



Portsmouth
CITY COUNCIL

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 23 of the act to:

Name: **Mr Usman Naseem Ahmed**

Address: **Not Recorded**

Status: **Applicant**

That a hearing was held on: **5 April 2017**

To consider an application for the **GRANT of a premises licence** made in accordance with Section 17 of the Act. The details of the applicant and premises are:

Name of Applicant: **Mr Usman 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 18 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:

Grant with conditions

Reasons For Decision:

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 it along with the annexes attached to each document.

The committee was aware that the premises is located within an area of Special Policy. This committee was engaged by reason of referral to the committee by the relevant responsible authorities - the police and licensing both of whom make objection to the grant of a licence.

The licensing objectives that are not promoted within the area of Special Policy are: prevention of crime and disorder, public safety 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 looked 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 is 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 above stated, the committee balanced within its consideration all representations made by the applicant though his advocate and by way of comments made by the applicant himself.

In considering the application for a grant 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.

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 new proposed operating schedule in the current application will not have a negative cumulative impact has been shifted.

In coming to this conclusion the committee was shown a new 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, with the following additional conditions imposed by this committee.

**Application Reference Number
17/02081/LAPREM**

Condition A:

- A minimum of 1 SIA licensed door supervisor will be on duty 11pm until close of business Monday, Tuesday and Wednesday.
- Two SIA licensed door supervisors for Thursday, Friday and Saturday to include New Year's Eve from 11pm to close of business.
- On Sundays 1 SIA door supervisor save for any bank holiday when it shall be a minimum of two, such obligation to cover any extensions to the permitted hours. Such obligations to extend to any close of business upon such extension.

- All the above obligations to apply over a 52-week period.

Condition B:

The committee accepted as a condition of the grant of the licence as offered that Mr Naseem Ahmed will not have any involvement with the running of the business known as Ken's Kebabs trading from Guildhall Walk and that the reason for this condition is based upon the following conclusions:

- The statement of Mr Naseem Ahmed dated 3 April 2017 and adduced into the hearing.
- The representations made through his advocate that in due course Mr Usman Ahmed will take over operational control of the business including the other premises outside Guildhall Walk.
- On the assumption that Mr Naseem Ahmed also divests himself of all legal interest in any operating company that currently has an interest in relation to Ken's Kebabs 35 Guildhall Walk, Portsmouth

The licensing committee was aware that any responsible authority, indeed anyone can ask the committee to review the licence currently held which would of course engage this committee in being able to consider the full range of evidence including matters are currently being considered.

The committee considered the following when balancing the factors and noted the above conditions were offered by the applicant and imposed by this committee in the promotion of the relevant licensing conditions.

- This committee considered that the current cumulative impact policy and is of the view that it is sufficiently evidence based to include a full range of premises within it, to specifically include premises that do not sell alcohol.

- Whilst not a condition, the committee observed that with respect to the lines of control between owners and managers that it needs to be made very clear by whom and upon what basis staff are employed, reviewed and disciplined this comment being particularly relevant to any management appointment (especially night time).

- The committee accepted the assurances that Mr Usman Ahmed will be in operational control of the business.

- The committee also recognised the fact that the current application hours are as

currently being used at the premise and additionally that irrespective whether a grant of a new licence was dealt with the business could continue trade in any event.

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:

The applicant:

Where the Licensing Authority rejects an application for a premises licence, the applicant may appeal against the decision - *Part 1, paragraph 1(a) of the Act*.

Where the Licensing Authority grants a premises licence, the holder of the licence may appeal against any decision:

- to impose conditions on the licence; or
- to take any step to exclude a licensable activity or refuse to specify a person as premises supervisor - *Part 1, paragraph 2(2) of the Act*.

A person who made relevant representations:

Where a person who made relevant representations in relation to the application desires to contend:

- that the licence ought not to have been granted, or
- that, on granting the licence, the Licensing Authority ought to have imposed different or additional conditions, or should have excluded any of the licensable activities to which the application relates or to refuse to specify a person in the licence as the premises supervisor

he may appeal against the decision – *Part 1, paragraph 2(3) of the Act*.

Note: The applicant for the licence is to be the respondent in addition to the Licensing Authority in relation to any appeal lodged by a person(s) who made relevant representations.

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

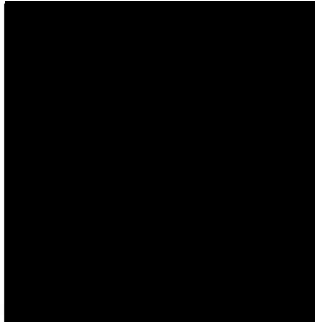
Action that may be taken by the Magistrates' Court:

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

- 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: **7 April 2017**



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

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.