



ALCOHOL AND ENTERTAINMENTS HEARING PANEL

DECISION OF HEARING

The Licensing Act 2003 (Hearings) Regulations 2005

Applicant:	Chief Constable, Nottinghamshire Police (Represented by Katie Buckley, Legal Representative)
Premises:	Queens Head, 34 Main Street, Kimberley, Nottingham, NG16 2LL
Hearing date and time:	10 November 2020 at 10.00am
Hearing place:	Broxtowe Borough Council Virtual Meeting held via Microsoft Teams
Constitution of the Panel:	Cllr D Bagshaw (Chairman) Cllr D Grindell Cllr P Simpson
Officers present:	Angela Edwards (Legal Advisor) John Miley (Licensing Manager) Arron Beckworth (Democratic Services Officer)
Responsible Authorities Present:	Environmental Health, Broxtowe Borough Council (Represented by Suzanne Hickey)
Premises Licence Holder:	Mr Juan Hua Chen (Neither present, nor represented)
Designated Premises Supervisor:	Mr Juan Hua Chen (Neither present, nor represented)
Application:	S51 Licensing Act 2003 – Application for review of a Premises Licence
Decision:	Premises Licence Number 05/00219PREMCV dated 29th July 2005 relating to the Queens Head, 34 Main Street, Kimberley, Nottingham, NG16 2LL be REVOKED in its entirety

PROCEDURAL NOTE

The hearing of the application was held virtually in accordance with the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020.

The Hearing Panel **RESOLVED** that the hearing should proceed with the press and public excluded as the public interest in doing so outweighed the public interest in the hearing taking place in public. The reason for this was the sensitivity of the information disclosed within the exhibits to the evidence bundle and discussed in the course of the hearing.

The Premises Licence Holder/Designated Premises Supervisor neither attended nor arranged for representation at the hearing. After hearing submissions with regard to the steps taken to bring the hearing to Mr Chen's attention, and to offer support and guidance, the Hearing Panel **RESOLVED** to proceed with the hearing in his absence pursuant to Regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005.

Introductions were made and the procedure for the hearing was outlined to those present. It was confirmed that all members of the Hearing Panel had read the evidence provided and had viewed the CCTV footage.

It was explained that when all parties had made their representations, the hearing would close and the Hearing Panel would retire to make their decision. Thereafter, the written decision would be sent out to all parties within 5 working days of the hearing. All persons present agreed that they understood the purpose of the hearing and the procedure that would be adopted.

Once the Hearing Panel were satisfied that a fair hearing had been held, the Chair closed the hearing. The Hearing Panel then immediately retired to make their decision and sought advice from the Legal Advisor as required.

FINDINGS OF FACT

An application for a review of Premises Licence Number 05/00219PREMCV, under Section 51 of the Licensing Act 2003, was received on the 18th September 2020 in respect of the Queens Head, 34 Main Street, Kimberley, Nottingham, NG16 2LL ("the Premises").

The Applicant explained the reasons for their application and highlighted particular incidents of serious crime and disorder that they demonstrated were associated with the Premises.

The Hearing Panel were advised that the Premises were a real cause of concern to the Applicant, and that the management and control of the Premises fell far below a reasonable standard. This irresponsible management and lack of control was undermining the licensing objectives and causing a risk to customers, staff, members of the public and police officers attending the Premises.

The Applicant advised that, as a Responsible Authority, they always tried to work with businesses to assist them to promote the licensing objectives and manage licensed premises effectively and responsibly.

The Applicant outlined the measures and interventions that they had taken to try and resolve the problems that were occurring at the Premises. They had worked in partnership with other agencies and had taken an incremental approach, using the statutory tools available. It was submitted that Mr Chen had received ample warnings, support, guidance and time in order to rectify the problems his premises were causing.

The Applicant highlighted evidence that demonstrated Mr Chen exercised little to no control over the Premises, and that he was reluctant to engage with the authorities when they tried to assist him. The CCTV footage was noted as clearly demonstrating this, together with the resultant need for an extensive police presence to control anti-social behaviour and crime and disorder, both inside the Premises and also when it spilled out onto the street.

It was explained that police officers attending incidents at the Premises had identified underage individuals, and also that Mr Chen had failed to contact the emergency services when crimes were in progress.

The Hearing Panel heard evidence that the Applicant assisted Mr Chen to obtain door staff and that the situation improved considerably on the occasion they were present. Unfortunately, however, Mr Chen failed to maintain this protection. It was noted that it was, in fact, the security company that refused to provide further door staff due to the poor management of the Premises and lack of COVID-19 measures in place.

The Applicant stated that Mr Chen's attitude and willingness to work with the authorities was poor. Whilst he occasionally complied, he was often aggressive and unwilling to make changes, particularly if there was any resultant cost to him. The Applicant had advised Mr Chen, on several occasions, to close the Premises early to avoid problems being caused by customers arriving to continue to drink after other licensed premises in the area had closed. It was noted that Mr Chen refused to do this for financial reasons, stating that it was his busiest time.

The Applicant explained that the lack of effective management of the Premises had adversely impacted on police resources, requiring the deployment of additional officers and also the instigation of dispersal powers pursuant to the Anti-social Behaviour, Crime and Policing Act 2014. This had a detrimental effect on policing the rest of the borough.

The Hearing Panel heard evidence from the Police Licensing Enforcement Officer that the assistance and guidance given and offered to Mr Chen was well above what they would usually give or expect to have to give. The officer further stated that in his 19 years of experience working in the role, the Premises was one of the worst he had seen.

The Hearing Panel heard evidence from the Chief Environmental Health Officer of Broxtowe Borough Council ("the Council") as to their involvement and how they had worked jointly with the Applicant and other authorities to try and resolve the problems being caused.

The Chief Environmental Health Officer explained the statutory measures and controls that it had been necessary to put in place to ensure public safety, due to Mr Chen's inconsistent and inadequate responses to their concerns. It was noted that an incremental approach, using various legislative tools, had been taken, which ultimately resulted in a Direction being made by the Chief Executive of Nottinghamshire County Council to close the premises pursuant to the Health Protection (Coronavirus, Restrictions) (England) (No.3) Regulations 2020.

The Hearing Panel was advised that this closure had since been reviewed and remains in place as insufficient progress has been made to allow it to be removed.

The Chief Environmental Health Officer explained the efforts they had made to provide support and guidance to Mr Chen in an attempt to avoid formal action. Unfortunately, he had proved unable/unwilling to take the necessary steps, even failing to put in place simple management controls that would not incur any cost.

The Licensing Manager of the Council advised the Hearing Panel that the only representation received from Mr Chen was "do what you have to do".

THE DECISION OF THE HEARING PANEL

The Hearing Panel **RESOLVED** by a **UNANIMOUS** decision that Premises Licence Number 05/00219PREMCV dated 29th July 2005 relating to the Queens Head, 34 Main Street, Kimberley, Nottingham, NG16 2LL be **REVOKED** in its entirety.

REASONS FOR THE DECISION

In reaching its decision, the Hearing Panel had due regard to the Council's Statement of Licensing Policy, the s182 Government Guidance, the four licensing objectives, the Licensing Act 2003 and the Crime and Disorder Act 1998.

The Hearing Panel listened carefully to the oral representations made during the hearing and considered them in detail, together with all of the relevant written representations received and the CCTV footage.

During the hearing, and upon consideration of the evidence, the Hearing Panel were mindful of the fact that English was not Mr Chen's first language. The Hearing Panel were satisfied, however, that the additional support and guidance offered by the authorities throughout their dealings with Mr Chen was more than sufficient to ensure that he suffered no prejudice or discrimination in this regard. The Hearing Panel was satisfied that Mr Chen properly understood these proceedings, and the preceding enforcement actions of the authorities, and had been given every opportunity to be involved. The Hearing Panel formed the view that Mr Chen's lack of engagement was his own informed choice.

The Hearing Panel found there was significant evidence that demonstrated a causal connection linking the anti-social behaviour, crime, disorder and nuisance that was occurring to the Premises.

The Hearing Panel found the evidence overwhelmingly demonstrated the Premises were having a negative effect on the community, and putting customers, staff, members of the public in the vicinity and attending police officers at risk. The Hearing Panel had no doubt that neighbours were adversely affected and that harassment, alarm and distress was being caused.

The Hearing Panel were satisfied the evidence clearly demonstrated Mr Chen had very little or no control over the Premises, and that he had shown very little concern for the problems emanating from his premises and the consequences thereof.

The Hearing Panel found it completely unacceptable that Mr Chen prioritised his own personal gain over and above the licensing objectives by refusing to close the Premises early when requested to do so by the authorities. Further, the Hearing Panel considered that Mr Chen's refusal and reluctance to co-operate with the authorities overall was wholly unreasonable and irresponsible in the circumstances.

The Hearing Panel were satisfied that the authorities had taken a reasonable stepped approach in their use of enforcement measures to try and resolve the problems at the Premises. They considered that Mr Chen had been given plenty of warnings and advice on the steps needed to improve, but that he had failed to respond adequately. They were satisfied that review of the Premises Licence was an appropriate and proportionate step.

The Hearing Panel noted that despite very serious action being necessary, namely the ultimate closure of the Premises, Mr Chen had still not put appropriate measures and safeguards in place. The Hearing Panel acknowledged that the closure had been effected as a result of non-compliance with COVID-19 legislative requirements, but found there was significant evidence to demonstrate that these additional requirements had merely exacerbated the situation, and that the licensing objectives were being undermined despite this.

The Hearing Panel was disappointed to note Mr Chen's failure to engage in the hearing and found this attitude to be consistent with the evidence submitted by the authorities. Accordingly, the Hearing Panel formed the view that this attitude demonstrated a complete disregard for authority and willingness to change. The Hearing Panel had no confidence that Mr Chen was competent as either a Premises Licence Holder or a Designated Premises Supervisor.

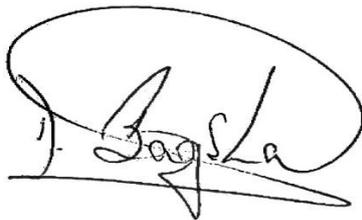
The Hearing Panel found that Mr Chen's actions and failure to act were undermining every licensing objective.

The Hearing Panel considered, at length, all of the options available to them, and, in particular, whether any action less than revocation would be sufficient and proportionate to resolve the problems at the Premises. However, given the serious nature of the evidence presented; the fact that the authorities had already taken a stepped approach; and the lack of co-operation by Mr Chen to a significant degree, being both the Premises Licence Holder and the Designated Premises Supervisor, the Hearing Panel felt the only appropriate action was to revoke the Premises Licence in its entirety.

In making this decision the Hearing Panel were mindful of the serious impact this would have on Mr Chen, but gave precedence to their duty to ensure promotion of the licensing objectives and to act in the best interests of the community. On balance, bearing in mind all of the evidence before them, the Hearing Panel were satisfied that revocation of the Premises Licence was proportionate and the only appropriate action to take.

RIGHT OF APPEAL

There is a right of appeal to the Magistrates' Court within 21 days from the date on which the parties are notified of the determination of the decision of the Hearing Panel.

A handwritten signature in black ink, appearing to read 'J. Bagka', enclosed within a large, hand-drawn oval shape.

Signed:

Dated: 10TH NOVEMBER 2020