

TYNE AND WEAR FIRE AND RESCUE AUTHORITY

Item No 6

MEETING: 16 DECEMBER 2013

SUBJECT: PROSECUTION UPDATE – FIRE SAFETY

JOINT REPORT OF CHIEF FIRE OFFICER AND CLERK TO THE AUTHORITY

1 INTRODUCTION

- 1.1 The purpose of this report is to inform members of the outcome of prosecutions brought by the Authority during 2012/2013.

2 PROSECUTION OF ANGUR MIAH / RUMANA RESTAURANT

- 2.1 On the 20th February 2011, Fire Crews attended premises known as the Rumana Restaurant at Ponteland Road, Newcastle in response to a 999 call reporting a kitchen fire in the premises.

Once all persons were accounted for and the fire contained, an inspection of the premises was undertaken. A number of serious contraventions of the Regulatory Reform (Fire Safety) Order 2005 were identified.

The premises were found to consist of a ground floor restaurant with accommodation above. The first floor accommodation was found to be in use as sleeping accommodation for staff and it was in the first floor kitchen that the fire occurred.

The investigation concluded that there were a number of serious deficiencies within the premises. As such, the view was taken that it was in the public interest to progress this matter by way of prosecution in the Magistrates Court. These deficiencies included:

- no working fire alarm and no detectors in any of the bedrooms or restaurant;
- no fire fighting equipment;
- no emergency evacuation procedures or plan in the event of fire;
- fire routes and exits were blocked by combustible materials;
- no arrangements in place for calling the Fire and Rescue Service;

- fire doors were missing which meant in the event of a fire there was no means of preventing the spread of smoke or fire;
- combustible materials being stored at the bottom of the staircase and in the bedrooms;
- bedrooms contained a large number of electrical equipment which had not been PAT tested and also posed a potential risk of fire;
- bars on living accommodation windows preventing any attempted rescues by Fire and Rescue Service;
- Emergency exit blocked by locked roller shutter.

2.2 Angur Miah as the responsible person for fire safety was charged with offences against the Regulatory Reform (Fire Safety) Order 2005.

2.3 These breaches of the Regulatory Reform (Fire Safety) Order 2005 were:

Article 8 (1)(a): **Duty to take general fire precautions**

A failure to ensure the safety of his employees as there was no emergency action procedure in place to ensure their safe evacuation in the event of fire

Article 9 (1): **Risk assessment**

A failure to make a suitable and sufficient risk assessment of the risks to which relevant persons were exposed in that no risk assessment had been carried out.

Article 10: **Principle of prevention to be applied**

A failure to implement preventative and protective measures including a failure to carry out Portable Appliance Testing.

Article 10: **Principle of prevention to be applied**

A failure to implement any preventive and protective measures.

Article 11(1): **Fire Safety Arrangements**

A failure to make effective arrangements for planning, organising, control, monitoring and reviewing preventative and protective measures with regards to the nature of the activities and size of the undertaking.

Article 13(1)(a): **Fire Fighting and Fire Detection**

The premises were not appropriately equipped with a fire alarm system

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Article 14(1): Emergency Routes and Exits

The escape routes to emergency exits and the exits themselves were not kept clear at all times

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The emergency exit was locked shut while customers were present in the restaurant

Article 17(1): Maintenance

Emergency lighting was not subject to a suitable system of maintenance and not maintained in an efficient state, in efficient working order or in good repair

Article 17(1): Maintenance

Manual fire precautions were not adequately maintained

Article 17(1): Maintenance

The fire alarm system was not adequately maintained

Article 18(1): Safety Assistance

No competent person was appointed to assist in undertaking the preventative and protective measures

Article 21(1): Training

Inadequate safety training was provided to employees at commencement of employment

Article 21(2): Training

Inadequate safety training was provided to employees periodically

Article 31: Prohibition Notices

A failure to comply with prohibitions or restrictions imposed by a prohibition notice dated 20th February 2011

- 2.4 At Newcastle Magistrates' Court on 13th March 2012, Mr. Miah pleaded guilty to all 16 offences. He was fined £3,000 for each offence, reduced to

- 2.5 £2,000 per offence for an early guilty plea (a total of £32,000), together with the standard £15.00 victim surcharge and costs of £5,200 being awarded to the authority, making a total of £37,215.
- 2.6 Mr Miah appealed against the severity of the sentence and his appeal came before the Newcastle Crown Court on 31st May 2012. Although the condition of the premises was considered to be extremely serious, the Crown Court noted Mr Miah's limited means and the length of time that would be required to pay the full penalty and costs ordered by the Magistrates. Consequently, the fine was reduced to £300 per offence (at total of £4,800), together with victim surcharge of £15 and costs of £1,200, making a total sum of £6,025.

3 PROSECUTION OF AMAD ALI / LIGHT OF INDIA RESTAURANT

- 3.1 On 25th May 2012, at Newcastle Magistrates' Court, Mr Amad Ali pleaded guilty to 12 breaches of the Regulatory Reform (Fire Safety) Order 2005 in relation to Light of India Restaurant at Wallsend.
- 3.2 On 26th May 2011, fire officers inspected accommodation above the Restaurant in response to information concerning alleged fire safety deficiencies. It was discovered that the upstairs accommodation included three bedrooms, with four beds, and it was clear that people were staying there. Despite the increased fire risk arising from the restaurant/takeaway business on the ground floor, it was found that no fire risk assessment had been carried out in relation to the living accommodation, the fire fighting equipment on the premises had not been tested for 11 years, no PAT testing of electrical equipment had been carried out, there were holes in the kitchen ceiling in the restaurant below, severely compromising the fire resistance between the high risk commercial kitchen and the residential accommodation above, stairs were obstructed by large amounts of combustible items, there was inadequate emergency lighting and emergency exit signage and no emergency action procedure in place.
- 3.3 The magistrates considered that their powers of punishment were insufficient to deal with the matter and the Defendant was therefore committed to Newcastle Crown Court for sentence. On 16th July 2012, the matter came before a Crown Court Judge who considered that the breaches were very serious matters but that account should be taken of the Defendant's early guilty plea, the fact that all work required by the fire and rescue service had been completed and the limited profit derived from

- 3.4 the business. The Defendant was fined a total of £3,000 (£250 per offence) and was ordered to pay prosecution costs of £3,500.
4. **PROSECUTION OF MANJEET KAUR LALLY, DUKHJIT SINGH LALLY AND ANDREW CHOMKO / NORFOLK HOTEL**
- 4.1 On 18th November 2012, a fire occurred at the Norfolk Hotel in Sunderland, a 42 room former hotel licensed as a house in multiple occupation and predominantly occupied by vulnerable adults. The reported fire had occurred in one of the residents' bedrooms.
- 4.2 During fire fighting operations, one of the fire exits was found to be locked in the closed position by means of a heavy duty bike lock. The night porter who was in charge of the premises at the time was initially unable to locate the key for the chain but, once found, the key broke in the lock so that it became necessary for the chain to be cut off.
- 4.3 During a subsequent fire safety audit, a number of further contraventions of the Regulatory Reform (Fire Safety) Order 2005 were identified. Proceedings were therefore subsequently brought against Mrs Lally – the HMO licence holder and Responsible Person for the premises – for offences relating to the failure to ensure the safety of employees and relevant persons (article 8), failure to review the fire risk assessment for the premises (article 9), failure to record fire safety arrangements (article 11), failure to ensure that emergency doors were not locked shut (article 14), failure to establish and give effect to appropriate procedures (including safety drills) (article 15) and failure to provide adequate training for employees (article 21). Mr Lally, the General Manager for the premises, was also charged with the offences under articles 8, 9, 15 and 21. The Duty Manager, Mr Chomko, was charged with two offences relating to the failure to ensure that emergency doors were not locked (article 14) and failure to co-operate with his employer to ensure that fire safety duties were performed and complied with.
- 4.4 Guilty pleas were entered by the three defendants to all charges and sentences were imposed at a hearing before the Sunderland Magistrates' Court on 9th August 2013. Mrs Lally and Mr Lally were both fined the sum of £3,350 plus costs of £1,913.13 and victim surcharge of 120. Mr Chomko was ordered to pay a fine of £180 plus £85 costs and £25 victim surcharge. The Norfolk Hotel is no longer operated by Mr and Mrs Lally.

5. PROSECUTION OF PASSION LEISURE LIMITED / BUTLER'S BISTRO

- 5.1 A prosecution brought against the operator of Butler's Bistro at Nun Street in Newcastle was heard by the Newcastle Magistrates' Court on 18th and 19th November 2013.
- 5.2 The matter was one which came to light as a result of an inspection of the premises carried out by fire safety personnel on 21st February 2012, following a referral by Newcastle City Council Environmental Services. A flat on the second and third floors had been let out to students and serious concerns arose in relation to various fire safety deficiencies, leading to the service of a prohibition notice to prevent the use of the flat as sleeping accommodation.
- 5.3 Within the first floor function room of the licensed premises, the ceiling in a storage room – immediately beneath the flat – was holed, resulting in a breach in the fire separation between the function room and the flat above. This formed the basis of a charge under article 8(1)(b) of the Fire Safety Order.
- 5.4 Also, although the commercial part of the premises was equipped with a fire detection and warning system, there was no interlinking with the residential flat, so that there was a risk that occupants of the flat would not be alerted to any fire developing below them. This allegation formed the basis of a charge under article 13(1) of the Order.
- 5.5 The means of escape in the event of fire was also considered to be inadequate in view of the fact that neither of the two escape routes from the flat was sufficiently protected. One route, across the flat roof of the licensed premises led to a staircase accessed by doors that lacked cold smoke seals and intumescent strips. The alternative means of escape, leading into the first floor function room of the licensed premises, was also affected by breaches in/inadequate compartmentation, including non-fire resistant glazing on the stairs leading from the function room to the flat. This resulted in the charging of an offence under article 14(2) of the Order.
- 5.6 A subsequent fire safety audit established that the fire precautions log book recorded only intermittent testing of the fire alarm, emergency lighting and fire fighting equipment and not weekly/monthly as would normally be expected. This failure formed the basis of a charge under article 17(1).

- 5.7 Finally, the Defendant was charged with an offence under article 9(3)(a) in relation to a failure to keep the fire risk assessment for the premises under review and up to date.
- 5.8 At the conclusion of a two day trial, the Defendant Company was found guilty of the offences under article 8(1)(b) (damaged ceiling), article 17(1) (testing of fire alarm etc) and article 9(3)(a) (fire risk assessment). In relation to the two remaining charges (means of escape and lack of interlinked fire alarm system), the magistrates considered that the Defendant had reasonably placed reliance upon a service and maintenance contract taken out with the brewery from whom the premises were leased and that a due diligence defence had been made out. In relation to the offences which were proved, Passion Leisure Limited was fined a total of £7,500 and was ordered to pay costs of £4,890, together with a victim surcharge of £120, making a total of £12,510.
- 5.9 The Defendant has recently filed a notice of appeal against conviction and sentence therefore the matter will now be referred to the Crown Court. Members will be advised in due course of the outcome of the appeal.
6. **CONCLUSION**
- 6.1 Members are asked to note the contents of the above report.

BACKGROUND PAPERS

Case outlines and results records from Sunderland City Council Law and Governance files 71535, 71857, 73664 and 72859.

