessey shall not be involved in or influence the operation of these premises; and

In addition to that modification, Members noted that the premises licence was suspended for a period of three months, until 7 January 2022, allowing Ms Trust time in the intervening period, to implement the measures outlined in the new conditions. Members also noted that this decision was appealed two days after Ms Trust's initial submissions to the Police, during their visit to the premises on the 16 November 2021, whereby she stated that she did not want to appeal the decision, that she was satisfied with the conditions and that she did not want to go to Court. It was therefore of great concern to Members to learn that during this discussion, Ms Trust also stated that she had not discussed the matter with Mr Hennessey, so she was not aware if he wanted to appeal. Notwithstanding that Ms Trust was the Premises Licence Holder. This evidenced to Members, operational control by Mr Hennessey, despite him having no legal standing in respect of the premises licence and his influence in this, was in their opinion, a direct breach of the second of the two conditions set out above.

Whilst the appeal was subsequently withdrawn by Ms Trust on the 22 December 2021, in lodging the appeal, Members noted that the premises were permitted to continue trading, as the decision to suspend the premises licence did not take effect until its withdrawal. During that period of operation, Members further noted with grave concern that the Police continued to raise issues of concern with Ms Trust in respect of the premises operation and non-compliance with conditions. This further alarmed Members and demonstrated to them that Ms Trust was out of her depth in managing these premises, especially as this was a period where Members could reasonably have expected full compliance with its conditions and strong management in place, given the high stakes associated with an appeal and the risk that Ms Trust could lose her licences.

Despite Ms Trust being afforded the opportunity of a suspension to implement change, it was also of great concern to Members to note that late on the 8 January 2022, a day after the suspension was lifted, leading into the early hours on the 9 January 2022, Responsible Authority Officers visited the Premises and noted concerns in respect of covid passport compliance checks, likely noise outbreak emanating from the premises, non-compliance with conditions of the premises licence and the premises layout, not being in accordance with its plan. During this visit, Members were alarmed to note that the personal licence holder on duty, was Ms Harley, the previous Premises Licence Holder and Designated Premises Supervisor who had resigned from these positions. In Members opinion, placing Ms Harley in this position of responsibility was a fundamental misjudgement by Ms Trust, especially noting her submissions at the Review hearing on the 7 October 2021, that she was aware of the concerns raised within the Review application and as such, would have been aware of Ms Harley's failings in compliance with licensing conditions, alleged drug supply, increase in recorded crime, drunkenness, and use of unlicensed SIA door stewards at the premises. This again cemented the opinion of Members, that Ms Trust was out of her depth and

did not have the capabilities required to operate this premises licence or to hold positions of responsibility. In doing so, Members formed the clear opinion on the evidence before them, that Ms Trust had been put into these positions, following the resignation of Ms Harley, as a front for Mr Hennessey which enabled him to continue operating these premises, as he had done so.

Members also noted that on the 9 January 2022, the Police served a Closure Notice under Section 19 Criminal and Justice and Police Act 2001 on the outcome of the visit referred, and that this Notice remains in force. Additionally, Members noted following further visits and communication with Ms Trust, the Police submitted a Review of the Licence on 1 February 2022.

Members further noted that Mr Ralph had been engaged by Mr Hennessey, to oversee the management of his three leased licensed premises which have all been identified by the Police as being high risk premises, including this one, from the 14 January 2022. This engagement coincided with Mr Trust's emails to the Police to reopen these premises, where she was advised that if she was satisfied that she could comply with the conditions, she could carry out licensable activities whenever she wished. Members noted that a Police Officer observed the premises being open and operating on the Saturday 15 January 2022, into the early hours of Sunday 16 January 2022.

Noting the dates, Members were satisfied that Mr Ralph would have had oversight of this opening, and this was significant to them, when considering Mr Ralph's suitability in operating these premises and determining if a further suspension was the right decision, to that of a revocation of the premises licence. In doing so, Members noted during a scheduled visit to the premises on the 21 January 2022, at the request of Ms Trust in respect of the Closure Notice, to which Mr Ralph was also present, Police Officers found breaches of the premises licence which in Members opinion, would have also taken place when the premises were noted to be open and operating on the 15 and 16 January 2022, at a time when Mr Ralph was engaged. Furthermore, and of great concern and significant worry to Members, Officers found that the premises itself was of such a poor state of repair which in Members opinion, was likely to have been the state of the premises on the 15 January 2022, some six days earlier, when it was open to the public. Such was the disrepair, the premises was found to have no electric in the ladies toilet, a free standing lamp placed inside the toilet, between the electric hand drier and sink which could have resulted in it coming in to contact with water in the sink or wet hands, the use of an extension lead for this which was plugged in to the main bar area which in Members opinion, was wholly unacceptable for this type of premises and would have been a trip hazard, cubicle in complete darkness when in use, a crack to one of the sinks which was plugged with paper towels and had sharp edges and was held together with silver tape and cellotape and no facilities to dry hands.

In respect of the male toilets, Officers noted that the cistern was not connected to the mains and therefore no water flushes through the urinals which on the admissions of Ms Trust, had been like this for some time but concerningly to Members, no action had been taken to address this, a strong smell of urine, likely to be attributable to this defect, an electric hand drier was not fitted properly to the

wall and was lying on a shelf but still connected to the mains electricity above the sink and in respect to a paper towel dispenser being pulled off the wall, Ms Trust response was to say staff had not informed her. In a position of responsibility, it was reasonable to expect the Premises Licence Holder, along with Mr Ralph, having been appointed for management oversight, to be aware of all aspects of the premises and this response showed in Member's opinion, the irresponsible attitude of Ms Trust and a failing of them both to allow the premises to open in this state.

In the main bar area, it was noted by Officers that a number of wires were hanging from the walls in at least three different locations and the number of extension leads being used with sockets potentially being overloaded.

When advised of the serious safety concerns and asked when the premises last had an electrical safety check, Ms Trust indicated that she did not know which was of serious concern to Members and again echoed the irresponsible attitude and lack of professional oversight required. Whilst Mr Ralph and Ms Trust agreed that the premises was not safe and that Ms Trust would not be opening again until an electrician had checked all wiring to ensure it is safe and provides her with a certificate to this effect, Members were of the opinion that this was a reactionary response to the serious safety concerns brought to their attention and had the visit not taken place, Members were absolutely certain that the premises would have continued to operate, as it had done so on the 15th and early hours of the 16th January 2022, placing patrons at a serious risk of harm and even death.

This was further compounded by the horrifying response given by Ms Trust and subsequent action taken by Mr Ralph, when asked about staff training and any guidance given to the door stewards before their shift, using fire safety and escape routes. To say she had not provided any staff training, did not know if there was a fire extinguisher, but if there was, she did not know where it was located and then for Mr Ralph to have to go and look for it, was woefully unacceptable to Members and filled them with absolute dread and fear that these two individuals were operating and overseeing the operation of this late licence. In the case of an emergency, customers under the influence of alcohol would be expected to be directed to an emergency exit by staff and stewards and therefore they had a duty to ensure all persons employed at the premises know where to find fire escape routes, fire extinguishers and alarms are located. To this end, Members had absolutely no confidence in either of them, should such an event occur and were filled with relief, that it had not. This is despite Mr Ralph producing a Fire Awareness Certificate dated 28 March 2021, as exhibited to his witness statement.

In respect of Mr Ralph's appointment as the Premises Licence Holder and Designated Premises Supervisor, again the day before what was a second Review hearing in less than a six months period, was of the upmost concern to Members. In forming this concern, Members noted that Mr Ralph was the third person to take up the position of Premises Licence Holder and Designated Premises Supervisor in respect of these premises, within less than a ten month period. Furthermore, Mr Ralph was a third successive employee of Mr Hennessey to hold these positions. Albeit Members noted that Mr Ralph did not have a formal contract in place which also caused them concern, understanding on the evidence before them, that Mr

Ralph had been engaged by Mr Hennessey to oversee three licensed premises leased by him but without, what appeared, to be firm arrangements in place.

In Members opinion, it appeared to them that these resignations and appointments were no more than an attempt by those involved in this premises operation, to frustrate the actions of the Responsible Authorities, in ensuring this premises operated in a responsible and safe manner. Noting also on the submissions of Mr Ralph, that those previously appointed as Premises Licence Holders and Designated Premises Supervisors under Mr Hennessey's employment, remained employed by him at these premises.

Furthermore, Members could not be satisfied that Mr Ralph was a suitable person to train up managers, as proposed by him, enabling him to have oversight of all three premises. Whilst this may have been an aspiration of his and Mr Hennessey, it did nothing to reassure Members in the immediate or the long term, that this premises would operate in a safe and responsible manner. In forming this opinion and in addition to the concerns already noted, Members were mindful that Mr Ralph had never held a late licence such as these premises and the only relevant qualification Mr Ralph appeared to possess, was a certificate exhibited to his witness statement which evidenced that he had completed the BIIAB Level 2 National Certificate for Licensees (On-Licence) on 2 May 2003, some nineteen years ago and before the Licence Act 2003 came in to force. In addition, when asked about his experience, noting his submissions in his witness statement, Mr Ralph was vague on his dates and the experience he alluded to, did not add up which also caused concern for Members.

Members further noted that Mr Ralph had inserted a noise limiter into the premises, as required but it was the opinion of the Public Protection Officer, that this particular limiter was an old model and not fit for purpose. Whilst Mr Ralph said he would change it, this again demonstrated to Members, the lack of relevant experience held by Mr Ralph in dealing with this type of premises, notwithstanding his witness statement stating he had a history as a sound engineer.

Despite agreed conditions to prohibit Mr Hennessey's involvement in the premises operations and the assurances given by Mr Ralph that he would be in control and his word was final, it is of great concerns to Members to learn that Mr Hennessey remains involved in this premises operations, nine months after a Licensing Authority determination was made to refuse to transfer the Premises and Designated Premises Supervisor licences to himself. This evidenced to Members that there was an absence of robust control measures or capabilities in place to prohibit the persistent and apparent devious nature of Mr Hennessey, who in Member's opinion, was using employees as a front, to enable him to operate these premises in circumvention of that decision and Mr Ralph's appointment, was no different.

In forming this opinion, Members were greatly concerned following Mr Ralph's admission that Mr Hennessey had sent an email to a Responsible Authority, holding himself out to be Mr Ralph, using Mr Ralph's email address, without his knowledge. The email stated that it was Mr Ralph's intention to re-open the premises on 4 February 2022, only a few days after the Responsible Authority had

been given assurances that the premises would not open, following fire safety concerns being identified. Whilst Mr Ralph sought to assure Members that it was not his intention to open until the premises were safe, they were alarmed to learn that Mr Ralph had no knowledge of this act, or control over it and in their opinion, showed that Mr Hennessey would go to any lengths to remain involved in the premises operation, with no real regard for public safety but instead, putting income and profit over this. In respect of this incident, Members were concerned to read in Mr Ralph's witness statement that he stated Mr Hennessey had not made any decisions about the licence since he came on board. This witness statement is dated 22 March 2022, Mr Ralph was engaged on the 14 January 2022, yet this incident occurred on the 9 February 2022. Therefore, Members found this submission to be misleading.

It was of further concern to Members to learn that Mr Hennessey had recently completed and submitted an Application for a premises licence in respect of Hennessey Cocktail Lounge, 2 King Street Brixham in Mr Ralph's name. This is a premises leased by Mr Hennessey and he was the Premises Licence Holder and Designated Premises Supervisor of that premises, until the licence was revoked by a Licensing Committee on the 24 June 2021. This decision was subsequently upheld by the Magistrates' Court, following an unsuccessful appeal of that decision, by Mr Hennessey.

Whilst it is accepted that Mr Ralph had knowledge of this application, Mr Ralph did not submit it as implied, and it was only at a Licensing Sub-Committee hearing on the 10 March 2022 that this became known. Members were further alarmed to learn that Mr Hennessey consulted Mr Ralph over the telephone as to the contents of the application and despite Mr Ralph not being happy with certain conditions, he was told by Mr Hennessey to put them in to get the application granted. Members noted that this application was subsequently refused and that a further application has been submitted by Mr Ralph, without sight as to the reasons for that refusal. This further evidenced to Members, continued control by Mr Hennessey, despite engaging Mr Ralph to oversee his leased licensed premises, demonstrating Mr Ralph's lack of autonomy.

Whilst Members were encouraged by Mr Ralph's honesty, noting at time this became to his detriment as a Respondent, they were seriously concerned to note within his witness statement, that Mr Ralph felt Mr Hennessey had been unfairly treated. Members determined this was a serious misjudgement by Mr Ralph, as it failed to recognise or appreciate the seriousness of the issues to date and the scale of intervention necessary by the Responsible Authorities.

Added to this, was Mr Ralph's oral submission at the hearing, whereby he confirmed that he had read all the paperwork relating to these premises, that of Hennessey's Cocktails and had discussed this with Mr Hennessey. Had he objectively done so, Members believed Mr Ralph would have arrived at a different feeling, given Hennessey Cocktails dealings had been independently test by an appeal Court, or at least would have reasonably expected him to have done so, even if in part, noting his loyalty to Mr Hennessey who Members were advised, was also providing Ralph and his wife accommodation at no charge.

Mr Ralph's further misjudgement was noted by Members, in reading Mr Ralph's witness statement, where he stated that in his view, this premises had improved since Mr Hennessey took over. However, in the Police's Review application and echoed in their oral submissions at the hearing, Members noted that under previous ownership, this premises did not regularly come to the Police's attention within a sixteen year period, due to what they say, was robust management in place. However, under Mr Hennessey's lease and employees, this premises licence had been subject to two Reviews and a Closure Notice, within a ten month period.

In Members opinion, a further and significant misjudgement by Mr Ralph, not connected to these premises or Mr Hennessey which was of great concern to them, as it evidenced the influence others could have over Mr Ralph, to carryout licensable activities, other than in accordance with its licence. This related to Mr Ralph's previous employment, where he states in his witness statement that his previous employer neglected to nominate him as a Designated Premises Supervisor when the previous one left after around six months. This would have resulted in Mr Ralph operating these premises as a general manager for about twelve months, without a Designated Premises Supervisor in place and on the evidence before them, there did not appear to be any continued challenge to his employer to rectify this or that Mr Ralph had reported this to the Licensing Authority, even if he had done so anonymously, in fear of losing his employment and associated accommodation. When asked about this, Mr Ralph stated that the person was closely connected to him and was there but had another job too. Members found this to be inconsistent, electing to give greater weight to that in his witness statement, as this would have been considered, as opposed to a reactive reply to Members questions.

Members also noted in Mr Ralph's witness statement that he had discussed with the Police the possibility of being named as a Designated Premises Supervisor for two of Mr Hennessey's licensed premises, including this one, and that the Officer was 'very enthusiastic and suggested there would be no issue'. However, at the hearing, Members heard from the Police that this submission was not true and if that had been the case, why would they have objected to the applications to enable this. Members found the Police account to be true.

Members further noted the content of Mr Hennessey's witness statement, much of which in their opinion, was an attempt to revisit matters which had been concluded and on one of the premises, upheld independently by an appeal Court. There were also a number of inaccuracies contained within the statement, such the Council suggested that, in order to avoid an appeal hearing, we try to negotiate conditions. Members were advised that it was in fact Mr Hennessey who indicated his wish to withdraw the appeal through his Counsel, at the conclusion of the Hennessey appeal. Notwithstanding again, that Mr Hennessey was not the Premises Licence Holder. Furthermore, the statement states that Mr Hennessey had removed himself from the premises operations but on the evidence before them and some of which is documented within this decision, Members know this not to be true and therefore found these submissions to be misleading.

As such, Members could not be satisfied on the evidence before them, that Mr Hennessey either accepted these determinations, would not continue to be involved in or influence these premises operations, as he had done so to date and would not exploit the misjudged feelings of Mr Ralph, that he had been unfairly treated which would enable him to influence and control Mr Ralph in the future. In coming to that position, Members determined that a revocation was both necessary and proportionate in all the circumstances before them.

In addition, Members could not be satisfied on the evidence before them that Mr Ralph had the necessary autonomy, foresight, experience or strength of character to implement the change required, noting in addition that already set out, that he was also engaged at these premises during Ms Trust's appointments as licensee and Designated Premises Supervisor. Therefore, when carefully considering a further suspension period for one month, as requested by Mr Ralph, they unanimously determined against this, believing the scale of change required would not be implemented at all and certainly not within this time frame and to believe otherwise, further evidenced to them, Mr Ralph's inexperience in operating this type of premises.

In Members opinion, all that was likely to occur within this intervening period, was the further completion of some building works which may enable the premises to reopen to the satisfaction of Environmental Health and Fire Safety Officers. However, to permit this request, Members determined unanimously would undermine the Licensing Objectives, further continue breaches of the premises licence conditions and place patrons at a real and substantial risk of harm or even death, given its operations to date under the lease of Mr Hennessey.

In concluding, Members had careful regard to what other options were available to them, as an alternative to revocation and determined that further conditions, given the recorded breaches to date, nor the exclusion or limiting of licensable activities, given the individuals continually involved in these premises operation, would alleviate their concerns. Members also considered the removal of Mr Ralph, as the Designated Premises Supervisor but given the appointments and resignations to date of these positions under the employment and lease held by Mr Hennessey, noting also the Police's submissions in respect of how these roles have been filled in the past, without proper scrutiny or consideration of qualifications or experience required to successfully hold this position, Members could not be satisfied that a suitable replacement would be found. Furthermore, for the reasons set out above, Members disregarded a further period of suspension and therefore unanimously determined on the evidence before them, that the only necessary and proportionate outcome in respect of these premises to uphold the Licensing Objectives, was a revocation of the premises licence with immediate effect.