

**REPORT TO: LICENSING SUB-COMMITTEE 07 JULY 2016**

**REPORT BY: LICENSING MANAGER**

**REPORT AUTHOR: MR ROSS C LEE**

**Licensing Act 2003 – Application for variation of a premises licence  
Kassia 135 - 137 Havant Road, Drayton, Portsmouth PO6 2AA**

## **1. PURPOSE OF REPORT**

The purpose of this report is for the Committee to consider an application for the variation of a premises licence under the Licensing Act 2003 (“the Act”). The matter has been referred to the Committee for determination following formal representations being made "other persons" namely residents living nearby.

## **2. THE APPLICATION**

The variation application has been made by Mr Fasu Miah who is both the licence holder and the designated premises supervisor (DPS) for the premises.

The applicant has requested that the committee remove a current condition stating "**no entry or re-entry after 2300 including those leaving the premises to smoke**".

The current premises licence authorises alcohol sales between 1200 and midnight Sundays to Thursdays and 1200 and 0100 on Fridays and Saturdays. The opening hours are the same.

## **3. BACKGROUND INFORMATION**

This application has been submitted in accordance with the provisions of Part 3 of the Act and associated Regulations.

A redacted copy of the variation application is attached as **appendix A** together with a copy of the current premises licence as **appendix B**. This includes also the conditions previously imposed by the committee in November 2014.

I can confirm that public notice has been given by way of press and premises notice. There are no grounds therefore for the committee to reject the application for non-compliance with the advertising requirements prescribed by the act and regulations.

The history of the premises can be briefly summarised as follows:

- **November 2014** - first premises licence granted after consideration of representations from local residents concerned about potential public nuisance concerns. Conditions imposed by the committee.
- **October 2015** - committee consider an objection submitted by the Chief Officer of Police to a Temporary Event Notice (TEN) for Kassia in order to extend the trading hours until 0300 on New Year's Eve. Committee not satisfied that the licensing objectives would be undermined and therefore did not issue a counter notice and the event, as planned, could lawfully proceed.

- **December 2015** - Mr Fasu Miah convicted at Portsmouth Magistrates' Court of breaching the terms of his premises licence by knowingly allowing patrons to re-enter the premises contrary to the condition imposed previously by the committee. Given a 12 month conditional discharge and ordered to pay council costs.

#### **4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES**

The applicant has not identified any further additional steps required to support this variation application and to promote the licensing objectives.

#### **5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES**

There are no representations submitted by any of the statutory responsible authorities. The Police report they have no grounds to object having regard to the crime and disorder objective.

#### **6. RELEVANT REPRESENTATIONS BY OTHER PERSONS**

Relevant representations have been received from 3 local persons which can be summarised as follows:

- Public nuisance caused by people noise outside the premises
- Litter associated with cigarette butts and packets discarded in the vicinity

**Officer advice:** One representation refers to a later opening time - this is not correct as the variation is in respect of the removal of a condition only.

**The representations are attached as appendix C.**

#### **7. POLICY AND STATUTORY CONSIDERATIONS**

When determining the application to vary the premises licence the Committee must have regard to:

- Promotion of the licensing objectives which are;
  - prevention of crime and disorder
  - public safety
  - prevention of public nuisance
  - protection of children from harm
- The Licensing Act 2003;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary).
- Its Statement of Licensing Policy;
- The statutory guidance issued by the Home Secretary in accordance with section 182 of the Act; and

- The representations, including supporting information, presented by all the parties.

## **Statement of Licensing Policy**

The Statement of Licensing Policy lays down a general approach to the determination of licensing applications and any such application will be considered on its individual merits. Equally, any person permitted by the Act to make relevant representations to the Committee will have those representations considered on their individual merit.

The Committee should consider the fundamental principles set out in its policy, particularly paragraphs 4.6 and 4.7 which are reproduced below:

- 4.6** *Whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.*
- 4.7** *Licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of the overall approach to the management of the evening and night-time economy in town and city centres.*

The Committee should also have regard to paragraphs 7.1 to 7.6 in relation to such circumstances where it may be appropriate to consider the imposition of conditions on a premises licence.

## **Statutory Guidance**

The updated statutory guidance issued by the Home Secretary in accordance with section 182 of the Act, which came into force in March 2015, refers to the consideration of applications for the grant or variation of premises licences in Chapter 9.

Members may wish to consider the following extracts from the statutory guidance when determining this application:

### **Para 9.36**

*“... As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas....”*

#### **Para 9.41**

*"Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representation made by the applicant or premises user as the case may be".*

#### **Para 9.42**

*"The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve"*

#### **Para 9.43**

*"Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. Whilst this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters...."*

Members may also wish to consider Chapter 11 of the statutory guidance in respect of reviews of premises licences. Paragraphs 11.1 and 11.2 of the guidance states:

#### **Para 11.1**

*"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate".*

#### **Para 11.2**

*At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.*

***A copy of the Statement of Licensing Policy, statutory guidance, the Act and the pool of model conditions has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.***

#### **Determination of an application**

Where an application to vary a premises licence has been made in accordance with section 34 of the Act and where relevant representations have been made, the licensing authority must hold a hearing to consider them, unless the applicant, each

person who has made representations and the licensing authority agree that a hearing is unnecessary.

After having regard to the representations, the Committee may take such steps, if any, as it considers appropriate for the promotion of the licensing objectives which are:

- To modify the conditions of the licence
- To reject the whole or part of the application

And for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

In discharging its duty in accordance with the above, the Committee may vary a premises licence so that it has effect subject to different conditions in respect of:

- different parts of the premises concerned;
- different licensable activities.

### **Appeal Provisions**

Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of an application to vary a premises licence.

Where the Licensing Authority rejects (in whole or in part) an application, the applicant may appeal against the decision to the Magistrates' Court.

Should the committee grant (in whole or in part) an application, the applicant may appeal against any decision to modify the conditions of the licence.

Where a person who made relevant representations in relation to the application contends that:

- a) that any variation made ought not to have been made, or
- b) that, on varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under section 4(a) of that section,

He may appeal against the decision.

## **8. APPENDICES**

- A. Copy of the variation application form
- B. Copy of current premises licence
- C. Copies of representations received

## **THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION**

Ross Lee  
For Licensing Manager