

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 12 July 2017 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Lee Mason (in the Chair)

Councillors Dave Ashmore
 David Fuller

52. Election of Chair

Councillor Lee Mason was appointed to Chair this meeting.

53. Declaration of Members' Interests

There were no declarations of members' interests.

54. Exclusion of Press & Public

RESOLVED that 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 were 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 item and paragraph numbers

Item 4 - Consideration of Driver Licence Matter Mr B
(exempt report under paragraph numbers 1,2 & 3).

55. Local Government (Miscellaneous Provisions) Act 1976 and/or Town Police Clauses Act 1847 - consideration of driver licence matter - Mr B

An exempt report had been circulated to the members of the Sub-committee only. There is an exempt minute of this item.

Mr B and his representatives were in attendance. Mr L Matthewson, Licensing Officer was also present.

The simplified hearing procedure was followed.

RESOLVED that the Private Hire Driving Licence of Mr B be revoked for the minimum period of 5 years as per the policy.

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

The hearing procedure of Licensing Act 2003 applications for 'Responsible Authorities' was followed.

Present:

The applicant Mrs Minoo Sefidan and her advocate Mr Phil Crier
PC Rackham and Nickii Humphreys, Licensing Manager (as responsible authorities)

Mr Derek Stone to present the Licensing Officer's report

The Licensing Officer Mr Stone presented the report on the application, which had been circulated.

Members did not ask questions of the Licensing Officer following his presentation. There were no questions of him by the applicant or responsible authorities.

The Applicant's Case was then presented by Mr Crier, on behalf of Mrs Sefidan. He asked that the business have the opportunity to trade at hours favourable to the extended hours for the surrounding nightclubs (since the temporary closure and refurbishment of the premises) and it was regretted that a couple of breaches had happened when the applicant had not been on site and the staff had been trained and there was a good record regarding crime and disorder in the cumulative impact zone (CIZ).

Members asked questions covering the breach of the 3.30am trading hours and the use and maintenance of the CCTV system (which now had backup systems in place), the management of the business with a late night door supervisor now in place, and the hours of other takeaway businesses in the locality.

Questions were then asked by responsible authorities; firstly by Nickki Humphreys regarding the breach on 31st October with the handling of money after hours and the regularity of checking the CCTV system for faults. PC Rackham then asked about how long the CCTV had been out of action; it was not known how long it had not been operational. He also asked why a second breach of trading hours had taken place.

The responsible authorities' cases

a) Police

PC Rackham presented his submission on behalf of the Chief Officer of Police and outlined the breaches witnessed by the police officers. Whilst he appreciated the measures put in place he was still deeply concerned by the running of the business due to the breaches that had occurred and the need to adhere to imposed conditions. There was missing CCTV evidence over 4 weeks. There were crime and disorder issues in the cumulative impact zone especially at the hours for which the variation was sought.

Members asked questions regarding the number of breaches over the long period that the business had been running and why concerns were being raised regarding this licensed premises. The police wanted high standards throughout the CIZ.

Mr Crier asked questions on behalf of the applicant about the low level of anti-social behaviour incidents during the 17 years trading, the incident when PC Rackham had not been admitted to the premises when he was not recognised, and the positive impact of the proposed conditions.

b) Licensing Manager

Nickki Humphreys presented her submission (letter page 35 of the papers) and referred members to the guidance on CIZs, the need to consider the number of licensed premises in the area and the effect of conditions. She also referred to the broken CCTV which was a breach of condition and the police evidence given on the prevalence of public nuisance in the area. The new Licensing Policy had been adopted at the Council meeting the previous day. In considering the need to be satisfied that there was no detrimental effect she recommended that the application be refused.

There were no questions to Ms Humphreys.

Summing up:

Mr Crier summed up for the applicant, stressing that the presumption of adding to the existing CIZ had been rebutted and the new conditions would help ensure this. It should not be refused on the grounds of what was happening outside. Measures had been put in place in response to the breaches and the applicant had a good record over 17 years of trading.

After the chair had checked that everyone had said all they wished the panel went into private session to deliberate.

RESOLVED

In the Matter of the Licensing Action 2003 - in the matter of "Gida" 12, Guildhall Walk, Portsmouth PO1 2DD - application for variation of the current premises licence Section 35 of the 2003 Act - the variation of hours to 5 am was granted as amended, and detailed below.

The Committee heard the representations of the applicant, the relevant Responsible Authorities and considered all the papers put before them along with the annexes attached to each document. The Committee was aware of the obligation to consider the Statutory Guidance dated April 2017.

The Committee had also considered the previous application that came before the Licensing Sub Committee in January 2017. (The decision of this committee is made on the basis of 2 to 1).

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 (Policing and Licensing) assert that there are no proposed measures offered by the applicant that are sufficient to negate any cumulative impact upon the licensing objectives of: crime and disorder, prevention of public nuisance. These are the principal licensing objectives that are engaged.

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 were mindful of paragraph 9.12 of the Guidance as stated above.

The Committee take a similar view with respect to the representations made by the Licensing Department.

The above stated, the Committee had balanced within their consideration all representations made by the applicant through their advocate and by way of comments made by the current licensee/applicant. The Committee had considered in relation to this application whether it might be appropriate to consider the imposition of a range of conditions, this said it is not the burden of the Committee to impose conditions to assist in creating an operating model that would not add to the cumulative impact within the Cumulative Impact Zone (CIZ) (Guidance 7.1-7.6).

In considering the application the Committee is mindful of the following and considered that having heard all matters on the day could conclude that the following facts have been established:

1. That the area within which the premises is situated is one of special policy and that it is clear that the advice as to mitigation of the presumed increase with respect to cumulated impact as suggested in the letter from the Police dated 5th December 2016 following a meeting in November 2016 have not been considered or dealt with, until this current application.
2. The period of time since the first application which was refused and this hearing was a little under 6 months. This said each application must be assessed upon its own facts paying regard to the circumstances of the case and the relevant Statutory Guidance under Section 182 of the Act.
3. Within the context of the current application the applicant does offer a range of conditions that are as stated in December 2016 and added to on the day through the applicant's advocate.
4. Despite the above the applicant has currently shown an inability to deal with the current licence and shut/stop service at the appropriate time the position being that this is evidence of a lack of understanding of the need to promote the licensing objectives and the potential impact within the CIZ. This said the Committee accepted the fact that the applicant is contrite and through a range of conditions adequately addresses this issue.

5. The Committee had heard a range of 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. The fact that conditions are offered is not such that they would automatically be such as to avoid any likely increase within the CIZ area. This said, on balance the Committee felt that the current and additional conditions do promote the licensing objectives and avoid adding to the cumulative impact.

6. 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 been shifted.

7. CCTV - failure to engage and have a functional system on current licensing conditions is addressed with regard to the below conditions. Having heard the representations from the applicant the Committee was satisfied that the burden that rests with the applicant to shift in showing that their operating schedule will not have a negative cumulative impact has been shifted. In coming to this conclusion the Committee having been shown the data from the Responsible Authorities was of the view that the applicant had sufficiently assuaged the cumulative impact by reason of the full range of conditions as offered by the applicant. The Committee considered the following additional amendments could be made to the proposed operating schedule:

All conditions in paragraph (b) of Page 19 of the report papers save that:

- Condition 4 is amended to minimum 1 SIA door supervisor being on duty from 0.00 midnight until close of premises on Friday, Saturday and any other day if the premises is open beyond 3.00am
- Signage to be placed within the premises and externally to confirm that no order will be taken post 05.00am
- The applicant to produce to any Responsible Authorities not less than twice per year a full service review of the CCTV system including a full log of its functionality
- Whilst not imposed as a condition it is recognised that the applicant does provide assistance to her customers to aid customer through put and in the general sense by way of the provision of water if required.

The above grant of variation is made having full regard to the representations made and the ability of any Responsible Authority or person to make a request for a review should the applicant fail to adhere to the conditions as offered or imposed.

The application for the variation of hours to 5 am was granted as amended above.

(There is a right to appeal this decision by any of the Responsible Authorities.)

The meeting concluded at 1.15 pm.

Councillor Lee Mason
Chair

