



SUPPLEMENTARY AGENDA

LICENSING SUB-COMMITTEE

MONDAY, 28 NOVEMBER 2022 AT 3PM

COUNCIL CHAMBER, SECOND FLOOR, THE GUILDHALL, PORTSMOUTH

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Membership

Councillor Scott Payter-Harris

Councillor Kimberly Barrett

Councillor Linda Symes

(NB This supplementary agenda should be retained for future reference with the main agenda and minutes of this meeting).

SUPPLEMENTARY AGENDA

- 3 **Licensing Act 2003 - Review Application - Danny Mart, 2 Ludlow Road, Paulsgrove, Portsmouth (Pages 3 - 10)**

The representation submitted on behalf of Nandakumar Vayanaperumal, the Premises Licence Holder is attached.

28 November 2022

Agenda Item 3

Representations on behalf of Nandakumar Vayanaperumal the Premises Licence Holder for Danny Mart

In the matter of an application to review the Premises Licence brought by Hampshire Constabulary

Introduction

1. I refer to our client as Nanda throughout these representations. At the outset Nanda would like to offer his apology to the Committee and to the Police that this application has been necessary. He has already written personal apologies to Officers Rackham and Hambrook. He would like to apologise to the young girl and her parents for any distress caused in not having the available CCTV.
2. It is important however, for the Committee to have a full picture of his conduct as a Premises Licence Holder, given the cause of the review we identify below. We intend to show that Nanda is a responsible licence holder who does work in partnership with the police and that it would be wholly unreasonable and disproportionate to revoke his premises licence.
3. Taking account of the matters set out below we respectfully invite the Committee to issue a warning to Nanda to reinforce his commitment to that Partnership.

The cause of the Review

4. The guidance issued by the Secretary of State under section 182 of the Licensing Act makes it clear that the “cause of the review” should be established and that any measures taken should only be those which are directed at addressing that cause and no more than is appropriate and proportionate (paragraph 11.20).
5. I respectfully invite the Committee to accept that the cause of the review is the lack of confidence the Police Licensing Officer has in Nanda working in Partnership with the Police, and a fear that assistance may not be given to the police when investigating crime. From the application submitted, accompanying evidence, correspondence following receipt of the application between us and the police and a meeting with them, we cannot establish any other possible cause.
6. In correspondence with PC Pollard during the consultation period he accepted that the fact the CCTV was not recording for 31 days was not, in his view, a reason to revoke the premises licence. His email dated 12th October 2022 states: “you say the review outcome is entirely disproportionate. If the concerns

from police were solely related to the CCTV system recording too few days, in line with the wording of the condition, then I would agree.” He stated it was Nanda’s attitude that caused concern and his “unwillingness to engage with police.” This was repeated at a meeting between PC Pollard, Nanda and me, on 3rd November.

7. I will seek to persuade the Committee that this is most certainly not the case and as there is credible evidence that Nanda has indeed assisted and cooperated with Police on many occasions. It is important also to hear Nanda’s account of what happened with the specific allegation of the 12th of July.

Background

8. Nanda has owned and been the Premises Licence Holder at Danny Mart at Ludlow Road for over a decade. He also owns and is the Premises Licence Holder at Danny Mart at Wingfield Street, Portsmouth, again for over a decade. He has previously held two other premises licences in Portsmouth for shops which have since been disposed of. He is a personal licence holder and the DPS of both stores which are currently trading. He divides his time between the two premises and has excellent staff to assist in their management. In operating those 4 licensed premises there have been no issues of concern raised by any responsible authority in relation to the sale of alcohol or promotion of licensing objectives other than the 2 incidents referred to in the review.

Incident 2016

9. Nanda accepts that he should have been more responsive in the first instance. It was not due to an unwillingness to assist the police but giving priority to work and family pressures. He did provide all the information required and CCTV footage and did take on board the advice given.
10. Notably that incident did not involve the sale of alcohol and only indirectly involved the premises. It involved the use of a stolen credit card in the shop. There is nothing the store could have done to prevent its use in that way. It is disappointing that in the public realm social media posts imply that the shop is responsible for the fraud.
11. Subsequently and prior to this review Nanda has been asked to provide CCTV in relation to a number of matters and has always co-operated and provided the relevant CCTV footage. The following is a list of dates when CCTV has been provided in the last 2 years (there have been more pre-2020):

25th September 2020

13th October 2020

17th November 2020

16th August 2021

30th August 2021

2nd October 2021

5th January 2022

26th February 2022

14th September 2022

Notably none relate to the sale of alcohol at the premises and there have been no other requests for CCTV where it has not been provided.

12. Following the issue of these review proceedings Nanda has also been requested to provide CCTV on two other occasions which he has provided.
13. Another example of his commitment to working with the police, although unconnected to the shop, is when Nanda assisted the police in relation to a drugs investigation and Police officers were using home to carry out surveillance.
14. Given the background of how long he has been a licence holder in Portsmouth and the above assistance given to police, this is credible evidence to demonstrate that Nanda is a responsible licence holder and can work in partnership with the police.
15. From all those investigations above Nanda has not been advised by the Police of any successful prosecutions or action taken by the police. Notably he had a serious burglary at the shop where a considerable amount of tobacco was stolen. He has been extremely frustrated by the apparent lack of action taken by the police when investigating incidents from his store. That frustration is not unreasonable and I know is shared by many retailers and not just in the City of Portsmouth. His comments to the police officers regarding the lack of assistance from the police was born out of this frustration. It was not an abrogation of his responsibilities, there was never any intention not to assist, but a comment in the heat of the moment. He will always assist the police in their investigation.

Incident 12th July

16. It is accepted by Nanda that the CCTV at that time was only recording for 14 days and not the 31 days required by the Licence condition. He had upgraded his CCTV system in 2021 and the installer of the

system set the recording to 14 days which achieved the best quality images. The system was capable of recording for 31 days. Nanda accepts it was his responsibility to have checked the system.

17. Regarding the incident itself Nanda did not become aware of the full nature of that allegation until his conversation with Pete Rackham on the 11th of August.
18. PCSO Hambrook visited the premises on the 16th of July, 4 days after the serious allegation had been made, but did not make any effort to contact Nanda on that day. She visited again on the 22nd of July on two occasions and again on neither occasion did she try and contact Nanda. The officer states that she tried to call his mobile number but Nanda states that no voicemail message was ever left and that he very rarely, if ever, accepts a call from an unrecognised number.
19. The member of staff working on those occasions was the alleged defendant and she did not inform Nanda that the police had visited the premises. The first conversation the Police had with Nanda was on the 28th of July. Nanda was informed that an incident had occurred at the shop on the 12th of July involving a member of his staff and that the officer wanted to view the CCTV. At this stage Nanda was not advised that it was an alleged assault on a young girl nor that photographs had been taken.
20. Nanda had been informed by a female member of staff a couple of weeks prior to this telephone conversation that she had caught a young girl stealing from the premises and had blocked her exit from the premises and asked the child to put the sweets back. When the officer mentioned an incident Nanda thought this must have been the incident she was referring to. There was no urgency conveyed in the officer's request at all.
21. On checking the CCTV, he realised that it was not recording for 31 days and that accordingly he could not provide the footage. The officer then spoke to him a day or two after he had checked the footage, which was the 8th of August. He panicked as he knew he was in breach of his licence condition. He states he was not angry and was not shouting but would agree he was agitated.
22. On speaking to PC Rackham on the 11th of August he advised PC Rackham that there was no CCTV. He accepts he did mention again the fact that the police do not ever get results after he has helped them, and no action ever seems to be taken. However, after PC Rackham reminded him of his obligations Nanda states he apologised. On this call PC Rackham advised him of the full nature of the allegation. Nanda confirmed he had the details of the member of staff and would contact PCSO Hambrook immediately the call ended. Nanda still believed this incident was the same one he had been told about by the member of staff where they had caught a young stealing. He called the officer concerned on the

telephone number she had provided him with. A male colleague answered the telephone, and he provided them with full details of the alleged defendant.

23. The member of Nanda's staff has not been spoken to by the police. However, she is no longer employed at the premises. It is very important to note that there are rumours the member of staff was Nanda's daughter. It is unequivocally not his daughter. There is unequivocally no risk to children from this store retaining the premises licence.
24. I have interviewed that member of staff. It is not necessary in these proceedings for me to give an account of what she told me. I did however, provide the police with a summary of what had been said and again provided them with her full personal details. I am still waiting to hear whether they have now interviewed her. Even without the CCTV the investigation into the alleged offence could have easily been pursued by interviewing her. There has been considerable unfair criticism and abuse on social media over the incident.

Letters of Support

25. Notably there are numerous letters of support for Nanda to keep his licence. Most include comment on how important this shop is to the Local Community. Indeed, the parents and the young girl continue to shop there. It is not necessary to repeat the comments here but would ask the Committee to attach great weight to them as it is most unusual to get letters of support in any licensing application.
26. As a convenience store it is important to be able to sell core convenience products such as milk, bread, food, tobacco, confectionery and alcohol. If alcohol were removed from this store, it is highly likely customers would shop elsewhere so they could get the "one stop shop." There would therefore be significant financial loss and when this very small corner shop operates on very tight profit margins revocation of the licence is virtually certain to lead to the loss of the business. That will not only have an impact on the local community as set out in their letters of support but would also lead to the loss of employment.

Steps taken following the review

27. Given the issue with the CCTV Nanda upgraded the CCTV system to ensure the highest quality images were available for 31 days which was completed on the 7th of October. Since then to guard against the

malfunction of the CCTV and facing the threat of a review again he has installed a secondary system which was completed on the 4th of November. Both systems work independently of each other. Both systems are linked to his mobile telephone giving him instant access to live feed and also the ability to download recordings. This should make access to CCTV footage for the police much more straight forward.

28. Nanda has had business cards printed with his contact details including mobile number and email address for staff to hand to any officer of a responsible authority who visits the shop when he is not there. He has also retrained staff to ensure that whenever an officer of a responsible authority attends the shop this is logged and they inform him immediately.

Conclusion

29. None of what has been set out in the police review has any connection with the licensable activity of the sale of alcohol. It is a highly unusual review for that purpose. The police say there is a link to the licensing objective of crime and disorder. Given the 12th of July incident is an alleged crime, I can understand why they say that but should that really be a matter at the forefront of a Licensing Committee's mind? Is it not the function of a Licensing committee to consider the licence in the context of the licensable activities it permits and how those are managed by the licence holder?
30. There is a very broad list of measures you could take, and the police are asking for the licence to be revoked. I certainly agree with them that there are no suitable conditions that could be imposed to address the cause of the review: which I have identified as the lack of trust in Nanda to work with the police.
31. I respectfully submit that given all the matters set out above the most appropriate and proportionate outcome is to issue Nanda with a warning. Revocation is wholly inappropriate and disproportionate. The Police accept that the fact CCTV was not recording for 31 days is not a ground to revoke the licence. I would respectfully suggest that the frustration exhibited by Nanda in his conversations with the police was not entirely unreasonable given the lack of police action in numerous other matters, but that expression of frustration has absolutely not reached a level where he would not assist them and work in partnership. He reassures this Committee he will continue to work closely with them as he has done numerous times over two decades.

Jon Wallsgrove

John Gaunt & Partners

Solicitor for Nandakumar Vayanaperumal

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