

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Tuesday, 7 August 2018 at 2pm in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillor David Fuller (in the Chair)
Hannah Hockaday
Scott Payter-Harris

45. Appointment of Chair.

Councillor David Fuller was appointed Chair.

46. Declarations of Interests.

There were no declarations of interests.

47. Exclusion of Press and Public.

The Legal Advisor gave advice about holding the hearing in exempt session and informed Mr Lewis that if it were held in open session, his personal details would be made public.

Mr Lewis said that he would prefer the hearing to be held in open session.

DECISION

The hearing would be held in open session.

48. Licensing Act 2003 - Consideration of a Personal Licence

The Licensing Officer introduced his report.

In response to questions from members, he clarified the following points:

- The Magistrates Court had failed to engage with the Licensing Department. The latter lodged a formal complaint to obtain the information that had been requested and visited the court to speak to court officers. The Licensing Officer was told that Mr Lewis had not informed them that he was in possession of a personal licence.
- Mr Lewis had emailed the Licensing Department on 12 February 2018 about the convictions recorded against him.
- Mr Lewis and the Licensing Department exchanged various emails regarding his visits to the office for interview, to update his address (at the end of April) and regarding this hearing. There had been an ongoing dialogue between them.

Mr Lewis had no questions for the Licensing Officer

Mr Lewis asked the committee to consider the following points:

- This is a unique case due to the extreme circumstances around the eviction.

- The police had been told of the eviction beforehand which explains why so many were available to attend; 19 officers and 4 sniffer dogs.
- He had been under pressure because he had been told many lies by Councillor Donna Jones and the rest of her political party. He had not been told that he would have to leave on that date. He had been assured that he would be given alternative premises on a rolling contract basis.
- He had built his life's dream and had been running the lodge for 17 years without incident.
- He had acted recklessly not violently. He is not a violent man. He had not hit any police officers and was simply protecting a valuable community centre, the city's only cultural hub.
- He did not care if his licence was taken away but he would want it back before he took over the running of the lodge again in a few years' time.
- The fact that the Tories had been ousted was proof that justice would prevail.

In response to questions from members, he explained that:

- The allegations were heard at Brighton Magistrates' Court because Councillor Donna Jones is a magistrate in Portsmouth.
- He had received an order to complete 120 hours of community service and a £200 fine.
- He attended the first session of community service which involved chopping back weeds and trees in Staunton Park. He had to wear a bright vest community payback which he felt was humiliating. Three days after the session (6.5 hours of hard labour) the arthritis in his left elbow aggravated by the work was still painful. The doctor gave him tablets and a certificate declaring him unfit for work for two months. This excused him from doing the community service. His certificate was renewed two months later and he applied to the court to revoke the community service order. The court removed it because it was deemed unworkable and imposed a £300 fine instead. His friends paid the fine for him.
- He had given 70,000 hours of voluntary hours to the city in the past.
- The judge said that he had been reckless rather than violent because he did not hit anyone.
- His premises had been taken away dishonestly; it was normal to react like that.
- He did not appeal the convictions because he felt he had wasted enough time on that and he considered them a badge of honour.
- When running the lodge, he had been on site pretty much every day.
- More than 200 people from all over the world volunteered at the lodge for approximately 1 20,000 hours.
- He had informed his barrister of his personal licence holder status prior to the hearing.
- If he were to be permitted to retain his personal licence, he would respect people who show him respect. He felt it unlikely that this sort of incident would happen again in his lifetime but obviously would act professionally in future.
- In 2014, the Licensing Committee had said it was a well-run establishment. Many people had commented that it was one of the safest and friendliest venues.

- At the time of the conviction, he had many things going on in his life had not been told how quickly he had to inform the Licensing Department of the change in his circumstances.

The Licensing Officer explained that:

- The act states that the Licensing Authority should be informed of changes in circumstances, including convictions as soon as reasonably practicable. Mr Lewis had waited from 27 November 2017 to 12 February 2018.
- The Licensing Department had not said that Mr Lewis had hit anyone. Violent behaviour could include shoving, spitting, pushing and ultimately punching.

In response to a question from the panel, the Legal Advisor clarified that there are varying levels of violence which could be considered assault. You do not have to actually hit someone to be convicted of assault. The fine was at the low end of the tariff that could be imposed; he estimated it to be one on a scale of one to ten.

The Legal Advisor also reminded members that the test was not whether the licence holder was "fit and proper" but whether, on the evidence, the holder could promote and uphold the licensing objectives - particularly the crime and disorder objective.

The Licensing Officer had no questions for Mr Lewis.

In summing up, the Licensing Officer asked the committee to note that:

- Holding a personal licence was a privilege and would be held forever, unless the committee decided otherwise.
- Before being granted a personal licence, the applicant must undergo police checks and training.
- The Licensing Authority expects all responsible authorities to be treated respectfully and honestly by the personal licence holder, the Designated Premises Supervisor and the Manager at any licensed premises. The committee must decide if it is confident that they will be in future.

Mr Lewis reminded the committee that the police had not attended any incidents at the premises in the 17 years he had run it. He is a very passionate, responsible, peaceful and caring person who tries to influence others to also show these qualities.

DECISION

In the matter of the Licensing Act 2003.

In the matter of considering the personal licence LAPERS/9923 - Mr Mark Edmund William Lewis.

Upon hearing representations and considering section 100A of the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985, the committee decided that this matter could be heard in public. The licence holder confirming his agreement and the

committee having considered that on balance it was in the public interest that the matter be dealt with by way of a public hearing.

This matter had been referred to the committee by the relevant Responsible Authority, Portsmouth City council's Licensing Department which sought a determination before the committee as to the appropriateness of Mr Mark Edmund William Lewis holding a personal licence. Portsmouth City Council's Licensing Department had granted the personal licence on 12 February 2008.

The committee heard and read the relevant representations of the Licensing Authority the relevant Responsible Authority and was advised as to the range of powers available under the 2003 Act. In addition the committee had been advised as to the appropriate Statutory Guidance. The committee had been advised that they must have regard to any representations made by the licence holder and that his Human Rights were engaged.

The committee, having considered the evidence adduced by the Licensing Authority and in particular in support of the contention that the current application for a review of the personal licence is consistent with the promotion of the licensing objective of the prevention of crime and disorder and public safety, were engaged and had a discretion to either: revoke or suspend for a maximum of 6 months or make no order as to sanction.

When looking at this case, the committee approached the consideration on the basis that all cases are decided upon their own facts.

The committee having looked at and heard the evidence, found that on balance of probabilities the following facts had been established and in having been so, established this committee could act as stated above in pursuance of the LA 2003.

- 1. It is a matter of fact that the Personal Licence Holder was convicted at trial of two offences of assaulting police in the execution of their duty and contrary to section 89(1) of the Police Act 1996.**
- 2. It is a matter of fact that the original sentence was changed to delete the requirement that the Personal Licence Holder undertake 120 hours of unpaid work with the next 12 months. The reasoning for deletion was that the CPS accepted that the sentence had become unworkable.**
- 3. It was established that the Personal Licence Holder had not informed the court at trial that he was a Personal Licence Holder and that the court did not as they had power to do either revoke or suspend the personal licence held by Mr Lewis. This committee was entitled to look at all matters afresh and was not bound by the Magistrates Court; this committee being engaged in considering the promotion of the licensing objectives.**
- 4. The committee, on balance felt they must consider that a relevant offence had occurred and that despite the comment of the Personal**

Licence Holder need to promote the licensing objective of preventing crime and disorder.

Having considered all matters and having looked at the relevant elements of the Portsmouth City Council Guidance and section 132A of the Licensing Act 2003, the committee was entitled to exercise their discretion. The committee had been directed to look at section 132A (7) a-c and was of the view that given the nature of the offences and the need to promote the licensing objectives that it was fair and proportionate to revoke the personal licence held by Mr Lewis.

The committee considered Mr Lewis' Human Rights and in particular his right to a fair hearing and balanced that against the relevant licensing objective of prevention of crime and disorder.

The Personal Licence Holder would be informed of his right to appeal.

The meeting concluded at 3.35pm.

Councillor David Fuller
Chair