

LICENSING SUB COMMITTEE

MINUTES OF A MEETING of the Licensing Sub Committee held on Wednesday 20 January 2010 at 9.30am in the executive meeting room of the Guildhall, Portsmouth.

Present

Councillors Les Stevens (chair)
Andy Fraser
David Fuller

5. Appointment of Chair (AI 1)

Councillor Les Stevens was appointed chair for the meeting.

6. Declaration of Members' Interests (AI 2)

There were no declarations of interest.

7. Licensing Act 2003 – Application for the review of a premises licence – Om Sai, 139 Queen Street, Portsmouth, PO1 3HY (AI 3)

(TAKE IN REPORT BY THE LICENSING MANAGER)

Craig Copland (Trading Standards), the applicant, was in attendance.

PC Montague (representing the Chief Officer of Police) was also in attendance as a responsible authority.

Jon Wallsgrove (solicitor representing the premises licence holder) and Mrs Naynaben Patel (the premises licence holder and designated premises supervisor) were in attendance.

Mr Thurston (chair of the Portsea Action Group 99 Ltd) and Mrs Janeen Davis (of The Beauty Experience, Queen Street) were also in attendance as interested parties.

The Deputy Licensing Manager introduced the report and explained to members that an application for the review of the premises licence at Om Sai had been made by Trading Standards, as a responsible authority. The grounds for the review are based on the belief that the premises licence holder and designated premises supervisor, Mrs Patel, has failed to promote the licensing objectives and since the premises have opened has failed to adhere to conditions of the premises licence.

Representations have been received from the Chief Officer of Police, as a responsible authority and Mr Thurston and Mrs Davis, as interested parties.

The legal advisor explained to the committee that a relevant representation is only relevant if it related to one or more of the licensing objectives and members must be satisfied that this is the case for all representations. Members should also ignore paragraphs 9.8 and 9.11 on page 4 of the Licensing Managers report as these relate to the granting of a premises licence.

Craig Copland referred to paragraph 4 (page 59 of the report) of Mrs Patel's response to the application for a review and explained that he now accepted that conditions relating to Challenge 25 and proxywatch were not originally agreed on the premises licence. Jon Wallsgrove agreed that there had not been a breach of the conditions as they were not on the premises licence but said he would be putting them forward, as conditions to be added to the licence, during his representations.

The Deputy Licensing Manager apologised for the error on the premises licence and explained that it had been a matter of interpretation from emails between Trading Standards and the premises licence holders firm of solicitors, Blake Laphorn.

Craig Copland, Trading Standards, made the following points during his representations:

- The Patel family have not co-operated with Trading Standards;
- Referred to paragraph 24/8/09 on page 12 of the report and asked that this be removed from the application as it related to a different premises;
- Agreed that the store actually opened on 2 June 2009 and not 5 May 2009 as mentioned in the application;
- 27/4/09 Mrs Patel attended and failed Under Age Sales training with a mark of 63%, at the Civic Offices. Asked to attend the training again not just to re-sit the exam;
- 18/5/09 a training/guidance pack was delivered to Om Sai and Mrs Patel was asked to look at the areas in which she failed;
- 20/5/09 Mrs Patel re-sat the test and again failed. Mrs Patel was asked to retrain in her own time and send the test via the post;
- 22/5/09 emailed Jon Wallsgrove as concerned about Mrs Patel's knowledge of licensing objectives;
- 4/6/09 3rd test was marked which was sent via the post and 95% pass achieved. No certificate was issued because test not taken place under exam conditions and Mrs Patel was asked to keep test paper in the shop training pack;
- 15/6/09 regular compliance visit undertaken to the store. No statutory signs in place;
- 7/8/09 proxy operation undertaken in Queens Street. Group of males witnessed outside Om Sai approaching passersby for alcohol and cigarettes. No call from Om Sai regarding this date or any other;
- Now review procedure instigated receiving calls from Om Sai re minors attempting to obtain alcohol by proxy;
- 27/8/09 concerned about Akash Patel's behaviour with regards to an egg-throwing incident. Clear breach of licence;
- Remove paragraph 3/9/09 on page 13 from the application;
- 11/9/09 representatives from Om Sai failed to attend Action Plan meeting with Police and Trading Standards;
- 15/9/09 visited Om Sai; on checking the refusals log only 10 under age sales had been entered in a 4-month period. Very low result and would expect to see between 5 and 25 refusals per week;
- During visit looked at training log. No training logged so Akash and his sister still not trained;
- 17/9/09 test purchase undertaken and failed. Mrs Patel failed to ask for ID;
- 27/9/09 sale of alcohol to a known minor;

The committee was shown CCTV footage of the underage sales on 2/11/09 as reported by the bus driver and the 'egg throwing' incident, which occurred on 17/8/09. Footage of the sale of alcohol to 'a known' underage person on 26/9/09 was not shown as the premises licence holder did not dispute that the incident had taken place.

- Staff are using tactics to avoid failure of underage sales, as seen in the footage;
- No ID is being asked for, as seen in the footage;
- Have consistently tried to offer training;
- Refusals log does not reflect the number of attempts made to buy alcohol particularly in an ASB area. Would expect the number to be higher than average;
- Either not logging the refusals or not challenging the customers;
- No calls have been made to the proxy watch number;
- Would expect regular calls due to the number of youths congregating outside of the premises. None have been received;
- Only received a call from Mrs Patel with regards to suspected drug dealing outside the premises after the review procedure had been instigated;
- If during Mrs Patel's training the instructions in the manual were understood she should have known the conditions of the premises licence and the responsibility of the premises licence holder from day one of operating;
- Mrs Patel did not feel it important to train her son, despite him working in the store;
- Have been trying to work with the Patels since 2008;
- Have made numerous visits and telephone calls to the premises and tried to assist with training;
- Have tried to engage with the Patels but failed;
- Underage sales and refusals log not being completed properly are all breaches of conditions;
- Anti-social behaviour clearly seen outside the premises. Akash did not report or deal with it appropriately;
- All staff should be trained and the training should be logged. Again this is a breach of the premises licence;
- Very concerned about the sale of alcohol to underage persons. Have witness statements and CCTV.

Mr Thurston, chair of the Portsea Action Group 99 Ltd ("PAG"), spoke as an interested party and made the following points during his representations:

- PAG meets monthly and is made up of ward councillors, reps from schools and churches in the area, residents, Police and Portsmouth City Council;
- PAG objected to the original application on the grounds of underage sales and anti-social behaviour;
- The premises have proved to be an unnecessary burden for the Portsea community to bear;
- Don't want anti-social behaviour on our streets;
- Want to protect children from harm and curb this anti-social behaviour and underage sales.

Mrs Janeen Davis, from 'the hairdresser' in Queen Street, also spoke as an interested party and made the following points during her representations:

- Have been trading in Queen Street for 22 years and the last year has been the worst ever;

- Had to escort our clients out of the shop, often through the rear exit, because of the gangs of youths hanging around outside;
- Have counted up to 30 youths aged between 8 and 25years old;
- Objecting on the grounds of the prevention of crime and disorder;
- Youths throw things at passing cars, pedestrians, at shop windows;
- Have seen youths go into Om Sai to buy alcohol only to drink it outside. They then throw the cans or bottles;
- Unacceptable noise from youths. Have to move clients into quieter rooms for their treatments;
- Spar has now moved further down the road but the youths remain because of Om Sai;
- Gangs, youths, anti-social behaviour – unbearable;
- Have to ask youths to be quiet and get spat at and verbal abuse.
- Pubs are not allowed to serve drunks so why does this not apply to Om Sai as well?
- Have seen older youths go into the store quite clearly drunk, falling all over the place, and come out with more cans;
- Feel the opening of Om Sai have caused problems for my shop;
- Last couple of years have been quite quiet, now awful;
- Not had extent of problems we are now experiencing;
- Feel owners have total disregard for the residents in the area.

Jon Wallsgrove, solicitor representing Mrs Patel, made the following points during his representations:

- Anti-social behaviour, underage sales and potential for proxy sales is the cause of the review;
- Need to sort out facts of the case from hearsay;
- Mrs Patel does not accept that the youths bought the eggs from the store or that Akash gave them. The eggs were stolen;
- Mrs Patel does accept that the youths did throw eggs outside the premises;
- Mrs Patel also accepts that Akash should not have been outside the premises and that this was behaviour was not promoting the licensing objectives;
- Akash did not encourage the youths and did not give them the eggs;
- Mrs Patel does agree that they should have called the Police and reported the incident;
- Have had anti-social behaviour and racial abuse;
- Akash foolishly tried to go along with the incident rather than challenge the situation;
- Mrs Patel agreed that Akash did not look stressed by what was happening;
- Mrs Patel did give Akash 'a telling off' after the incident and told him the Police should have been called;
- Mrs Patel stressed that Mr Patel did not give the girls the cans of Fosters (referring to the CCTV footage previously seen). They only purchased the chewing gum;
- Need to look at the quality of evidence submitted. The bus driver is not here today;
- Perhaps his view had been obscured;
- The Police did not take a statement from the girls and yet they knew who they were;
- If persistent and deliberate selling of alcohol to underage girls then where is the evidence?
- Do not agree with Craig Copland and his expert view with regards to the number of refusals;

- Mrs Patel needs to have a closer relationship with the Police and have the confidence to ring them;
- Revoking the premises licence will finish the shop. Only just making ends meet now;
- Expect to build trade over the first year;
- The anti-social behaviour is affecting their trade and have been fearful of repercussions;
- Mrs Patel wants the opportunity to show Trading Standards and the Police that she will get this right;
- Haven't seen any evidence of how the Police are trying to address the anti-social behaviour;
- Mrs Patel apologies for not attending the 'action plan' meeting and realises now that the meeting was 'crunch' time;
- Mrs Patel did not know about the action plan which the Police proposed to suggest at that meeting and has never seen the document;
- The Police at that time thought there was hope to work with Mrs Patel to address those issues;
- Mrs Patel knows that if conditions are imposed today and they do not adhere to them then a further review is inevitable;
- If the premises licence is revoked, the store will struggle and do not feel that it would address the anti-social behaviour;
- Would revoking the licence have an impact on the youths who hang around outside the premises?
- Mrs Patel did not realise her responsibility in terms of ringing the Police;
- Mrs Patel admits that she buried her head in the sand and should have dealt with it by calling the Police;
- Ignoring the situation is not the solution;
- Om Sai is not the magnet causing the anti-social behaviour, it is part of the jigsaw. Mrs Patel realises this;
- Would ask that if conditions are imposed that they are deemed to be necessary and proportionate;
- Allow the premises to operate as is.
- With regards to the conditions as suggested by Trading Standards on page 15 of the report, Jon Wallsgrove made the following comments:

Condition	Comment
1	Not necessary and proportionate and would affect the business.
2	Not necessary. Mr Patel could become the DPS as he has undertaken the NCPLH course.
3	Agree.
4	Agree.
5	Agree.
6	Will continue to be kept.
7	Not worthwhile and will not combat the problem.
8	Would follow if imposed.
9	Agree.
10	Agree.
11	Would ask to be removed.

- Anti-social behaviour there before Om Sai opened up;
- Interested parties made representations about anti-social behaviour on the original application;
- Mrs Patel has agreed to engage in a different manner now;
- The only incident up for questioning is the egg-throwing one;
- Cannot expect the Patels to have a constant eye on activity outside the store when they are working;
- Do not know the motivation behind the 'key' witness;
- Please allow the premises to continue to trade.

DECISION: that the application for the review of a premises licence at Om Sai, 139 Queen Street, Portsmouth, PO1 3HY was considered and the following conditions were imposed:

- To remove the Designated Premises Supervisor ("DPS") as she is not capable of running the premises on a day to day basis;
- To suspend the licence for a period of 3 months to give the premises licence holder the opportunity to recruit a new DPS and to address training issues of all staff.
- To attach the following additional conditions as suggested by Craig Copland on page 15 of the report and agreed by the premises licence holder:
 - Operate challenge 25 including prominent display in store windows and proper use of I.D checks.
 - Operate ProxyWatch scheme and promote to customers, including window display and till cards. Designated Premises Supervisor to phone or email any suspected activity in store vicinity to Trading Standards ProxyWatch on a weekly basis.
 - To keep and use refusals log to record attempted underage sales, proxy sales and anti-social behaviour near store.
 - That no sale of alcohol take place unless all containers are labelled with U.V stickers with name and address of store of origin.
 - No multi packs to be split and sold as singles.
 - No sale of alcohol shall be made unless a personal licence holder is present on the premises.

REASONS: the committee had regard to its Statement of Licensing Policy, statutory guidance, the promotion of the licensing objectives and the judgement of the High Court. The committee also had regard to the representations submitted both attached to the report and heard at the meeting. The committee agreed that an underage sale did take place on 2/11/09. They accepted the bus driver's evidence and could see no reason why he would make a statement which was not true and he signed a statement of truth. PCSO Rolfe identified the 2 girls involved as aged 15 and 16. However the committee did accept that it was not clear from the video that Mr Patel carried cans outside the premises or that he handed them to the girls outside. There were two previous underage sales which are accepted by the premises licence holder. The training of staff has been totally inadequate. Much help has been offered by Trading Standards but not always accepted. What training was done is not documented. Little importance has been attached to training and Mrs Patel had no real understanding of who had to be

trained and did not realise her family who worked in the shop were staff. There is therefore a clear breach of the condition relating to training. The refusals log has not been maintained. The committee accept Craig Copland's view as an experienced officer and are satisfied that less than one entry per week is not realistic. Mrs Patel admits it may not have been completed on every occasion, which is a breach of the condition. The committee accept there is anti-social behaviour in the general area not all of which is attributable to Om Sai and is out of their control. However the video of the egg-throwing incident clearly shows neither Mrs Patel or her son reacted to the incident by calling the Police. The committee also accepted the evidence from Mr Thurston on behalf of PAG and Mrs Davis that anti-social behaviour in the vicinity of Om Sai has increased since they opened. The human rights of the local residents were taken into account, specifically Article 8 in relation to the right of a private and family life and that of the applicant under Article 1 of the First Protocol in that the interference with the licence which constitutes property is justified. The committee believe the conditions to be both necessary and proportionate to address the problems occurring at the premises.

The Deputy Licensing Manager advised that all parties have the right of appeal to the Magistrates' Court within 21 days of the Notice of Decision being received by them.

The meeting concluded at 1.45pm.

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Signed by the chair of the meeting.