

## **LICENSING SUB-COMMITTEE**

MINUTES OF A MEETING of the Licensing Sub-committee held on  
Wednesday, 25 January 2017 at 9.30 am in the executive meeting room, floor  
3 of the Guildhall, Portsmouth

### **Present**

Councillor Julie Bird (in the Chair)  
Lee Mason  
Gerald Vernon-Jackson CBE

7. **Appointment of Chair.**  
Councillor Julie Bird.
8. **Declarations of Members' Interests.**  
No prejudicial interests were declared.
9. **Licensing Act 2003 - application for variation of a premises licence  
Alibaba Kebab House, 50 London Road, Portsmouth PO2 0LN.**  
In attendance  
Mr Yaqubi, the applicant  
Mr Sadiqi, friend of the applicant and acting as his interpreter.

**DECISION: the application was refused.**

### **REASONS**

The committee heard the representations of the applicant (and/or their representatives), the relevant Responsible Authorities and also considered all the papers put before it along with the annexes attached to each document.

The Responsible Authorities (Police and Licensing) asserted that there were no proposed measures offered by the applicants' sufficient to promote the licensing objective of: the prevention of crime and disorder.

In addition it was asserted by both of the Responsible Authorities that the current licensing permissions were not being adhered to which is the subject of ongoing investigation and potential prosecution. (Annex D).

The committee looks 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 is not obliged to accept all reasonable and proportionate representations made by the police.

The committee took a similar view with respect to the representations made the Licensing Department.

The above stated the committee balanced within their consideration all representations made by the applicants through his representative and by way of comments made by the current licensee/ applicant.

In considering the application the committee was mindful of the following and considered that having heard all matters today could conclude that the following facts had been established:

1. That with respect to the current application for variation whilst the police have engaged and suggested an appropriate condition with respect to the licence the applicant had neither responded or considered undertaking the provision of CCTV until the email of 27 December 2016. Such conduct and lack of engagement was not consistent with the promotion of the relevant licensing objective.
2. The committee was entitled to conclude that the current licence holder had traded beyond his current licence entitlement on numerous occasions and whilst the current application was not a review would be entitled to conclude that the flagrant breaches were indicative of a fundamental lack of understanding on the part of the applicant and not consistent with respect to promotion of any licensing objective, but particularly with respect to the prevention of crime and disorder.
3. The committee accepted that the behaviour of the applicant on 24 December 2016 was again not consistent with the promotion of a licensing objective in that the police attendance and obstruction is upon any balanced basis potentially indicative of how the licence holder would continue to act.
4. The committee saw and accepted that the premise was advertised as being open at 4am which is potentially indicative of suggesting a desire upon the part of the licence holder to continue to trade beyond the permitted hours. The committee considered that when this point is looked at within the context of Annex D that the production of numerous till receipts would lead to a reasonable finding that late night refreshment was provided.
5. In addition to the above it was clear that despite the early engagement of the relevant responsible authorities (the police and licensing authority) that the applicant further by himself or his employees continued to breach on a deliberate basis the current licence.

Whilst the applicant put forward a range of conditions in an attempt to assuage the committee it was not clear who or how this would be dealt with (despite not having engaged with the Responsible Authority (the police) before the hearing), and having considered the factual evidence produced by the police and having reviewed all aspects of the case on balance with due regard being given to all the circumstance of the case the committee is entitled to refuse the application for variation. The application was refused.

The committee stated that each application for a licence or a variation shall be considered on merit and with due consideration as to the specific facts of each case. In light of the above comments that should a future applicant for variation be made it would be appropriate for such an application to not be made for a period of six months and that such application should fully set out in its operational schedule the basis upon which all licensing objectives will be promoted. Also that the current licence was being fully complied with.

In addition and for the avoidance of doubt, the committee did consider the ability under the 2003 Act to consider a review and how and by whom a

review could be initiated but were not of the mind that this was an appropriate safety mechanism in this case and that only a clear refusal would be appropriate. Again and for the avoidance of doubt should anyone or any Responsible Authority consider requesting a review of the current premise licence then a fresh committee will consider the above evidence and determine such application upon the merits.

The applicants have a right to appeal this decision.

**10. Licensing Act 2003 - application for variation of a premises licence  
Victory News, 261 Copnor Road, Portsmouth PO3 5EE.**

The simplified hearing procedure was followed.

In attendance:

Kailasanathan Madanlal, the applicant  
Professor Roy Light, advocate for the applicant  
Richard Baker, agent for the applicant.

Other persons

Jacqueline Smith  
Patrick McEwan  
Roy Smallwood  
Steve Furmedge  
Councillor Neill Young

**DECISION**

**Licensing Act 2003 "Victory News" 261 Copnor Road, Portsmouth PO3 5EE- application for variation of the current premise licence - the following elements of the application were granted:**

- **The sale of alcohol and late night refreshments until 00:00 hours seven days a week with both activities commencing at 08:00.**
- **That the schedule of offered conditions at page 68, number 7 be amended to read that training should be updated annually.**
- **That save for newspaper delivery there be no deliveries between 23:00 and 07:00 hours seven days per week.**
- **That conditions in page 83 should be removed as was accepted that they were no longer relevant.**

REASONS

The committee heard the representations of the applicant together with the detailed representations from the applicant's representative and considered all the papers put before it along with the annexes attached to each document.

The Responsible Authorities make no assertions or comments with respect to the application.

This committee was seized of this application by reason of there having been a range of formal complaints received by the Licensing Authority from a PPC Member together with local residents - the consequence of that fact being that

the committee will determine this application according to the facts and upon merit each case being looked at on an individual basis.

The alleged failing upon the part of the applicant was that the application should be refused as there was no basis for it to be concluded that the relevant licensing objectives were being promoted. The theme of the written representations is that a grant of the application would lead to greater risk of there being a nuisance along with there being a failure to prevent crime and disorder and a potential issue as to 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 is not obliged to accept all reasonable and proportionate representations made by the police. It was noteworthy that the police and all other responsible authorities had made no representations to this committee.

The above stated, the committee balanced within their consideration all representations made by the applicants through their advocate and by way of comments made by the current licensee/ applicant along with all representations made.

It was felt that whilst many of the representations were clearly highly relevant to the complaints that they failed to establish that the licensing objectives were not being promoted as the potential failings are by and large based upon what "may happen" as opposed to showing a failure to promote a licensing objective.

The committee would encourage full engagement between the licence holder and all residents within the immediate location.

In considering the application the committee was mindful of the following and considered that having heard all matters today could conclude that the following is relevant:

As stated before, there were no representations from any Responsible Authorities.

- The committee considered the relevant case authorities and the statutory guidance as stated in section 182 of the Licensing Act 2003.
- The committee considered that whilst there was a right of review available that given the concerns of the residents when balanced with the conditions in the operational schedule that they were able to consider the application and balance all matters.
- It also noted that there were other avenues available to residents to redress difficulties, in addition to the right of review.

Whilst the applicant put forward a range of conditions in an attempt to assuage the concerns of local residents and having considered the evidence produced to this committee and having reviewed all aspects of the case on

balance with due regard being given to all the circumstance of the case the committee are entitled to refuse the application for variation.

The committee stated that each application for a licence or a variation shall be considered on merit and with due consideration as to the specific facts of each case.

In addition and for the avoidance of doubt, the committee considered the ability under the 2003 Act to consider a review and how and by whom a review could be initiated and were of the mind that this was an additional safety mechanism.

The applicants have a right to appeal this decision as do all the others who made representations today.

The meeting concluded at 2.10 pm.

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Councillor Julie Bird  
Chair