

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 11 October 2017 at 9.30 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Hannah Hockaday
Dave Ashmore
David Fuller

72. Election of Chair

Councillor Hannah Hockaday was elected as chair for this meeting.

73. Declaration of Members' Interests

There were no declarations of members' interests.

74. Licensing Act 2003 - Application to Vary a Premises Licence - Ken's Kebab House, 35 Guildhall Walk, Portsmouth PO1 2RY

Derek Stone presented his report as Licensing Officer for the variation of hours until 0500 every day (application as set out in Appendix A), and he reported that the public notices had been properly advertised. He referred to the issue of cumulative impact and the history of the premises with a transfer of ownership and the existing licence having been granted in April 2017 (Appendix B). The representations from Responsible Authorities were set out in Appendix C regarding the negative impact on the Cumulative Impact Zone (CIZ). Mr Stone referred members to the relevant guidance, also set out in his report.

No questions were raised at this point by the members, Responsible Authorities or by the applicant and his legal representative.

Responsible Authorities

Nickki Humphreys, Licensing Manager, Portsmouth City Council, presented her representations to oppose the extension of hours; the local authority was concerned due to the cumulative impact, as defined in statutory guidance, with the potential impact on the promotion of the licensing objectives in the CIZ. This was supported by the Licensing Policy agreed by the full Council in July 2017. She was concerned by the concentration of a large number of drinkers leaving premises at one time.

As part of the Licensing Manager's evidence an analysis of offences recorded during Freshers' Week in September 2017 compared to the previous year had been provided, which showed a substantial increase, with more incidents of crime and disorder and public nuisance occurring in the early hours. The

applicant had offered no further measures. She asked that the application be refused.

Members asked questions relating to:

- Whether there had been problems reported since the change of owner of the premises? There was not information specific to the premises and it was noted that the tables showed the number of incidents in the street of the CIZ generally.
- How had the record of incidents been compiled? This was through the record of incidents recorded by the Chief Officer of Police's management system. This was a snap-shot and the figures were not re-examined weekly.

Mr Wallsgrove, the applicant's solicitor, asked questions which included:

- The timing of the granting of late night licenses, two of which had been granted before Freshers' Week of 2016; the Licensing Manager was concerned regarding the cumulative effect with 7 being granted in 2017.
- Freshers' Week was the one of the highest risk weeks in Portsmouth - it was reported that there had been a lot of work by licensing officers with the nightclubs leading up to it.
- Were the CIZ primary concerns of alcohol fuelled offences? It was reported that cumulative impact covers a variety of concerns, including other facilities which encourage people to stay in the area.

PC Peter Rackham, then presented his representations as a Responsible Authority on behalf of the Chief Officer of Police. These were made on the grounds of crime and disorder and concern on the cumulative impact on the CIZ, the Section 182 guidance and the Licensing Policy approved by the Council in July 2017 which had created a rebuttal position unless the application, through measures, would not lead to cumulative impact. He stressed that this was not about how well run the premises was, but about late night crime outside the premises. The Freshers' Week statistics had shown an increase in violent crime from 6 incidents last year to 19 this year. If the extension to hours was granted he believed this would increase the risk of negative impact on the CIZ.

Members then asked questions of PC Rackham including:

- The increase in student numbers in the city centre due to more student accommodation
- The issue of dispersal from the late opening nightclubs
- The role of the door stewards on the premises and how they can contribute to the whole CIZ
- Judicial advice on the weight given to police evidence (the committee's legal adviser Mr Baulf reminded the committee that this case should be considered on the evidence before members)

Mr Wallsgrove, on behalf of the applicant, then asked questions, including:

- Why it was more likely that offences would be caused when people were eating the purchased refreshments; PC Rackham responded that it was regarding the likely involvement in crime and disorder the longer people are in the street area
- Whether the week's analysis of Freshers' Week was representative and whether it took into account the increase in other late night licences since the previous year's event

The Applicant's Case

Mr Wallsgrove, solicitor for Mr Ahmed, presented the applicant's case. He explained the reason behind the application to extend hours as Ken's Kebab House was not getting the same trade at 3am as customers were now leaving the clubs at 4am and 5am. Their intention was to serve food and drink to those already in the area, and this is a well-run premises. These customers would otherwise go to Gida in Guildhall Walk which had recently been granted a late-night extension or to the other nearby Ken's Kebab refreshment premises open until 4am. Ken's Kebab House had used a series of Temporary Event Notices without serious incidents linked to these. The issue was therefore would an extension in hours **add** to problems in the Guildhall Walk area? The premises could stay open to serve cold food and drink. There is already a stringent set of conditions to ensure it is well regulated with the use of the 2 door stewards, and there had not been problems since their implementation and their help assist where there are problems in the wider CIZ area. The extra 2 hours would be beneficial, so people don't all walk home or look for taxis at once (they had approximately 200 customers in the 2 hours under TENS).

Mr Wallsgrove concluded that whilst it is difficult to prove that there will be no negative impact, it was difficult to see how anyone buying food is more likely to cause problems or be involved in an offence, and there were other nearby refreshment premises open with longer hours already.

Questions were then asked by members including:

- What would be the benefits of granting an extension - the effect of food in countering intoxication
- How dispersal was assisted by staying open later - this included the effect on taxi queues
- Where customers would go if this was not granted

The Responsible Authorities were then able to ask questions of the applicant, which included:

- The dates of the TENS which had included the Freshers' Week

- If there is a specific dispersal plan - there is not a specific one for the premises but the door staff do monitor when, rarely, there are queues going outside, and there are 30 seats for consumption of food on the premises
- Referring to the operating schedule, would there be door staff used from 1 July - 15 September or would the extra hours be reviewed for this quieter period? Mr Wallsgrove responded that it was unlikely that the extra hours would be used 7 days a week as the nightclubs do not stay open late all week and in the summer it is quiet as there are not students, therefore the risk would be assessed to see if 2 doorstaff are needed.

Summing up by all parties

- i) Mrs Humphreys, PCC Licensing Manager, stressed the crime and disorder concerns of the local authority. Whilst there had been mention of Gida (granted in July 2017) each application should be considered on its own merits. If granted there would be a worse cumulative impact on the area. The agreed council Licencing Policy had a presumption of rebuttal to these applications. Members should consider the trend of serious incidents in later hours. Refreshments premises were part of the guidance, so if there was a departure reasons should be given. This would encourage people to stay later in the CIZ and this would add to the existing problems. The PCC policy was based on fact and not speculation.
- ii) PC Rackham, on behalf of the Chief Officer of Police, stressed this was about the cumulative impact on the whole CIZ and not the specific running of Ken's Kebab House. Violence was linked to the night-time economy. This application should be refused unless it could be shown there was no negative impact. The survey had presented evidence of the rise in incidents and there would be further information available by the end of the year. The premises had been open via TENS at a time when there had been an increase in incidents.
- iii) Mr Wallsgrove, on behalf of the applicant, stated that the council's Licensing Policy and Section 182 guidance were not absolute, with each application being determined on merit, and an extension could be granted if it would not increase crime and disorder. Another refreshments premises had been granted nearby, so it would need to be shown that Ken's Kebab house was a contributor, but it was well run and well managed and had operated via the TENS. The only research provided related to the busy Freshers' Week. There are benefits of buying and consuming food and soft drinks after leaving clubs and this does assist in dispersal in the area, and there are door stewards provided. The TENS had shown that the premises could open until 5am without incidents. It was less likely for people to commit offences when they are eating and drinking.

The committee then deliberated in private, before the Chair asked their legal adviser to read out their decision.

Decision to grant the application

The Committee heard the representations of the applicant, the relevant Responsible Authorities and the advocate acting on behalf of the applicant in addition the Committee considered all the papers put before them, along with the annexes attached to each document. The Committee was grateful to the presenting officer having within his report outlined the relevant up to date history of the various applications with respect to this premise.

The Committee accepted that this was a finely balanced case and a difficult decision.

The Committee was aware that the premise is located within an area of Special Policy. This Committee was engaged by reason of referral to the Committee by the relevant Responsible Authorities - Police and Licensing - both of whom made objection to the application for a variation to the current licence which was granted to the applicant on 5 April 2017.

The licensing objectives that are allegedly not promoted within the area of Special Policy are: prevention of crime and disorder and the prevention of public nuisance. The Responsible Authorities both indicate that the applicant has failed to sufficiently engage in negating any increase to the cumulative impact by reason of having appropriate conditions or measures in place to overcome the legal burden placed upon the applicant.

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 took a similar view with respect to the representations made by the Licensing Department. The Committee was aware of the recently obtained information relating to the number of incidents occurring within the Cumulative Impact Zone (CIZ) having been informed that the information was obtained relevant to "Freshers Week".

The above stated, the Committee balanced within their consideration all representations made by the applicant through his advocate and by way of comments made by the applicant himself.

In considering the application for a variation of licence 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.

1. The Committee was aware of the history of this premise in that the licence was revoked as of 18 January 2017 thereafter to be granted an alternative applicant on 5th April 2017. The Committee confirmed that whilst

they are aware of this fact that they look upon the application from the perspective of each application being dealt with upon its individual facts. The Committee approached this case upon the basis of considering whether within its operating schedule the applicant has sufficiently addressed the issue of cumulative impact, the burden being upon the applicant to show that the proposed variation will not add to the cumulative impact.

2. The Committee have been shown the recent evidence showing a purported increase in the number of incidents occurring with the Cumulative Impact Zone. The Committee can see that there has within a short period of time been a number of incidents occurring within the suggested time zone that the applicant suggested should be allowed as a variation. They were not persuaded that the current application will add to the cumulative impact and are re-assured that they can review the current licence should it be necessary. They noted the usage of Temporary Event Notices (TENS) having no effect upon cumulative impact.

3. The Committee noted that despite the fact that incidents occur as stated above, the current conditions are the same as proffered to obtain the current licence (albeit that the provision of SIA staff would increase to 0500 hours), the position being that despite the current operating schedule the Committee could see this assuages the risk of impact within the CIZ, it follows therefore that the proposed increase in licensing activity would be unlikely to have an impact that of itself could be negative. Essentially what was offered was appropriate.

Having heard the representations from the applicant and his advocate the Committee was satisfied that the burden that rests with the applicant to shift in showing that the proposed operating schedule in the current application will not have a negative cumulative impact has been shifted. In coming to this conclusion the Committee have been shown a new slightly extended set of conditions and was of the view that the applicant had sufficiently assuaged the cumulative impact by reason of the full range of variations as offered by the applicant previously in April and having at this hearing been extended to 0500 hours.

The Licensing Committee is aware that any Responsible Authority (indeed anyone) can ask that the Committee review the licence currently held which would of course engage this Committee in being able to consider the full range of evidence including matters that are currently being considered.

The committee granted the application.

The right to appeal this decision exists to any of the Responsible Authorities.

The meeting concluded at 11.58 am.

Chair