

REPORT TO: LICENSING SUB-COMMITTEE 20th OCTOBER 2016

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR DEREK STONE

**Licensing Act 2003 – Application for variation of a premises licence
Kassia, 80-82 Osborne Road, Southsea, Portsmouth PO5 3LU**

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 by six local residents.

2. THE APPLICATION

The variation application has been made by Kassia Southsea Limited. Mr Fasu Miah is the Director of this Company.

The applicant has requested that the licence be varied in respect of the above premises so as to permit the following:

- To permit live and recorded music from 12:00 to 01:00 Sunday to Wednesday. Thursday from 12:00 to 02:00 and on Friday and Saturday from 12:00 to 03:00. The application seeks an extension of these times until 04:00 on New Years Eve going into New Years day.
- To permit Late night refreshment from 23:00 to 01:00 Sunday to Wednesday, Thursday from 23:00 until 02:00 and Friday and Saturday from 23:00 to 03:00
- To permit the supply of alcohol from 09:00 to 01:00 Sunday to Wednesday. Thursday from 09:00 to 02:00 and Friday and Saturday from 09:00 to 03:00
- To permit the hours of opening to the public from 07:00 to 01:00 Sunday to Wednesday, Thursday 07:00 to 02:00 and on Friday and Saturday 07:00 to 03:00

3. BACKGROUND INFORMATION

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

A copy of the variation application and plan that reflects the new layout of the building is attached as **appendix A**

I can confirm that public notice has been given by way of press notice, premises notice and local ward councillors have been informed. 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.

Kassia is located in Osborne Road close to the junction with Palmerston Road. The history in relation to the building itself, is that it traded as a popular café 'Snookies' which first opened in 1956. On the 24th August 2007 a licence was granted for the sale of alcohol and recorded music Monday to Saturday 10 AM to 4.30 PM and on a Sunday finishing earlier at 4 PM. On the 9th October 2009 the sale of alcohol was extended until 11 PM. On the 19th August 2016, Mr Miah transferred the existing 'Snookies' Premises Licence into Kassia Southsea Ltd and he became Designated Premises Supervisor (DPS). On the 30th August 2016 the variation application was submitted as detailed in the application, to turn the premises into a cocktail bar and Indian tapas similar to Kassia in Drayton which is marketed as a chic and stylish cocktail bar with a twist of spice.

Officer note:

Mr Fasu Miah was convicted at Portsmouth Magistrates Court on the 7th December 2015 for twice knowingly allowing a licensable activity to be carried out at Kassia, 135-137 Havant Road, Portsmouth, otherwise than in accordance with a premises licence, namely that he did knowingly allow patrons to re-enter the premises after 11pm contrary to the condition imposed on the premises licence. For this matter he was sentenced to 12 months Conditional Discharge on each offence to run concurrently.

4. OPERATING SCHEDULE – PROMOTION OF LICENSING OBJECTIVES

The applicant has completed the operating schedule detailing the steps intended to be taken (and as appropriate to promote the licensing objectives) in support of this variation application.

5. RELEVANT REPRESENTATIONS BY RESPONSIBLE AUTHORITIES

There are no representations from any of the responsible authorities. There are however six representations from local residents and these are attached at **Appendix B**.

On submission of the application, responsible authorities were notified and negotiations have taken place between the applicant, the Police, Trading Standards and Environmental Health where conditions have been agreed. These conditions are attached at **Appendix C** (Police) **Appendix D** (Trading Standards) and **Appendix E** (Environmental Health) and will be conditions placed on the premises licence subject to this hearing. One of the agreed conditions will be no admission or re-admission to the premises after 01:00

Another condition that has been agreed is the change of the DPS from Mr Fasu Miah to Rujal Miah. This followed concerns by Police that with Mr Fasu Miah's other business interests, and the fact that he was already DPS at several of his other venues, that this venue required a DPS to be involved at the venue and not committed elsewhere. On the 19th September 2016 Rujal Miah was registered as the DPS.

Para 9:11

Responsible authorities under the 2003 act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

Para 9:12

In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on crime and disorder objective. The police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regard to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However it remains incumbent on the police to ensure that their representation can withstand the scrutiny to which they would be subject at a hearing.

6. RELEVANT REPRESENTATIONS BY OTHER PERSONS

The representations raised by local residents are in relation to concerns around noise that this business would add to the general area during the evening and late night economy. In this area it is reported that there is general drunken noise and loud music, public nuisance, damage, and public safety concerns. One representation raises a concern that the venue would create around the smell of food and not being able to have their windows open.

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 or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representations. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation..."

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. While 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.

As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.

Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination."

Para 10:13 (Hours of Trading)

The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during

which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

Para 10.14

"Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested".

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 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:

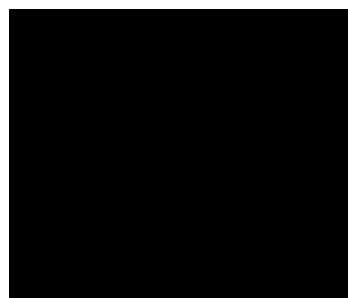
- a) that any variation made ought not to have been made, or
- b) that, on varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under section 4(a) of that section,

He may appeal against the decision.

8. APPENDICES

- A. Copy of the variation application and plan.
- B. Copy of six representations received from 'other persons'.
- C. Copy of agreed conditions with Police and e mail exchange.
- D. Copy of agreed conditions with Trading Standards and e mail exchange.
- E. Copy of agreed conditions with Environmental Health and e mail exchange.
- F. List of venues in vicinity and times of alcohol sales and opening hours.

THE COMMITTEE IS REQUESTED TO DETERMINE THE APPLICATION



For Licensing Manager
And on Behalf of Head of Service

