

## **LICENSING SUB-COMMITTEE**

MINUTES OF A MEETING of the Licensing Sub-committee held on Wednesday, 25 April 2018 at 2.00 pm in the executive meeting room, floor 3 of the Guildhall, Portsmouth

### **Present**

Councillor Lee Mason (in the Chair)

Councillors    Gemma New  
                     Steve Pitt

### **31. Appointment of Chair**

Councillor Lee Mason was appointed as chair for this meeting.

### **32. Declaration of Members' Interests**

There were no declarations of members' interests.

### **33. Licensing Act 2003 - Review Application - Seven Days, 37 Osborne Road, Southsea PO5 3LR**

The simplified procedure for review hearings was followed. Mr Stone, Licensing Officer, had provided the panel members and licence holder Ms Midde with a private list of the redacted names of staff members so that these would not be referred to in full during the public hearing. He also gave them a list of the 3 personal licence holders which had been successfully been applied for and granted during March and April 2018.

All parties present introduced themselves.

#### The Council's Case

Derek Stone, Principal Licensing Officer, introduced his report which included at Appendix A the review application by Trading Standards. Appendix C set out the previous hearing which was included as evidence as this showed the conditions that had been put in place, and he stressed that Ms Midde had no association with the previous licence. He reported that the new DPS was Simon Bennett, who had been put in place since the review had been lodged. The evidence from the other responsible authorities would be presented as part of the hearing. The one supporter of the premises licence holder had been invited to attend the hearing but had declined. Mr Stone read out the list of licensing objectives and the relevant guidance that should be considered by the committee.

There was the opportunity for questions to Mr Stone by the panel members and by Ms Midde (as the respondent) but no questions were raised at this point.

### Responsible Authorities' Cases

- i) Tracey Greaves, Trading Standards presented her case, as set out in Appendix A, the review application. She outlined how Trading Standards officers had tried to engage with the premises since December 2016 and had found it to be poorly run, with a lot of officer time spent trying to get compliance. She requested that the panel revoke the premises licence.  
  
There was the opportunity for questions to Ms Greaves by the panel members and Ms Midde but no questions were raised at this point.
- ii) Rob Anderson-Weaver, Public Health, presented his case (referred to within Appendix D), who stressed the nature of Osborne Road serving the seafront area which hosted big events for the city. The other licensed premises in that area were found to be compliant but at Seven Days there had been no evidence of alcohol purchase refusals during the major events. Public health officers had found Ms Midde and her staff to be obstructive and negligent over a 2 year period. He requested that the panel revoke the premises licence. No questions were raised.
- iii) PC Jason Pearce presented the case of the Chief Officer of Police (referred to within Appendix D). Their experience was similar to that of Trading Standards, showing a similar pattern. The DPS Ms Midde had been issued a fixed penalty notice in 2015 for a failed test purchase. PC Rackham had worked with Ms Midde and had given her the tools to run a compliant premises but checks had shown that there was a continuous lack of compliance and disregard for the Licensing Act. He therefore felt there was an overwhelming case to revoke the premises licence. No questions were raised.
- iv) Nickii Humphreys, The Licensing Manager, presented her case for the Licensing Authority (referred to within Appendix D), which she explained documented the extensive level of engagement sought with the licence holder which had not been successful. There had been delays by Ms Midde in dealing with raised concerns. The Licensing Authority was instigating formal proceedings for the breaches. The responsible authorities had sought to give Ms Midde early warning of their concerns but she had failed to respond adequately. The review procedure had been the last resort. Seven Days was not totally reliant on the sale of alcohol, and Ms Midde had been incapable of selling alcohol in a responsible way, so the premises licence should be revoked. No questions were asked of Ms Humphreys.

### Case for the Respondent

Ms Midde then addressed the committee to present her case, and she apologised that the licence review had been necessary. She explained that

she had been unwell and so there were times when she had been absent. This had led to delays but matters had not been forgotten.

Ms Midde explained that there had been a 3 week period during which alcohol was not sold (March-April 2018) to allow staff to be fully trained and a new and experienced DPS had been appointed. The refusal log was now checked regularly. The CCTV was now secured and the appropriate staff had personal licences. She explained that it was hard to recruit staff with a personal licence.

Ms Midde asked that if conditions were imposed they would be appropriate and explained that staff had undertaken refresher training with an action plan. If the premises licence was lost, even temporarily, it would affect her business as there were 2 other off-licences nearby that customers would go to. She stated that the store was fully compliant now. As a small business it was a burden to have the personal licence holder on site all the time and asked that this condition be removed. Also having 2 people on site after 10pm made it hard to recruit staff for the extra hour until 11pm (Sunday to Thursday). She asked that the committee allow her to continue to trade.

Questions were raised regarding the late weekend trading hours. Ms Midde stated that closing time depended on how busy they were, sometimes closing at midnight rather than the later licenced closing hour (up to 2am). Ms Midde wished to add further to her case to say that when she took over she was unaware that she could apply for a new licence, and she had since been trying to put things in place. She was not ignoring the conditions that were from the previous owner, and had not been negligent.

No further questions were asked by Licensing or the Relevant Authorities.

### Summing Up

Mr Stone explained that there was the opportunity of appeal if a revocation was decided.

Ms Midde stated that the breaches had been of the conditions from the previous owner and she had since tried to put measures in place. It was hard to get a personal licence holder in place all the time, and it cost £300 for the course, and they can then go to work in pubs and bars. She herself could not be there all the time as she needed to go to the bank and 'cash and carry'. So she had appointed Simon (as DPS). The shop usually closed at 11pm (except weekends when they could close up to 2am) and it was hard to get people to work these hours. Customers were asked for ID by staff; the problems had happened with 2 new staff which had been mistakes rather than a continuous pattern and she apologised for this which would not be repeated.

The Chair explained that as everyone had had their opportunity to have their say the panel members would meet privately to deliberate before the decision was announced.

After the private deliberations Tracy Blair, Legal Adviser to the committee, announced the decision.

### Decision and Reasons

The Committee heard the representations of the licence holder and the relevant Responsible Authorities. In addition the committee considered all the papers put before it along with the annexes attached to each document and the written representations of a local resident.

The Responsible Authority, Trading Standards, asserted that the licensee failed in the administration of the licence and failed to promote the licensing objections with particular regard to the licensing objective of protection of children from harm. This assertion was supported by way of representations being made by the Licensing Authority and from Public Health and the Police. In addition, the Police, Public Health and the Licensing Authority added prevention of crime and disorder as a licensing objective that was not being promoted.

The Committee look to all the Responsible Authorities but in this case Trading Standards for guidance and assistance in determining the effect of a licensing activity. This said, in terms of all licensing objectives, the committee should pay regard as it must to the statutory guidance under section 182 of the Licensing Act 2003, and in particular to paragraphs 11.18, 11.19, 11.20, 11.21 and 11.23.

The committee took a similar view with respect to the representations made by the Licensing Department, Public Health and Police and noted the particular recommendations of these Responsible Authorities which relate to revocation of the licence.

The above having been said, the Committee balanced within its consideration all representations made by the licence holder and noted her apologies, ill-health and acceptance of delays. The Committee also took note of the licence holder's evidence that if she loses the premises licence, she believes she will lose the business.

A key function of the committee is to review the licences that are referred to it by the relevant Responsible Authorities and consider through that process each case upon its own facts and merits. The committee found the following as being established upon a balance of probability:

1. The committee accepted as a fact that the current licence holder became the owner and licence holder of the premises in July 2015. The premises at that time was trading as Osborne Wines and as a result of a police instigated review in January 2015, a number of additional and enhanced conditions were attached to the licence. Whilst the events leading to this previous review are not relevant to the current application, the committee took note of these additional conditions but the key focus was the evidence from 2015 onwards.

2. The committee found that the licence holder did breach the licence conditions with two failed test purchases as of 14.07.2017 and 29.09.2017 and has an extremely serious and extensive history of breaches of the premises licence conditions which have continued almost to date and include long periods of time when no licence holder has been on the premises whilst alcohol has been sold. The committee on balance took the view that the above was evidence of a continuing theme of failure to understand and engage with the Responsible Authorities and additionally to promote the licensing objectives in a consistent and well-managed way.
3. The committee noted that the issues of staff training, refusals log and CCTV had been addressed and that all staff have now obtained personal licences and a new DPS is in place. This said, the concerning matter was that the approach of the licence holder was to only approach these matters now rather than during the subsistence of the current licence and despite the very high level of advice and support provided.

The Committee note and took account that the licence holder's human rights are engaged and that any interference with these must be necessary and proportionate.

#### Decision

Whilst the licence holder had put forward a range of assurances and comments in an attempt to assure the committee, having considered the factual evidence produced by Trading Standards when coupled with additional comments from the Responsible Authorities and having reviewed all aspects of the case, on balance, and having paid due regard to all the circumstances of the case, the committee's decision was to:

**Revoke the premises licence in view of the failure of the DPS and licence holder to operate the premises in accordance with the licence requirements, licensing objectives and Portsmouth's licensing policy over a long period of time from 2015 to date, particularly in light of the high level of support and advice given by all the Responsible Authorities and particularly Trading Standards.**

It is only through this course of action that the relevant licensing objective(s) will be promoted. The committee had in particular considered that the above was appropriate and proportionate and had looked at what the guidance states at paragraph 11:23 but the Committee's view was that these premises have been trading irresponsibly for a number of years and there is no evidence that the licence holder is able to run a business which promotes the licensing objectives, in particular the prevention of crime and disorder or the protection of children from harm.

The licence holder has the right to appeal this decision.

The meeting concluded at 3.21 pm.

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Councillor Lee Mason  
Chair