

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Friday, 25 August 2017 at 10.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor Lee Mason (in the Chair)

Councillors David Fuller
Steve Pitt

Apologies for Absence

66. Election of Chair

Councillor Lee Mason was appointed as chair for this meeting.

67. Declaration of Members' Interests

There were no declarations of members interests.

68. Licensing Act 2003 - Review Application - Melody, 229-231 Commercial Road, Portsmouth, PO1 4BJ

Present

Mrs Wei Wei Jin, Licence Holder (accompanied by interpreter provided by the local authority, Ms Jia Lin)
James Culverwell, Licence Holder's Legal Adviser

Peter Baulf, Legal Adviser (accompanied by Claudia Baulf, observing)

Ross Lee, Licensing Officer

Responsible Authorities:

- i) PC Pete Rackham
- ii) Nickii Humphreys, Licensing Manager

Councillor David Fuller explained that he was attending as a reserve member as Councillor Gerald Vernon-Jackson was not able to attend for family reasons.

The Chair opened the meeting by asking everyone to introduce themselves and the procedure for the meeting had been circulated.

Licensing Officer's report on the review application

Mr Ross Lee presented his report, which had been circulated to and read by members, and explained the separation of roles with the Licensing Manager Ms Humphreys on the review file. Another Licensing Officer, Mr Stone, was separately considering the criminal liability angle caused by the breaches of the licence. He concluded that the committee had a wide range of discretion open to them from taking no action to revoking the licence.

There were no questions to Mr Lee from the members or any other parties.

The Licence Holder's Case

Mr Culverwell, representing Mrs Jin, stated that whilst she accepted most of the facts as set out, there had been considerable difficulties in the translation and interpreting of the strict obligations (friends had translated at the time of the visits to the premises). Therefore she accepted that the karaoke rooms were in use and customers were there drinking alcohol but not that alcohol had been sold after 11pm. Her understanding was that if alcohol was not sold after 11pm and no new customers were admitted this was not in breach of her licence, as this was a private party. She denied the allegations that customers were able to drink as much as they liked for a fixed fee (the posters showed fixed quantities of alcohol) and they could not help themselves. She was now aware that the playing of recorded music after 11pm was not covered by her licence.

Questions were then asked by the panel members which included:

- How smoking on the premises was dealt with and the use of smoke detectors
- The drinks promotion details
- Whether there had been discussion of 'opening hours' on the visits by the police and licensing officers
- How the whisky had been dispensed from the bottles and in what measures (it was reported that this was diluted with juice in the jugs also seen in the pictures, and was poured by the staff)
- How any drunk customers were handled (in response it was reported they were not given alcohol and were asked to sit in the room outside the karaoke rooms)
- The CCTV coverage in the premises (which did not cover the karaoke rooms)
- Why legal advice had not been sought sooner, with 3 visits taking place showing breaches (the licence holder's response was that the earlier occasions had been private birthday parties, and the 3rd a misunderstanding)
- Whether staff had been trained and Mrs Jin's experience - it was her first time running a premises having taken the test as a personal licence holder.

Questions were then raised by Mr Rackham, as a Responsible Authority, which included:

- The extent of the course that had been attended by Mrs Jin to become a personal licence holder which would have included premises licence obligations and the responsibilities of a DPS
- Whether all 3 visits were at times of birthday/private parties - and if the customers at these were personally known to the DPS and the status of paying customers? (it was reported that some of the party goers were friends of the DPS).
- Why the advert said they could stay until 6am and what exactly was included in the package and when it was paid for (the response was that it was always paid for before 11pm)
- Whether the air filter machines were there to help with the smoke in the karaoke rooms (it was reported that smoking was not encouraged and there were measures to prevent it although sometimes the smoke alarms had been disabled by customers and the air machines also controlled the temperature)

Responsible Authorities Case

i) PC Rackham for the Chief Officer of Police

PC Rackham explained why the police had called for this review and the grounds for this, as set out in his application for review document (which was appended to the papers for the meeting at Appendix A).

He outlined his concerns at the licensing objectives not being upheld and reported on the history of the premises with Mrs Jin holding the premises licence since December 2015. He detailed what had been witnessed by the police and licensing officers on the 3 visits after 23.00 hours when singing and music had been heard from outside, and evidence of alcohol found in the karaoke rooms to the rear of the property. Mrs Jin had not been on the premises and had been called to attend by her staff.

On Friday 28 April 2017 PC Rackham had relayed to her, through a friend of hers who translated, that she needed to comply with the licensing conditions and hours and was open to prosecution. Then the same thing happened again on Sunday 30 April 2017 when the conditions were breached again and she was advised that she had to stop activities, remove customers and stop breaking the law. The third visit was on Saturday 24 June when activities were in evidence after midnight and drunk persons found on the site. Some of the customers interviewed said that they had paid for as much alcohol as they wished.

PC Rackham was frustrated that the advice and support offered had not been taken up, as the police tried to work in partnership with the licencees. He did not have confidence that any measures would not be breached and therefore the Chief Officer of Police believed that the licence should be revoked.

Questions were asked of PC Rackham by members which included:

- What evidence found of smoking and dealing with smoke (it was reported that there were no ashtrays but cups had butts in them)
- Whether the translator used had a good command of English; PC Rackham said that the friend used by Mrs Jin had a clear grasp of English
- Whether any other licence holders were on the premises at the times of the visits
- Whether the CCTV was operational - it was reported that it was only partially compliant as it did not cover the rooms used to the rear for karaoke (these rooms were not on the plan for the licenced premises)
- The pricing of £30 on a bottle of spirit - was this a responsible promotion?

He was also asked about the availability of music equipment which can automatically cut out at certain levels, but responded that Environmental Health would be better placed to advise on this.

There was a small break before questions were asked on behalf of Mrs Jin so that she could speak with her legal adviser.

Mr Culverwell asked questions on behalf of Mrs Jin, which included:

- If the doors had been found locked when the premises had been visited (PC Rackham responded that they had not been but a sign was up saying 'Closed')
 - Exactly what was meant by the statement that every condition had been breached? (PC Rackham said this related to CCTV, training of staff, no evidence of a Challenge 25 policy as well as other issues - the licence holder had put up Challenge 25 posters after the visits)
 - Was there evidence of serving of alcohol after hours - this had not been witnessed.
 - The promotion did not advertise "all you can drink" or say drinking was until 6am
 - Why there were not witness statements from customers as documents
 - The disagreement on what the licensing officer had advised regarding karaoke after 11pm
 - The situation of the premises in a predominantly non-residential area
 - There had been no complaints from members of the public
 - The police had not been involved in public order issues at the premises
- ii) Nickii Humphreys, Licensing Manager, presented her representation (as set out in Appendix C)

Ms Humphreys explained the issues relating to the provision of alcohol and recorded music until 11pm which was also the end of opening hours. There had been recent changes in licensing legislation with a relaxation of measures relating to regulated entertainment, which meant that Melody could provide recorded music without the need for a licence from 8am until 11pm, but after 11pm this is a licensable activity for which a premises licence is required, and this is what she believed Mr Weeks from the Licensing Department had advised Mrs Jin. There was evidence that activity had taken place outside of the regulated hours and she was concerned that large quantities of alcohol was sold up to 10pm when the closing time was 11pm, allowing 60 minutes for consumption. She was also concerned by the nature of the drinks promotion, the disregard of the licence and the ignoring of advice, without seeking legal advice.

The panel asked questions of Ms Humphreys, including:

- The areas covered by a personal licensee's examination (which would include reference to terminal hour) and training of staff at licensed premises
- The experience of Licensing Officer who had attended
- The ability to provide recorded music should the licence be revoked, which Ms Humphreys checked that amplified live music (karaoke is singing with background music) is allowed at a workplace between 8am and 11pm.

Mr Culverwell then asked questions of Ms Humphreys including:

- If the proposed employment of a professional manager would help; it was noted that Mrs Jin would still be the licence holder.
- Whether private parties were compliant with the opening hours - it was reported that private parties were only if the attendees were family and personal friends, with no fee
- Had there been any complaints from the public - Ms Humphreys was not aware of any

Summing Up

PC Rackham summed up on behalf of the Responsible Authorities, stating that the law had been broken with trading continuing beyond the permitted hours, despite engagement by the police and licensing officers, and there were concerns regarding the personal licence holder being able to adhere to the rules. Both Responsible Authorities therefore also asked the committee to consider revocation of the licence.

Mr Culverwell then summed up on behalf of his client, Mrs Jin, referring to the licensing objectives. Breaches had been of the licence and clean air act but there had been no evidence of crime and disorder and no harm to public safety. There had been no complaints relating to noise nuisance. The case was therefore about a misunderstanding of the objectives with the operator

thinking that karaoke was allowed after 11pm and there was no evidence of sale of alcohol after 11pm. Any criminal charges should not influence the committee's decision. Mrs Jin had misunderstood her responsibility; there had been 3 occasions of breaches and when given the pack she had taken steps to comply and there were signs up to say 'No Smoking'. She now understood there should be no music after 11pm. A manager would be employed in the future to run the business. A revocation would have financial harm, and he asked that alternative measures be considered such as imposing conditions, or a short suspension rather than full revocation.

Decision to revoke premises licence

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 members considered all the papers put before them along with the annexes attached to each document.

The committee was assisted by an interpreter instructed by the Local Authority to assist the Licence holder to deal with this application. The Responsible Authorities (Police and Licensing) asserted that the licensee has failed in the administration of the licence and failed to promote the licensing objective 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 Department.

The above stated, the Committee balanced within their consideration all representations made by the licence holder through their advocate and by way of comments made by the current licensee via her interpreter.

In considering the application for review the Committee was 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.

A key function of the Committee is to review the licences that are referred to them by the relevant Responsible Authority(s) and consider through the process each case upon its own facts and merits.

The Committee considered the Licence Holder's Human Rights and in particular Article 8 on the issue of a right to a fair hearing and were satisfied that the Licence Holder had and has sufficient support to understand and engage with the process in its totality given that an interpreter was present

and that the Licence Holder has sufficient understanding of English to obtain a Personal Licence, coupled with carrying out the function of DPS.

1. The Committee was cognisant of a range of incidents occurring in April, May and June 2017, the common theme being material breaches of the current licence with the continued inability of the licence holder to correctly adhere to the closing times set out in the original licence being evident on a number of occasions. The Licensing Committee had seen the evidential train dealing with the warnings provided by the police and was entitled to conclude that the assurance of the Licence Holder was either not adhered to 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.
2. The Committee had seen clear evidence that the existing licensing conditions were not adhered to, particularly with respect to CCTV and training, all of which was offered by the Police and Local Authority.
3. The Committee could not see that the current Premises Licence Holder had the appropriate ability or experience necessary to run a licensed premises.
4. The Committee was also clear that the above material failings undermine the promotion of the licensing objectives to the extent that they are when viewed individually, or as a range of failings (closure, sales and training conditions), all are capable of being or leading to potential crime and disorder along with a further potentiality to cause public nuisance or raising issues as to maintaining public safety.

It is of note that the licence holder had not attended the hearing putting forward a range of conditions (or detailed comments) in an attempt to assuage the Committee, having considered the factual evidence produced by the Police when coupled with additional comments produced by the other Responsible Authority (Licensing), and having reviewed all aspects of the case, on balance and having paid due regard to all the circumstances of the case, the Committee was entitled to revoke the license with immediate effect*

The Committee was very concerned about the current business model. It is only through this course of action that the licensing objectives will be maintained.

The Committee state that each application for review shall be considered on merit and with due consideration as to the specific facts of each case being given.

The licence holder has the right to appeal this decision.

*The decision to revoke will not come into effect for a period of 21 days from the date of the hearing.

The meeting concluded at 2.25 pm.

Councillor Lee Mason
Chair