

## **Funny Boyz - Appeal Decision**

This is an appeal under Section 181 and schedule 5 Licensing Act 2003 in respect of a premises licence relating to Funny Boyz, 16A Dickson Road. I am proceeding on the basis that this is a re-hearing.

The appellant is Tariq Albattikhi who carries on the business of a takeaway at this address. It includes a licensable activity, the provision of late night refreshment.

The premises were made subject of a review application under Section 51 Licensing Act where various parties may apply for a review of a licence and the authority must have regard to the application and any representations and may take such steps, if any, as necessary to promote the licensing objectives. The steps are set out in Section 52(4):

- Modify the conditions of the licence
- Exclude a licensable activity from the licence
- Remove a Designated Premises Supervisor
- Suspend the licence for no more than three months
- Revoke the licence

In this case the licensing authority revoked the licence

The licensing objectives are set out in Section 4(2) of the Act:

- The prevention of crime and disorder
- The protection of Public Safety
- The prevention of Public Nuisance
- The protection of children from harm

The original holder of the licence was the appellant's brother, Iyad Albattikhi. The licence was granted sometime in 2005 neither the licence or the summary appear to be dated. The act came into force on the 24<sup>th</sup> November 2005. The licence was granted subject to conditions, permitting late night refreshment 23.00-03.00 Sunday-Thursday, 23.00-03.30 Friday-Saturday. The premises opening hours were 12.00-03.00 Sunday-Thursday, 12.00-03.30 Friday- Saturday. The premises licence contains conditions:

- 1 Noise from any Regulated Entertainment, Mechanical Ventilation or Refrigeration Plant shall be inaudible within the nearest sensitive properties or, at the discretion of the Local Authority, shall not exceed some other pre-agreed limit, which does not cause unreasonable disturbance to the residents of these properties or their guests.
- 2 There shall be placed at all exhibit points from the premises in a place where they can be seen and easily read by the public, clear and legible notices requiring the customers to leave the premises and the area quietly so as to minimize disturbance to nearby residents.
- 3 The licensee shall ensure that adequate ventilation is provided so as to ensure that cooking, noxious or persistent smells generated at the premises do not cause nuisance to properties within close proximity.

- 4 The applicant shall have regard to the Duty of Care on waste and for that purpose shall provide suitable receptacles for the storage of waste and ensure that these receptacles are constructed and maintained in such a way that they prevent the breaking open of the same and the removal of the waste by vandals, thieves and animals, accident or weather.
- 5 Any external light source associated with the premises shall not cause a nuisance or disturbance to any property within close proximity.

The application for review was made 13<sup>th</sup> January 2006 to licensing authority by PC Booth. The licence holder was Iyad Albattikhi, but on or about 19<sup>th</sup> February 2006, the licence was transferred to Tariq Albattkhi. The hearing took place on 23<sup>rd</sup> March 2006. The licensing authority revoked the licence. On revoking the reasons given by the licensing sub-committee read as follows:

***We have read all the statements served in this case, and take note of the representations made. The Albattikhi's have been running this premises for three years. We have heard that there have been a catalogue of incidents, which raise serious concerns about the management of the premises and the conduct of employees. Such are the concerns that we have come to the conclusion that, despite the impact on Mr Albattikhi's human rights, the only way to safeguard the licensing objectives is to revoke the licence.***

If I am right the Act came into force on the 24<sup>th</sup> November 2005, the licence was granted prior to this and came into force on that date. The person to whom the licence was granted was already in custody on a charge of rape and subsequently, in March 2006 that person was arrested and charged with murder.

The Act came into force on 24<sup>th</sup> November 2005 the premises were visited on the 26<sup>th</sup> November 2005 by Sgt Hurt, Gareth Shaw and two other people. Their evidence can be summarised – visiting just after midnight the premises were open and trading as they were entitled to. Sgt Hurt was aware they had a licence and ascertained the licence holder was not there. I assume he knew that he was in custody. What they found - notices should have been up, but there were no such notices, music playing without a performing rights licence (irrelevant to this hearing) and he with Mr Shaw, went into the cellar and found exposed electrical cables. I am satisfied that Mr Shaw has training with regard to the risks and that he could see that there were various defects, and I accept his evidence. Tariq Albattikhi was present and as a result, Gareth Shaw served a prohibition notice. The evidence about what was done and when is unclear, but at some point that cannot be ascertained, work was done to a standard that was acceptable. I accept Gareth Shaw's evidence as to the state of the premises at the time of the visit.

Shortly after, there was a visit on the 3<sup>rd</sup> December 2005 by Mr Shaw and PC Ross who did not give evidence today. Mr Shaw noted two baseball bats behind the service counter. I am convinced what the bats were there for. The

baseball bats were in the premises for one reason only – protection. While it may be understandable, it is nevertheless wrong. Such weapons should not be there.

A visit by Mr Shaw on the 10<sup>th</sup> December 2005 with PC Berry led to the confiscation of a bent claw hammer. Evidence had been given that the claw hammer had been used by the electrician – a legitimate purpose. I don't accept the explanation; it was behind the counter for the same reason as the baseball bats.

The next visit was in the early hours of New Years Day. Sgt Hurt and PC Ross visited the premises that were open and trading even though the licence only permitted sales until 03.30. The Police had advised takeaways not to admit persons for 15 minutes prior to closing to enable the sales to be completed before the end of the permitted hours. A summons was issued and a trial is pending. The premises were open after they should have been and the appellant does not dispute that. On this occasion, Sgt Hurt, with a view to obtaining evidence, sought to confiscate the till roll. I am satisfied that Tariq Albattikhi was uncooperative to the point of being hostile. It may be that he didn't understand the power the Police had and it took some time for the Police to obtain the roll.

Sgt Hurt has visited the premises since then, not clear how many times/when. He did visit on the 21<sup>st</sup> January 2006 at 00.25, after the application for the review had been lodged by PC Booth. There should have been displayed a blue public notice telling the public that there has been an application for a review, and there was not. I am prepared to accept that the appellant has taken it to his solicitor.

That is the first hand evidence in the case. The police bundle contains a summary of the police case. A warning letter was sent to Mr Albattikhi referring to the visit in November 2005. It is a standard form letter, which seems reasonable to me.

Those matters do not cause much difficulty for us to consider. The fact not disputed the alleged victim of the rape was on the premises and Tariq was working at the time.

The final part of the police case was intelligence, indicating that the premises may be linked to the disappearance of a teenage girl from Blackpool. I am faced with evidence causing difficulties. The problem arises out the evidence of DS Beasant – hearsay evidence about other information she has. Her evidence was originally disclosed in the form of a statement but amplified to include Tariq Albatikkhi at the hearing. The Sergeant's evidence related to activities at the premises and the disappearance/murder of Charlene Downes. Lyad A is awaiting trial on that.

It is not disputed that Tariq A was on the premises during the rape. Sgt B said things were caught on video – you can see that Tariq A was communicating

with his brother by body language. Whatever lyad A may have done, that's as far as you can take it as to what Tariq knew.

The disappearance/murder of a vulnerable teenage girl. Prosecution case seems to be a girl was lured to the premises. If it happened at the premises, this is a bad case of its type.

What happens to lyad A is a matter for trial. It is believed to have occurred on the premises – at one point the cellar was dug up and nothing was found.

The initial statement of Sgt B was a result of media attention 30 young females provided statements detailing behaviour of lyad that he wasn't the sole perpetrator many associates connected. Raveshi is in custody. In giving evidence, Sgt Beasant proceeded to give evidence that Tariq Q was personally implicated in activities in the premises, he knew Charlene, who she was and what had happened to her & how her remains had been disposed of. Reference was made to a witness David Cassidy. She was trying to give evidence about a matter when for other reasons she is reluctant to give evidence. She is caught in a dilemma. What is clear she says these girls have made statements but she is not in a position to give any information, produce statements. She was saying there was evidence Tariq A had seen group sex and had taken part in it, activity he denies. She also said that there was not enough evidence for criminal charges. I am satisfied that had there been sufficient evidence, he would have been arrested. She agreed that there was insufficient evidence to arrest him. This places me in difficulties in deciding what weight to place on the evidence. He wasn't involved in the murder; he was out of the country when she disappeared. There is no suspicion that he was involved, there is no evidence of the dates on which the girls say the activities took place, and I don't know how accurate the identifications are. It is clear that Tariq was working at the premises prior to his deportation for overstaying his visa. He returned on the 10<sup>th</sup> December 2003 and has been here ever since, save for a fifteen-day trip back to Jordan when his father died.

Tariq was working there and running the premises when the licence came into effect. It seems odd that no review application was made immediately on lyad's arrest for the rape.

Tariq A. after the review application, but before the hearing applied for transfer of the licence into his name. The transfer was not opposed by the Police. The transfer application was made by Tariq to try and protect his position. If the crime prevention objective and alleged rape had occurred and the police had the evidence of the grooming of girls one would have thought those matters fell within the crime prevention objective and the police might have opposed it.

Given this sort of evidence it is very difficult to say that there is reliable evidence to say that Tariq was involved in these activities.

Licensing Authorities must have regard to the Secretary of States Guidance – 5.113

Possibly there premises were used for criminal activities of a sexual nature. I am working on the basis that some activities would have been criminal. The difficulty is where is the evidence suggesting Tariq A knew of this, that is the problem. What they are seeking to put is premature, when the trial is resolved, evidential issues will not be so difficult.

If one looks at the guidance and the purpose of the Act, if premises present a problem, the fact that the premises licence holder has done his best may not be sufficient, one has to bear in mind how serious the consequences should be for the licence holder.

The evidence is insufficient to link the activities to Tariq A. The other evidence is not in dispute. Talk also of violence and being a hot spot. Had there been violence in the vicinity, evidence would have been presented by the police; there is no problem to the police in presenting that evidence before this hearing. We know disturbances can occur in takeaways.

There were breaches by Tariq A. The suggestion of horrendous crime is not enough to properly rely on. This place may have been a den of iniquity; there may in future be an absolute mass of evidence. There are defects and faults on the part of Tariq. His appeal should succeed in part. Looking at human rights and proportionality, there should be some sanction against him, but revocation goes too far. If more evidence becomes available, revocation will be the only answer.