

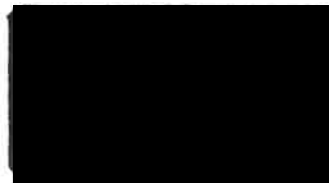


NOTIFICATION OF DECISION

Licensing Act 2003 - Licensing Sub-Committee

PORTSMOUTH CITY COUNCIL as licensing authority in accordance with the Licensing Act 2003 ("the act") and regulations made thereunder, hereby give notice pursuant to section 52 (10) of the act to:

Name: **Mr Naseem Ahmed**
Address:



Status: **Holder**

That a hearing was held on: **18 January 2017**

To consider an application for the **REVIEW of a premises licence** made in accordance with Section 51 of the Act. The details of the licence holder and premises are:

Name of Licence Holder: **Mr Naseem Ahmed**
Premises and address: **Ken's Kebab House
35 Guildhall Walk
Portsmouth
PO1 2RY**

Decision of The Licensing Authority:

In determining and considering the application pursuant to section 52 of the act, the Committee had regard to:

- The Licensing Act 2003
- The promotion of the licensing objectives
- The council's adopted statement of licensing policy for the time being in force
- The statutory guidance issued by the Secretary of State for the time being in force
- Any relevant case law
- The representations (including supporting information) presented by all the parties

Decision:

Revoke

Reasons For Decision:

The premises licence be revoked with immediate effect for the reasons listed below.

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

The committee was aware that the premise is located within an area of Special Policy. This committee was engaged by reason of referral back to the committee by the relevant Responsible Authorities, namely the Police and Licensing seeking a review of the current licence.

The Responsible Authorities (Police and Licensing) assert that the licensee has failed in the administration of the licence failed to promote the licensing objectives 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 Manager.

The committee have balanced within their consideration all representations made by the licence holder through their advocate and by way of comments made by through his advocate.

In considering the application for review the committee is 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. It has been established that a previous employee who served a prison sentence (GBH re a customer) having been the SIA door supervisor (a condition of the original licence grant) was upon release re-employed by the licence holder. The committee were of the view that this of itself is capable of being an imprudent decision on the part of the licence holder that is not concomitant with promotion of the relevant licensing objective in that there is a risk that a repeat response could occur if similar circumstances arose. This said it is accepted that the licence holder could re-employ an ex member of staff but are concerned about how appropriate management of the employer could be dealt with.

2. The Licensing Committee are entitled to conclude that on the 11th March 2016 there was no SIA presence at the premise for a period of time. A material breach of the licensing conditions of original grant occurred. Further given the licence holders previous high level of engagement with all the responsible authorities that it is fair and reasonable conclusion that the licence holder knew of the material failure and deliberately acquiesced or that if he did not know that the systems in place were such that upon attendance at the premise the failure would have been obvious and thereafter capable of rectification by way of forward planning or back up option.
3. The committee are cognizant of a range of incidents occurring in March, October and November 2016, the common theme being crime and disorder, these material breaches coinciding with the continued inability of the licence holder to correctly adhere to the closing times set out in the original licence. The Licensing Committee had seen the email train dealing with the warnings provided by the Police and are entitled to conclude that the assurance of the licence holder were either ignored 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.
4. The Committee had heard the clear admission by the licence holder that on five separate (known) occasions he opened his premises beyond his permitted trading hours. It is not accepted that the behaviour is isolated and that the behaviour was not concomitant with promotion of the licensing objectives.
5. The Committee are also clear that the above material failings undermine the promotion of the licensing objective to the extent that they are when viewed individually or as a range of failings (late opening, no SIA none compliance with primary obligations in the original licence) all being capable of being a public nuisance or raising issues as to maintaining safety.

Whilst the premises licence holders' put forward a range of conditions in an attempt to assuage the Committee, having considered the factual evidence produced by the Police when coupled with additional factual evidence produced by other Responsible Authorities and having reviewed all aspects of the case on balance and having paid due regard to all the circumstance of the case the Committee are entitled to revoke the licence with immediate effect. Again the Committee have looked at the statutory guidance with regard to paragraph 11.20 (cause) and 11.23 (an appropriate and proportionate response) and balanced this with the clear and resolute admission that the licence holder did deliberately breach the licence. It is further stated that the Committee considered the applicability and relevance of paragraph 11.26 but were not persuaded that the sanction of revocation with immediate effect would not be proportionate.

It is only through this this course of action that the licensing objectives will be maintained in a special policy area. The Committee state that each application

for a review shall be considered on merit and with due consideration as to the specific facts of each case.

The premises licence holder has a right to appeal this decision.

Appeal Provisions:

In accordance with the provisions of Schedule 5 of the Act, appeal provisions exist in respect of applications made to the Licensing Authority. Those provisions are outlined as follows:

Where an application for a review of a premises licence is decided under section 52, an appeal may be made against that decision by:

- **The applicant for the review;**
- **The holder of the premises licence; or**
- **Any other person who made relevant representations in relation to the application**

Note: The holder of the licence is to be the respondent in addition to the Licensing Authority in relation to any appeal lodged by the applicant for the review or any other person who made relevant representations in relation to the application.

In accordance with section 52(11) of the Act, a determination under section 52 does not have effect:

- **Until the end of the period given for appealing against the decision, or**
- **If the decision is appealed against, until the appeal is disposed of**

General Provisions About Appeals:

An appeal must be made to the Magistrates' court for the petty sessions area in which the premises concerned are situated.

An appeal must be commenced by notice of appeal given by the appellant to the designated officer for the Magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision appealed against.¹

Action that may be taken by the Magistrates' Court:

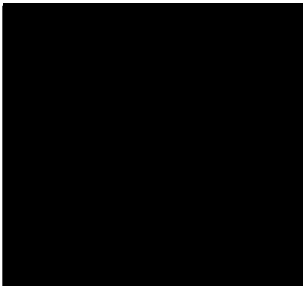
On an appeal against a decision of the Licensing Authority, a Magistrates' court may:

¹ The period of 21 days will commence from the date on which written notice is given, or in the case of electronic transmission, when the text is received.

- dismiss the appeal;
- substitute for the decision appealed against, any other decision which could have been made by the Licensing Authority; or
- remit the case to the Licensing Authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit.

Date of Notice: **23 January 2017**



Signed on behalf of the Head of Service
(Authorised Officer)