

REPORT TO: LICENSING SUB-COMMITTEE 25 AUGUST 2017

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: MR ROSS LEE

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

1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider and determine a review application pursuant to section 52 of the Licensing Act 2003 ("the Act") and in respect of the following premises:

Melody, 229-231 Commercial Road, Portsmouth, PO1 4BJ.

The holder of the authorisation is recorded as Mrs Wei Wei Jin.

2. THE REVIEW APPLICANT

The application and grounds for the review are attached as **Appendix A** and has been submitted by the Chief Officer of Police and relates to the following licensing objectives:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety

In summary, the police contend that the premises have been used "after hours" for licensable activities with evidence of persons drinking and smoking after 2300 and that the licence holder has ignored repeated advice from both police and licensing officers.

3. BACKGROUND INFORMATION

Melody is a ground floor Chinese café/restaurant situated at the northern end of Commercial Road just south of the Market Way roundabout.

Melody is flanked by Sun Hung Chang Oriental Food and Martha's. McDonald's is nearby with opening hours of 0600 - 2100. Opposite is a 24 hour taxi stand.

The licence holder Wei Wei Jin is also the designated premises supervisor and acquired an interest in the premises, by way of transfer, in December 2015.

The licence authorises the sale of alcohol and the provision of recorded music daily between the hours of 1000 and 2300.

A copy of the current authorisation is attached as **Appendix B**.

In accordance with the act and prescribed regulations, public notice of the review application was given both at the premises and also at the Civic Offices. In addition, a notice of the review application was also posted on the council website.

The review application was also served on the responsible authorities.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

A further representation has been received from the Licensing Authority via the Licensing Manager, Nickii Humphreys which is attached as **Appendix C**.

The licensing authority, as a responsible authority, concurs with the representations made by the police and also highlights the serious consequences, at law*, of providing licensable activities otherwise than in accordance with an authorisation together with the provision of irresponsible drink promotions at the premises.

***Officer Advice**

The licensing authority is also considering separately the alleged breaches to the premises licence authorisation (together with breaches to the Licensing Act 2003) by way of possible prosecution which is not co-dependent on these proceedings and will be dealt with on individual merit by an officer not party to this review application.

5. POLICY AND STATUTORY CONSIDERATIONS

When determining the review application, 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;
- The adopted Statement of Licensing Policy;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current 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.

The Statutory Guidance provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 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."*

Paragraph 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."

Paragraph 11.10 - "Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation."

Paragraph 11.16 - "The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives."

In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - "The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder."

Paragraph 11.18 - "However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."

Paragraph 11.19 - "Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence."

Paragraph 11.20 - *"In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."*

Paragraph 11.21 - *"For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."*

Paragraph 11.22 - *"Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."*

Paragraph 11.23 - *"Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again."*

However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence."

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

6. APPEALS

An appeal against any punitive sanctions may be made within 21 days of the authorisation holder being notified of the licensing authority's decision to a Magistrates' court. An appeal may be made by:

- The applicant for the review;
- the holder of the premises licence or club premises authorisation; or
- any other person who made relevant representations in relation to the application.

The decision of the committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until any submitted appeal is disposed of.

7. APPENDICES

- A.** Copy of the redacted review application together with any supporting documents
- B.** Copy of the current authorisation to include location plan
- C.** Copies of any other relevant representations received

THE COMMITTEE IS REQUESTED TO DETERMINE THE REVIEW APPLICATION



For Licensing Manager
And on behalf of Head of Service

