

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Tuesday, 18 December 2018 at 10am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Tom Coles
Leo Madden
Gemma New

83. Appointment of Chair.

Councillor Gemma New was appointed Chair.

84. Declarations of Members' Interests.

No interests were declared.

85. Licensing Act 2003 - Brewhouse & Kitchen, 51 Southsea Terrace, Southsea PO5 3AU

Present

Niall McCain, Solicitor
Mark McFadyen, Operations Director
Matt Chapman, Designated Premises Supervisor.

The Principal Licensing Officer introduced the report and added that he had visited the premises and seen the alterations that had been made. He drew members' attention to the supplementary information from the applicant that had been circulated to members. The applicant had written to all the residents who had made representations to explain the application and two had subsequently withdrawn their objections.

It was noted that three written representations had been omitted from the pack. These were circulated to members to read.

There were no questions from the applicants.

Niall McCain included the following points in his representation:

- The following changes to the layout had been made:
 - The women's' toilets are with the others, which enabled the kitchen to be enlarged so that the food order could be extended.
 - The brass vats are on display.
 - There is a fire pit with tables and chairs around it.
 - Outside there is an extensive decking area and beach huts which have heaters.
- Planning issues were not relevant to this hearing.
- The statutory authorities did not make any representations.
- There was some understandable confusion from residents regarding this application. He had contacted those who had submitted objections to explain that they were not seeking to increase the hours. Two then

withdrew their objection and another Mr Ritchie sent him a substantive response.

- The huts have soundproofing.
- He proffered the following conditions:
 1. No drinks be taken outside after 11pm Sunday to Thursday and midnight on Fridays and Saturdays.
 2. The garden policy be incorporated onto the licence via condition.
 3. The garden policy be displayed prominently so patrons can see the obligations clearly.
- The premise is not in a Cumulative Impact Zone.
- The residents are between 50 and 100m away from the premise.
- Temporary Event Notices have been used in the past and no problems arose.

In response to questions from members, he explained that:

- Mr Ritchie had maintained his objection regarding the use of heaters because of concerns about possible smells and pollution. Mr McCain reassured members that the kitchen had been fitted with new equipment including an extractor fan and the heaters are basic electric ones and so there would be no smells.
- They do not expect to have an increased footfall, so there would be no impact on parking in the area.

The Principal Licensing Officer added that he had visited the premise and had no concerns. He reminded members that the responsible authorities had not raised any concerns either.

Mr McCain had nothing to add to his representation.

DECISION

In the matter of the Licensing Act 2003.

In the matter of the application for variation of the current premises licence - Brewhouse and Kitchen, 51 Southsea Terrace, Southsea PO5 3AU.

The committee heard the representations of the applicant together with the detailed representations from the applicant's legal representative and considered all the papers put before them along with the annexes attached to each document. Additionally, the committee viewed all written objections produced today.

The Responsible Authorities had made no assertions or comments with respect to the application.

This committee was seized of this application by reason of there having been a range of formal complaints received by the Licensing Authority from local residents - the consequence of that fact being that the committee would determine this application according to the facts and upon merit each case being looked at on an individual basis.

The alleged failing upon the part of the applicant was that the application should be refused as there was no basis for it to be concluded that the relevant licensing objectives were being promoted. The theme of the written representations was that a grant of the application would lead to greater risk of there being a public nuisance along with there being a failure to prevent crime and disorder and a potential issue as to public safety. Some of the comments were based upon all of the relevant licensing objectives not being promoted.

The above stated, committee balanced within its consideration all representations made by the applicants through their advocate.

It was felt that whilst many of the representations were clearly highly relevant to the complainants, they failed to establish that the licensing objectives were not being promoted as the potential failings were by and large based upon what 'may happen' as opposed to showing a failure to promote a licensing objective.

It was clear that the current licensing operating schedule adequately promotes all the relevant licensing objectives and that the current application is limited to a re-configuration of the current premise by way of alteration. The question to ask is how such a variation in the current licence has an impact upon any of the relevant licensing objectives.

In considering the application, the committee was mindful of the following and considered that having heard all matters today could conclude that the following facts had been established:

The current position was that the permitted hours of trading were not being utilised and that the application was not one dealing with a change in terms of licensable activity. The application is to amend the premise layout plan.

The applicants had engaged with the complainants to the extent that two had withdrawn their initial complaints.

There were no representations from any of the Responsible Authorities.

Such comments about usage of the garden and the potentiality of the escape of smells from a newly refurbished kitchen were such that the committee on balance was of the view that such current concerns were speculative in nature. Additionally, should incidents arise these could be raised with the appropriate Statutory Agencies, for example Environmental Health or the police.

With respect to this application the committee was satisfied that the applicant had shifted the burden sufficiently to promote by way of their current operating schedule and current future plans the licensing objectives and as such the application was granted subject to the following conditions as proffered being accepted.

1. No drinks shall be taken outside after 11pm Sunday to Thursday and midnight on Fridays and Saturdays.

2. The garden policy be incorporated onto the licence via condition.
3. The garden policy be displayed prominently so patrons can see the obligations clearly.

The committee stated that each application for a licence or a variation should be considered on merit and with due consideration as to the specific facts of each case given.

In addition and for the avoidance of doubt, the committee did consider ability under the 2003 Act to consider a review and how and by whom a review could be initiated and was of the mind that this was an appropriate safety mechanism.

The applicants have a right to appeal this decision.

86. Licensing Act 2003 - Review application - Oxygen, 3 Portsmouth Road, Portsmouth PO6 2SG

Present

Mr Santiapillai, Designated Premises Supervisor and Premises Licence Holder.

Mr Suresh Kanapathi, Licensing Consultant.

Tracey Greaves, Trading Standards Officer (Alcohol & Tobacco Harm Reduction).

PC Pete Rackham, Police Licensing Team.

The Principal Licensing Officer introduced the report

In response to questions from the panel, he explained that these issues had not been previously brought to committee as it had been hoped that they could be addressed with the licence holder.

The licence holder had no questions for the Licensing Officer.

The Trading Standards Officer explained her reasons for submitting the application for review of the licence:

- The licence holder had failed to support the licensing objective regarding the protection of children from harm. Alcohol had been sold on two occasions to sixteen year olds within a period of two months.
- There were concerns regarding staff training. They are given the answers to the questions and do not need to show any understanding.
- The conditions that are already on the licence require staff to ask for proof of age from customers who appear to be under 25.
- Mr Santiapillai admitted that he had employed the member of staff who had failed the first juvenile test purchase in July 2014 without carrying out any prior checks.
- Mr Santiapillai failed the second test purchase.
- She recommended that the licence be revoked.

There were no questions from the panel nor the licence holder.

PC Rackham asked the committee to consider the following points:

- The police have serious concerns that the licensing objectives regarding the protection of children from harm and prevention of crime and disorder are not being upheld.
- There has been a persistent sale of alcohol to children. This shows that the issues raised by Trading Standards are not one-off incidents due to a unique set of circumstances. The licence holder has failed to show due diligence in promoting the licensing objectives.
- The Fishers News shop was the same premises and had the same business model as Oxygen. The name changed when Mr Santiapillai took over. He was the owner, Designated Premises Supervisor and Personal Licence Holder there.
- In July 2014 a member of staff failed a test purchase and a £90 fine was issued. He was working alone in the shop and it is the police's view that he did not have the language skills to carry out the challenge 25 policy.
- There were no training documents in place.
- Early in 2015 an application for a premises licence was granted for the Portsmouth Road Store with various conditions attached including stipulations regarding staff training documents.
- On a visit to the premises in April 2016, Mr Lee Principal Licensing Officer noted a number of licensing breaches. Mr Santiapillai was later convicted of four offences at court.
- Following a further juvenile test purchase failure in February 2017, the police provided engagement and Mr Santiapillai said he was sending staff on training courses.
- In July 2018 information was received regarding minors being sold alcohol at the premises. This information was passed to Trading Standards.
- Over the last four years the police and other responsible authorities had engaged with Mr Santiapillai but there is still a culture of selling alcohol to children.
- There are also concerns regarding his employment practices. He said that he did not know the member of staff who had failed the test purchase in July 2014. This shows a level of incompetence and at worst indicates potential modern slavery offences. However, there is no evidence of this.
- He sold alcohol to a child. He is not capable of promoting the licensing objectives particularly regarding the protection of children and the prevention of crime and disorder.
- The removal of Mr Santiapillai as the DPS would be a paper exercise only and the suspension of the premises licence would be ineffective as he has already had four years to address these issues. There would be no point in adding any further conditions to the licence as the current ones have not been complied with.
- He asked that members consider revoking the licence.

In response to questions from members, he explained that:

- The ethos is to work with businesses and licensed premises operators.
- PC Pierce felt that the training records had been written in the same handwriting which indicates that a number of members of staff had their training records written for them. When asked about this, Mr Santiapillai had replied that he had wanted to ensure that it all looks good.

In response to questions from the Licensing Consultant, he explained that:

- There had been more than two test purchase failures.
- Although Mr Santiapillai had said that the problems had been resolved, the same ones happened again and he was convicted of breaches.
- The police have concerns about the employment practices not just the test purchase failures. He has worked with the HMRC regarding the member of staff who first failed the test purchase.
- Mr Santiapillai did co-operate regarding the CCTV training but the sale of alcohol to children is more important.
- He agreed that there had been no breaches re: CCTV since 2016.
- Over four years, Mr Santiapilla had been provided with support and advice regarding compliance with his licence conditions, not selling alcohol to children and operation Challenge 25.

Mr Suresh Kanapathi asked members to note that:

- Mr Santiapillai had worked in the retail industry since 2008 and took over this premises in 2013.
- It was very challenging and he relied on new staff to teach themselves or learn from other staff. He had overlooked the procedures in 2015 and was punished. Since then, Mr Kanapathi had identified the weaknesses of the premises and Mr Santiapillai.
- Mr Santiapillai had given the HMRC the necessary employment information and VAT stuff. He had very good practice in that sense and it was not fair to say that he employed illegal workers.
- He had no intention of selling alcohol to children and did not lose his licence intentionally.
- Mr Kanapathi arrived on 26 October and trained all the staff. He found the original training programme not really powerful enough. The staff, including Mr Santiapillai had to rely on their own judgement. It was a failure that the challenge 25 policy was not being followed. He informed them that this was not acceptable.
- An external trainer was required to oversee the staff training.
- It is not that Mr Santiapillai does not care. He failed in the management of the training.
- The National lottery carried out a successful test purchase.
- Trading Standards was satisfied in the sale of illegal products.
- He recommended that the committee modifies the conditions on the licence to ensure that the management practices and training records are checked every week or month and that the DPS training is carried out every year by an external authority.

Mr Santiapillai added that:

- A friend put him in touch with someone who had previously worked at a Cash & Carry and was looking for two days work in July and would bring a copy of his licence. He worked with this member of staff on 5 July and then went on holiday on 9th. He was away from 9 until 17 July.
- On 15 July the man failed a juvenile test purchase.

- Mr Santiapillai called him on 17 July and was told that he would bring in his documents. He has not been heard of since and does not answer his phone.
- All staff get a pay slip.
- Two days before the test purchase that Mr Santiapillai failed a customer had stolen some beer. When the test purchaser was in the shop, he had thought he was a thief. It was only him in the shop. The customer had beer. Mr Santiapillai asked him what he was looking for. The customer said he was looking for beans and so was shown where they were. He paid cash. Mr Santiapillai accepted that he had failed. It was a mistake and he had not intentionally sold alcohol to them.
- For the previous incident, the licensing officer had checked the CCTV and been sent a copy.
- In February there were children hanging around outside and asking people to buy alcohol for them and stealing. He complained to the police about verbal abuse and was racially aggrieved. He received apologies from the children.
- PC Rackham showed him how to use the CCTV.
- He downloaded the staff alcohol training from the internet as he lacked the knowledge to do it himself.
- He had fixed most things since court.
- He had no intention of selling alcohol to children. He understands the consequences to society.
- HMRC had checked many other stuff.
- He would be happy to do anything to keep the business alive. He and four people rely on it.
- He asked the panel to consider adding conditions to the licence regarding employment and training papers which would be available for inspection by the authorities.
- He offered to show the panel the employment records for other staff.

The Legal Advisor informed the panel that there was no need for these to be shown as they could be taken on face value.

In response to questions from the members, he explained that:

- He had retail experience since 2008 and was trained in the Licensing Act 2013.
- He breached the conditions on his licence in 2016. His brother was taking treatment and a friend was running the business but he took responsibility as the Premises Licence Holder.
- He had not given any training regarding the sale of alcohol to the member of staff who was working on 15 July.
- The breaches of his conditions could be due to a lack of knowledge and family issues. He is going through a separation. He was on and off to India and the premises was run by the Manager.
- He had no knowledge of how to train so he made a questionnaire and document that he had downloaded from the internet. He gave the staff the answers and told them to copy them.
- Since 2016 he has kept training records and two members of staff had been sent for training.

- He is trying to have everything that is expected of him.
- It was a pure mistake to sell alcohol to a child. He had been thinking that he was a shoplifter because one had been there two days before. He had focussed on that. He was suspicious of the answer he gave and did not think of other stuff. When Tracey came in he realised his mistake. It was not because he wanted to. He had opened early and was stressed. It was a mistake.
- The Challenge 25 policy is now strictly followed. He offered to send the training programme to the council.
- Two members of staff have been sent to get personal licences. The other two members of staff will receive training at Mr Kanapathi's organisation. He has also had DPS training.

Trading Standards had no questions for the licence holder.

In response to questions from PC Rackham, Mr Kanapathi explained that:

- The committee could appoint someone else as the DPS as Mr Santiapillai has so much responsibility. The DPS would receive yearly training
- The committee was welcome to inspect the training programme.
- Training had been put in place but there was new staff now. He believed what he was doing was correct and is trying to implement new procedures.

Mr Santiapilla added that:

- The police had emailed to say that their only concern was about the CCTV. After the subsequent visit, they were happy with it.
- He employs four members of staff.
- The shop is run by one person at a time. He goes to the cash & carry.

In response to a question from the committee, PC Rackham confirmed that after seeing the training records he had thought that the licence holder would comply with the conditions

Summing Up.

Tracey Greaves asked the committee to note that Mr Santiapilla had presented his reasons for the failed test purchases; he was tired, had worked long hours and had family issues. Mr Kanapathi had said that the sales were not intentional. These are not grounds for mitigation. He has a wider social responsibility for the sale of alcohol. He knows that it is important not to make mistakes particularly within 11 weeks after the first failure.

The Licensing Officer drew the committee's attention to the paragraphs read out earlier regarding the management of the premises.

PC Rackham asked the committee to consider revoking the licence. There was suspicion that Mr Santiapilla was using shady employment processes. The employee had not been heard of since he sold alcohol to a child. No evidence had been offered regarding his employment status in the UK. Despite the relevant authorities had worked hard to resolve the issues, the licensing objectives had been undermined.

Mr Kanapathi invited members to look at how Mr Santiapilla is managing his other matters. The employee vanished because he had made a mistake. They have employment practices. It would be unfair to revoke licence because of a lack of experience. He is now working with the authorities.

Mr Santiapilla assured the committee that he really wanted to save this business and will ensure that this mistake does not happen again. He is happy to step down as DPS. The employment documents for other staff were offered to members.

The Chair declined the offer and said that his statement is taken on face value.

DECISION

In the matter of the Licensing Act 2003.

In the matter of an application for review of a premise licence - Oxygen, 3 Portsmouth Road, Portsmouth PO6 2SG.

The committee heard the representations of the licence holder and owner along with the Relevant Authorities and the Licensing Consultant acting upon behalf of the licence holder. In addition the committee considered all the papers put before it along with the annexes attached to each document.

The Responsible Authority, Trading Standards asserted that the licence holder had failed in the administration of the licence and failed to promote the licensing objectives with particular regard to the licensing objectives of the protection of children from harm. This assertion was supported by way of representations being made by the police who also asserted that the licence holder failed to promote the licensing objective of prevention of crime and disorder.

The committee looks 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 the licensing objectives, the committee should pay regard as it must to the statutory guidance and in particular paragraph 11.18, 11.19, 11.20 and paragraph 11.23. In particular the committee has to consider paragraph 11.22.

The committee took a similar view with respect to the representations made by the police contained in the written representations dated 19 October 2018 at page 78 of the bundle along with the letter from the police dated 1 November 2018 at page 101 of the bundle.

The above stated, the committee balanced within its consideration all representations made by the licence holder through the Licensing Consultant and by way of comments made by those attending today.

In considering the application for review, the committee was mindful of the following facts as having been established upon a balance of

probability and further that it has been specifically taken to the relevant parts of the Statutory Guidance under section 182 of the Licensing Act 2003.

A key function of the committee is to review the licences that are referred by the Relevant Authority(s) and consider through the process each case upon its own facts and merits. The committee found the following established:

1. The committee accepted that the licence holder was granted a licence as of 3 June 2015. The committee found as established that the licence holder received a written warning with respect to material breaches with respect to his licence and additionally that he was summonsed to Portsmouth Magistrates Court where upon he pleaded guilty to 4 offences under the Licensing Act 2003.
2. The current review application stems from 2 failed test purchases one on 15 July 2018 and the second within 3 months on 15 October 2018. The later failure was dealt with by the licence holder as DPS/Premise Licence Holder, in so doing the licensing objective of protecting children from harm was undermined and not promoted. The former failure was dealt with by a member of staff that subsequently left the employ of the current licence holder.
3. The police also submitted evidence with reference to the licence holder's material failings in another premise that should be considered, again the committee was of the view that this was relevant similar fact evidence that whilst having less weight than is lead with respect to the current review application was such that it showed over a period of 4 years that the licence holder had failed to engage appropriately to promote the relevant licensing objectives. The committee was of the balanced view that Mr Santiapillai does not act consistently and within the scope of his licence.
4. The committee found that despite the police and trading standards having worked and engaged with the PLH, he clearly showed a lack of understanding. It was noteworthy that the PLH could not explain his failings specifically with respect to staff training, employment practices and general management.
5. The committee considered the representations as to future plans to cover the failings and considered that these are not clear as yet in place and on balance unlikely to promote any of the licensing objectives.
6. Whist the licence holder put forward a range of detailed comments in an attempt to assuage the committee, having considered the factual evidence produced by Trading Standards when coupled with additional comments produced by the police and having reviewed all aspects of the case on balance and having paid due regard to all the circumstances of the case, the committee was entitled to revoke the licence with immediate effect.

It was only through this course of action that the relevant licensing objective(s) would be maintained. The committee had in particular considered that the above was appropriate and proportionate and had

looked at what the guidance stated at paragraph 11.22 with respect to DPS changes and at 11.23 with regard to sanctions and modifications being appropriate when coming to its decision.

The committee stated that each application for a review should be considered on merit and with due consideration as to the specific facts of each case.

The Responsible Authorities and the Licence Holders have a right to appeal this decision.

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Chair