

**REPORT TO: LICENSING SUB-COMMITTEE - WEDNESDAY
20 JANUARY 2010**

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: RICHARD CHALMERS

**Licensing Act 2003 – Application for the review of a premises licence
Om Sai, 139 Queen Street, Portsmouth PO1 3HY**

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an application for the review of a premises licence by Craig Copland, on behalf of Portsmouth City Council, Trading Standards as a responsible authority.

2. THE APPLICATION

The application and grounds for review are attached as Appendix A to this report and relate to the following licensing objectives:

- Prevention of crime and disorder.
- The prevention of public nuisance.
- The protection of children from harm.

The grounds for the review are based on the belief that the premises licence holder and designated premises supervisor (DPS), Mrs Naynaben Patel, has failed to promote the licensing objectives, and has failed, since the premises opened, to adhere to conditions of the premises licence.

3. BACKGROUND INFORMATION

Mrs Patel first applied for a premises licence at this location in September 2008. A Licensing Sub-Committee hearing into the matter on 29 October 2008 refused to grant a premises licence.

The second application was made by Mrs Patel on 24 March 2009 and at a committee hearing on 20 May 2009 the licence was granted. No additional conditions were added by the committee other than those previously agreed between the police and the applicant and those offered in the application.

Om Sai is currently authorised to sell alcohol daily from 0700 hours until 2300 hours with the shop being open for the same hours.

A copy of the premises licence is attached as Appendix B and a map of the area showing the location of the premises is attached as Appendix C.

There are three DVDs which show incidents inside and outside the shop. These are taken from the CCTV in the premises. These DVDs will be available for members to view at the hearing and the applicant, Mr Copland, will arrange this.

As a result of the review application, the premises licence holder, via her solicitor, responded by email on 4 December 2009. a copy of this response is shown as Appendix H.

Paragraph 4 of that response indicates an error on the premises licence whereby Challenge 25 adoption should not have been included on the licence and in paragraph 5, likewise, a condition relating to proxy watch should not have been included.

The Licensing Manager is in possession of copies of emails between Mr Copland and Mr Wallsgrove, the premises licence holder's solicitor. As part of a long email about another premises, Mr Copland wrote to Mr Wallsgrove on 21 April 2009 at 1803 hours. The email says "*Many thanks Jon, I will forward on to licensing. Did you need further info from me regarding Om Sai?*"

Mr Wallsgrove responded at 1807 hours that day and wrote "*No, clients will contact you direct to book the course. I think they want to book on next Monday. **Again Challenge 25 and proxy watch agreed** although in your email to Sarah you hadn't put those forward for Om Sai. Jon.*" [bold type by Licensing Officer]

The Licensing Manager took this to mean that the premises licence holder had amended her application for the grant of a premises licence and consequently these two conditions were added, with her consent, to the premises licence.

No questions were raised by the premises licence holder regarding this after the licence was sent to her solicitor. Accompanying the premises licence and the premises licence summary sent on 23 June 2009 was a letter in which the sender, Debra Robson, Senior Licensing Officer, wrote, at paragraph 3, "*Please ensure that you check the details concerned within your new licence and should you have any queries as regards any matter in relation to the new licence, please contact this office straight away*". No contact regarding this was made either by the premises licence holder or her solicitor.

On 30 December 2009 the licensing authority received a witness statement from the premises licence holder, Mrs Naynaben Patel. This statement is attached as Appendix J.

There are also witness statements relating to incidents which are attached as Appendix G. Your licensing officer has deleted the name of the bus driver who witnessed one incident on 2 November 2009. The other statements are from police or police community support officers and by a trading standards officer.

4. RELEVANT REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

In accordance with the procedure laid down in the Act, a public notice of the application for the review of the licence was advertised at the premises concerned and also in a prominent position at the Civic Offices. In addition a notice of the application was also posted on the website of Portsmouth City Council together with the grounds for the review. Mr Copland, for Trading Standards, as applicant for the review, was also statutorily required to serve a copy of the application on all of the responsible authorities.

As a result of the review application a relevant representation has been made by the Chief Officer of Police. It is on the grounds of:

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm

It relates to a sale of alcohol to an underage person on 2 November 2009.

The letter of representation is attached as Appendix D.

5. RELEVANT REPRESENTATIONS BY INTERESTED PARTIES

The Portsea Action Group 99 Ltd also made a relevant representation and this appears to be on the grounds of

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm

A copy of their letter of representation is attached as Appendix E.

There has also been a letter of representation from another interested party, Janeen Davis, a person involved in a business in the vicinity of the premises. Her letter is on the grounds of all four licensing objectives and relates to the violent and intimidating behaviour of youths who are customers of the premises.

A copy of this letter of representation is attached as Appendix F.

6. POLICY AND STATUTORY CONSIDERATIONS

When determining the application for review of 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.
- Its Statement of Licensing Policy;

- The statutory guidance issued by the Secretary of State in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statutory Guidance (revised in June 2007) provides advice in relation to the consideration of review applications.

In particular, members should have regard to the following advice:

Paragraph 9.8 - *A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.*

Paragraph 9.11 - *Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.*

Paragraph 11.1 - *“The proceedings set out in the Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.”*

Paragraph 11.2 – *“ At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the Licensing Authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.”*

Paragraph 11.6 - *“ In every case, the representation must relate to the particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.”*

Paragraph 11.7 – *“Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.”*

Paragraph 11.8 - *“It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review”.*

Paragraph 11.11 - *Relevance, vexation and frivolousness were dealt with in paragraphs 9.8 – 9.13 above. A repetitious representation is one that is identical or substantially similar to:*

- *a ground for review specified in an earlier application for review made in relation to the same premises licence which has already been determined;*
or
- *representations considered by the licensing authority when the premises licence was first granted; or*
- *representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement;*

and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

Paragraph 11.16 – *“The Licensing Authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary 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 warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where*

responsible authorities like the Police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their stepped approach to concerns, licensing authorities should not merely repeat that approach”.

In cases where the Licensing Authority considers that action under its statutory powers are necessary and after having regard to the representations, the Committee may take such steps, if any, as it considers necessary for the promotion of the licensing objectives which are:

- **modify the conditions of the licence, which could include altering, omitting or adding conditions;**
- **to exclude a licensable activity from the scope of the licence;**
- **to remove the designated premises supervisor;**
- **to suspend the licence for a period not exceeding three months;**
- **to revoke the licence.**

Paragraph 11.18 – *“In deciding which of these powers to invoke, it is expected that the Licensing Authority should so far possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response”.*

Paragraph 11.19 – *“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 11.20 – *“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 which impact upon the licensing objectives”.*

Paragraph 11.21 - *“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 a necessary means of promoting the licensing objectives. 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 necessary and proportionate to the promotion of the licensing objectives”.

Where an application for the review of a premises licence has been made in accordance with section 51 of the Act, the authority must hold a hearing to consider the application and any relevant representations.

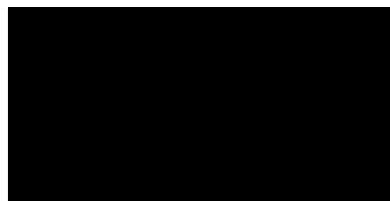
Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of a review of a premises licence. An appeal may be made against the decision of the Licensing Authority by:

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

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.

7. APPENDICES

- A. Copy of the application for review of the premises licence and the grounds submitted by Craig Copland on behalf of Trading Standards;
- B. A copy of the current premises licence;
- C. Map of the locality within which the premises are situated.
- D. Copy of letter of representation from Chief Officer of Police.
- E. Copy of letter of representation from Portsea Action Group 99 Ltd.
- F. Copy of letter of representation from Janeen Davis.
- G. Copies of witness statements.
- H. Copy of response by premises licence holder to review application.
- J. Copy of Witness Statement of Naynaben Patel.



Deputy Licensing Manager

RSC/DMF
Revised 5 January 2010
lic20100120r.doc