

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 18 January 2017 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

### Present

Councillor Julie Bird (in the Chair)

Councillors Ken Ellcome  
Leo Madden

#### 1. Appointment of Chair

Councillor Julie Bird was appointed chair.

#### 2. Declaration of Members' Interests

There were no declaration of interests.

#### 3. Licensing Act 2003 - Application for a review of a premises licence - Ken's Kebab House, 35 Guildhall Walk, Portsmouth, PO1 2RY

The chair, Councillor Julie Bird, explained to all present the fire evacuation procedures including where to assemble and how to evacuate the building in case of a fire. Introductions were then made.

The applicant, representing the Chief Officer of Police, PC Pete Rackham was in attendance.

Mr Jon Wallsgrove, solicitor representing Mr Naseem Ahmed, the premises licence holder was also in attendance.

The Principal Licensing Officer introduced his report and explained that a date has been set in February for the hearing in court as per the council prosecution of Mr Naseem Ahmed for five counts of carrying on a licensable activity on premises otherwise than under and in accordance with an authorisation.

PC Rackham introduced the application and explained that the reference to CCTV on page 16 of the report has now been viewed by the Principal Licensing Officer and written a synopsis for the court hearing. This was available for members should they wish to view it. PC Rackham referred to page 53 of the report, Mr Ahmed's response and explained that Mr Ahmed has been operating premises since 1990, he is a man with a wealth of experience in this field. With regards to the unauthorised opening of the premises in November, it was noted that the two adjacent venues to Ken's Kebab House had Temporary Event Notices ("TENS") for 'freshers week' and so Mr Ahmed had decided to also open later despite the fact that he did not

have a TENs. Therefore on that basis the Police requested revocation of the late night refreshment as the premises close at 11pm.

PC Rackham continued to explain that there have been issues with the Commercial Road premises but after speaking with Mr Ahmed he responded and adjusted his SIA duties. Mr Ahmed does listen and respond but because he employs management in his premises they appear to do the bare minimum. The Police do work closely with Lyberry and Astoria (the two adjacent premises to Ken's Kebab House) and both premises have stringent conditions on their licences. Mr Ahmed does not sell alcohol but his premises is in Guildhall Walk and operates to attract people in drink. There are many things which Mr Ahmed could do much better at his premises.

With regards to the incident on 6<sup>th</sup> November 2016, the door staff witnessed someone being assaulted. They did everything as they should in such an incident and detained the offender until the Police arrived. When the SIA staff working at Ken's Kebab House saw who the offender was he tried to intervene and get him released as he was a friend of his. It was understood that this SIA staff is no longer working at Ken's Kebab House. It was also noted on this date that the premises was still fully operational selling hot food and drink and attracting customers at 03.23 hours, when the premises are supposed to close at 3am and not allow any further entry. As a result CCTV footage was requested from Mr Ahmed. This footage clearly shows the premises operating until 5am. Mr Ahmed knows the rules and the licensing law. It is not reasonable to be opening way past your operating hours. Mr Ahmed should have applied for an extension to his licence or TENs

The Licensing Manager presented her representation and explained that Mr Ahmed is experienced and knows all aspects of the Licensing Act 2003. He was well aware of the procedure to apply for a variation or TENs as he submitted an application to extend in December 2011. The application was refused. There have been a number of non-compliances at this premises and at his others. Having regard to all the evidence from the Police and the fact he is being prosecuted for five breaches and he has had warnings in the past, the Licensing Manager requested revocation of the licence.

Mr Wallsgrove, representing Mr Ahmed, explained that Mr Ahmed has accepted responsibility for his breach and accepts that he knows the law. He apologises for the breach. He knew that he was breaking the law but most importantly he sold hot food and drink after 3am. It is important that the committee get a balanced view as to how Mr Ahmed operates these premises. It is not disputed that on five occasions hot food and drink were served after 3am. Mr Ahmed can serve cold food after 3am. Conditions on his licence do not require Mr Ahmed to produce CCTV to the Police. There are multiple cameras in the premises. Mr Ahmed will be pleading guilty to the offences in the Magistrate's Court. It is not up to this committee to punish Mr Ahmed.

Mr Wallsgrove continued to explain that with regards to the incident on 11<sup>th</sup> March 2016, when the Police returned to the premises a doorman was working. There was breach of the licence as the doorman was in attendance

albeit later, due to a family emergency. There were a sufficient number of staff on the premises that evening. The assumption that because all three Ahmed brothers are directors of the same company and therefore all work together is not the truth. They are directors of a property company. The committee should not be misled. The local licensing authority did produce a warning letter to Mr Ahmed in 2009 and it is accepted that Mr Ahmed knows the licensing law. The security guy who was convicted and re-employed by Mr Ahmed did have a valid SIA badge at the time. This was an isolated incident and Mr Ahmed had taken the view that the person had been punished and rehabilitated. He is no longer employed as a security person or in the kitchen.

The incident on the 5<sup>th</sup> of November 2016, it is accepted that the SIA door security was not wearing a tabard. This was an isolated incident. Mr Ahmed was not on the premises at that time and was therefore unaware. Suggest that the condition be amended so that it becomes obligatory to show CCTV to the Police or the local authority. This also applies to the training manual for all staff.

There have not been any reviews or convictions of his premises. Mr Ahmed has worked well with the Police over the years and has fully co-operated when required to do so. The breach of operating hours was not driven through greed and money but because the trade was there. The adjacent bars had licensing extensions on the August bank holiday weekend. Mr Ahmed tried to sustain his business and keep profits at the same. He made the same amount of money as he would have done on a normal night, except the trade was taken later. Mr Ahmed needs the premises to earn money to enable him to pay and employ staff. All SIA staff are from a company now rather than employed direct by Mr Ahmed. Persons attending late night refreshment premises assist with the dispersal of patrons from premises. If you revoke the premises licence you will increase pressure on the other food outlets. Patrons will walk up to Commercial Road which will potentially cause problems as Guildhall Walk is generally students and Commercial Road attracts local people. Persons eating are less likely to cause trouble. The premises will continue to trade until 3am if the licence is revoked but not offer hot foods and drink.

In summary I would ask you not to punish Mr Ahmed further by revoking the licence but to add conditions to the licence relating to CCTV, training and SIA security 1 Monday-Thursday, Friday and Saturday night 2.

**DECISION:** the premises licence be revoked with immediate effect for the reasons listed below.

**Reasons:** The committee heard the representations of the licence holder, the relevant Responsible Authorities and the advocate acting upon behalf of the licence holder. In addition the committee considered all the papers put before them along with the annexes attached to each document.

The committee was aware that the premise is located within an area of Special Policy. This committee was engaged by reason of referral back to the

committee by the relevant Responsible Authorities, namely the Police and Licensing seeking a review of the current licence.

The Responsible Authorities (Police and Licensing) assert that the licensee has failed in the administration of the licence failed to promote the licensing objectives with particular regard to the licensing objectives of crime and disorder, prevention of public nuisance and public safety.

The committee look to all the Responsible Authorities but mainly the Police for guidance and assistance in determining the effect of a licensing activity in terms of all the licensing objectives, but principally in terms of the Police, prevention of crime and disorder - the committee should but are not obliged to accept all reasonable and proportionate representations made by the Police. The committee take a similar view with respect to the representations made by the Licensing Manager.

The committee have balanced within their consideration all representations made by the licence holder through their advocate and by way of comments made by through his advocate.

In considering the application for review the committee is mindful of the following facts as having been established upon a balance of probability and further that they have been specifically taken to the relevant parts of the Statutory Guidance under section 182 of the Licensing Act 2003.

1. It has been established that a previous employee who served a prison sentence (GBH re a customer) having been the SIA door supervisor (a condition of the original licence grant) was upon release re-employed by the licence holder. The committee were of the view that this of itself is capable of being an imprudent decision on the part of the licence holder that is not concomitant with promotion of the relevant licensing objective in that there is a risk that a repeat response could occur if similar circumstances arose. This said it is accepted that the licence holder could re-employ an ex member of staff but are concerned about how appropriate management of the employer could be dealt with.
2. The Licensing Committee are entitled to conclude that on the 11<sup>th</sup> March 2016 there was no SIA presence at the premise for a period of time. A material breach of the licensing conditions of original grant occurred. Further given the licence holders previous high level of engagement with all the responsible authorities that it is fair and reasonable conclusion that the licence holder knew of the material failure and deliberately acquiesced or that if he did not know that the systems in place were such that upon attendance at the premise the failure would have been obvious and thereafter capable of rectification by way of forward planning or back up option.
3. The committee are cognizant of a range of incidents occurring in March, October and November 2016, the common theme being crime and disorder, these material breaches coinciding with the continued inability of the licence holder to correctly adhere to the closing times set out in the original licence. The Licensing Committee had seen the email train dealing with the warnings

provided by the Police and are entitled to conclude that the assurance of the licence holder were either ignored or that the management in place at the establishment was lacking to the extent that breaches were not dealt with and the primary conditions of the licence complied with.

4. The Committee had heard the clear admission by the licence holder that on five separate (known) occasions he opened his premises beyond his permitted trading hours. It is not accepted that the behaviour is isolated and that the behaviour was not concomitant with promotion of the licensing objectives.
5. The Committee are also clear that the above material failings undermine the promotion of the licensing objective to the extent that they are when viewed individually or as a range of failings (late opening, no SIA none compliance with primary obligations in the original licence) all being capable of being a public nuisance or raising issues as to maintaining safety.

Whilst the premises licence holders' put forward a range of conditions in an attempt to assuage the Committee, having considered the factual evidence produced by the Police when coupled with additional factual evidence produced by other Responsible Authorities and having reviewed all aspects of the case on balance and having paid due regard to all the circumstance of the case the Committee are entitled to revoke the licence with immediate effect. Again the Committee have looked at the statutory guidance with regard to paragraph 11.20 (cause) and 11.23 (an appropriate and proportionate response) and balanced this with the clear and resolute admission that the licence holder did deliberately breach the licence. It is further stated that the Committee considered the applicability and relevance of paragraph 11.26 but were not persuaded that the sanction of revocation with immediate effect would not be proportionate.

It is only through this this course of action that the licensing objectives will be maintained in a special policy area. The Committee state that each application for a review shall be considered on merit and with due consideration as to the specific facts of each case.

The premises licence holder has a right to appeal this decision.

#### **4. Licensing Act 2003 - Application for variation of a premises licence at Gida Express, 12 Guildhall Walk, Portsmouth, PO1 2DD**

Mr Phil Cryer, solicitor representing the premises licence holder and Mrs Minoos Sefidan, the PLH were in attendance.

The 'Responsible Authorities only' hearing procedure was followed.

The Principal Licensing Officer introduced the report.

Decision: the application for the variation of a premises licence was refused for the reasons listed below.

Reasons: The Committee heard the representations of the applicants, the relevant Responsible Authorities and considered all the papers put before them along with the annexes attached to each document.

The Committee is aware that the premises is located within an area of Special Policy and that when having regard to applications for licence grant or variation that the starting position is that any grant or variation which is likely to add to the existing cumulative impact will normally be refused or made subject to certain limitations unless and it is acknowledged that it is the applicant's burden to show, that the applicant can demonstrate that there will be no negative cumulative impact upon one or more of the licensing objectives.

The Responsible Authorities (Police and Licensing) assert that there are no proposed appropriate measures offered by the applicants' are sufficient to negate any cumulative impact upon the licensing objectives of: crime and disorder, prevention of public nuisance.

The Committee look to all the Responsible Authorities but mainly the Police for guidance and assistance in determining the effect a licensing activity in terms of all the licensing objectives, but principally in terms of the Police, prevention of crime and disorder - the Committee should, but are not obliged to accept all reasonable and proportionate representations made by the Police. The Committee take a similar view with respect to the representations made by the Licensing Manager.

The above stated the Committee have balanced within their consideration all representations made by the applicants through her advocate and by way of comments made by the current licensee/applicant. In considering the application the Committee is mindful of the following and considered that having heard all matters today could conclude that the following facts have been established:

1. That the area within the premise is situated is one of special policy and that it is clear that the advices as to mitigation of the presumed increase with respect to cumulated impact as suggested in the letter from the Police dated the 5<sup>th</sup> December 2016 have not been considered or dealt with, appropriately to assuage concerns and risk.
2. The Committee has not heard any (or appropriate) representations that would enable this Committee to conclude that this application within a special policy area is not likely to add to the existing cumulative impact.
3. The Committee having considered the Guidance (section 182) is aware that the burden to show no increase in cumulative impact rests upon the applicant and that this burden has not been shifted, to the satisfaction of this Committee.
4. It is accepted that the applicant has worked well with the Responsible Authorities and runs a successful business but that there is a lack of understanding as to the legal burden that the applicant retains and on balance when considering all factions this cannot shift.

5. The Committee have considered the Police representations as to the current levels of crime and disorder within the cumulative impact zone. They are entitled to accept on balance that there is higher risk of recorded violence within the night time economy within the cumulative impact zone.

With respect to this application the Committee are not satisfied that the applicants' have shifted their burden sufficiently to mitigate by way of their current operating schedule the negative cumulative impact on one or more of the licensing objectives in this case prevention of crime and disorder, prevention of public nuisance as such the application is refused.

The applicant has the right to appeal this decision to the Magistrates Court.

#### **5. Exclusion of the Press and Public**

RESOLVED that the following motion be adopted:

"under the provisions of Section 100A of the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded for the consideration of the following item on the grounds that the report contains information defined as exempt in Part 1 of Schedule 12A to the Local Government Act 1972."

Agenda items and paragraph numbers:

Item 6 - Local Government (Miscellaneous Provisions) Act 1976 and/or Town Police Clauses Act 1847 - Consideration of Private Hire Driver Licence - Mr T (under exemption paragraph numbers 1, 2 & 3)

Exemption paragraph numbers 1, 2 & 3:

1. Information relating to an individual
2. Information that is likely to reveal the identity of an individual
3. Information relating to financial or business affairs of any particular person (including the authority holding that information).

#### **6. Local Government (Miscellaneous Provisions) Act 1976 and Town Police Clauses Act 1847 - Consideration of Private Hire Driver Licence - Mr T**

It was agreed between Mr T and the Committee that this item be adjourned.

The meeting concluded at 3.00 pm.

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Councillor Julie Bird  
Chair