

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-committee held on Monday, 17 December 2018 at 2.30 pm in the Executive Meeting Room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Jason Fazackarley
Leo Madden
Scott Payter-Harris (in the Chair)

80. Appointment of Chair

Councillor Payter-Harris was duly elected to chair this meeting.

81. Declarations of Members' Interests

There were no declarations of prejudicial or pecuniary interests. Councillor Fazackarley declared that he is an employee of ASDA when mention was made of the company, but not of the store referred to in Fratton.

82. Licensing Act 2003 - Application for variation of a premises licence - Best-One, 140-144 Fratton Road, Portsmouth, Hants

(The panel followed the procedure for the hearing of Licensing Act 2003 Applications by Other Persons only)

Derek Stone, Principal Licensing Officer, presented the Licensing Manager's report, explaining the background to the hearing with representations made by 2 local residents against the proposed extension in hours, but not by Responsible Authorities. Appendix D set out the previous history of decisions relating to the premises. Mr Stone reported that the Licensing Team had been proactive and had visited the premises on 8th December 2018 at 00.25 hrs to carry out a test purchase and were refused to be sold alcohol past midnight.

There were no members' or applicant's questions to the Principal Licensing Officer at this stage.

Questions by other persons (residents) - Mr Barrow asked for an explanation regarding the strength of alcohol of items not being sold. Mr Stone reported that products above 6.5% (unless premium products, such as specialist ales) would not be sold. (This was set out on p19 of the report.)

The applicant's case (for Mr Jeevanayagiam who apologised for not being able to attend) was presented by Mr Jon Wallsgrove, as his solicitor. His points included:

- There had been no Responsible Authority representations to the extension to 2am and only 2 representations from local residents
- The residents' objections were based on occurrences from 10 years ago but the applicant disputed that the shop was linked to instances of crime and disorder locally
- There was no intention to apply for a 24 hour licence
- There had been an exchange of information with PC Rackham regarding crime statistics locally and in the opinion of the police there would not be an impact by granting the extension in hours to 2am
- Both the police and the Director of Public Health (who had not submitted an objection this time, having discussed this with the police) had not objected and both were experts in their respective fields, as defined in paragraph 9.12 of the statutory guidance (referenced page 4 of the report)
- The panel's decision should be evidence based (statutory guidance para 9.43)
- The steps that the applicant was willing to take were outlined, most of which were already in place apart from the door stewards who were proposed for Friday and Saturday evenings (an agreed condition with the police)
- the applicant had voluntarily agreed not to stock high alcohol products (whereas local competitors were selling these)
- There is a particular problem with one person who buying drink elsewhere in the vicinity
- The premises had been operating 10 years without issues or breaches of the conditions of licence, with the allegation of out of hours sales being proved untrue by the recent test purchase

Questions by the panel members covered the following matters:

- What was the intention of providing the police statistics? Mr Wallsgrove responded that these had been provided by the police as experts who did not conclude that an extension to 2am would make these figures worse and the risk of impact was minimal
- Had the way crime is recorded changed? Mr Stone responded that it had become more accurate
- What changes had been made since the 2014 application that had been rejected? The door stewards were offered as a condition and the voluntary ban of 6.5% ABV and above products was in place (to

support the "reduce the strength campaign"), which was further explained as relating to high strength beers/lagers/ciders used by street drinkers. It did not relate to higher priced craft beers.

- The wording in an email of 7 November 2018 (page 52 of papers) was questioned, which referred to a resident's complaint about after hours sales, who "had lied" - Mr Wallsgrove responded that a very serious allegation against his client had been made which was proved unfounded. It also referred to a previous panel not taking into account evidence provided on this point.

Questions were then put by the residents (as "other persons") which included:

- Mr Barrow asked why door supervisors were not being proposed for bank holiday cover and for New Year's Eve in particular?
- Mrs Stone asked why the door supervisors were needed if problems were not anticipated?
- Mr Wallsgrove responded that a risk assessment had been undertaken so Friday and Saturday evening door steward cover was proposed, who would prevent people who were intoxicated coming into the shop and were as a precaution.

The "Other persons" case by residents was then presented.

Mr Barrow outlined his concerns as per his submission (page 31), as there had been anti-social behaviour problems in the past, including drunken people walking along the streets and gathering by the shop. The gate erected at Garnier Street had made a difference. He was also concerned about the empty building opposite (former United Footwear) where people could gather.

Mrs Stone was speaking for Mrs Harris, who lived at the top of Garnier Street so was close to the site and was concerned that the peaceful nights that they had campaigned for would be lost and there would be a return to the anti-social behaviour of 10 years ago. The shop would attract cars and taxis stopping to buy drink. She felt that the local residents' views should be seen as the experts as they lived there and experienced the problems.

Questions were raised by members, covering the following matters:

- Were other nearby premises selling alcohol after midnight? The Principal Licensing Officer responded that 5 petrol stations (a nearby one in Goldsmith Avenue) sold alcohol 24 hours, but no premises in Fratton Road itself.
- Would the residents feel reassured by the presence of door staff? Residents were concerned regarding the increase in late night traffic (with people coming from different parts of the city) and parking at the former shop opposite.
- How did residents feel a 2 hour extension, if supervised, would cause problems? Mrs Stone (for Mrs Harris) was concerned there would be

an escalation in activity with this being the only place in Fratton Road for people to buy late night alcohol on a whim, increasing footfall and traffic.

- The advertising of the application was questioned and Mr Stone reiterated that the correct procedures for a site notice (for which he had photographic evidence), press notice and ward councillor notification had been followed. Mrs Stone had not seen the notice herself and if she had she would have made her own representation. There had been no representation from ward councillors.

Questions were then raised by the applicant's agent, who referred to Mrs Stone contacting the Licensing Office (initially regarding a proposed extension to the licensed hours for ASDA which had since been withdrawn) to discuss objecting to the applications. Mrs Stone objected to this information being raised which she felt broke Data Protection rules and reiterated that she had not known about this application (for Best One).

Summing up

Mr Barrow asked that there be further consideration of door supervisors, which were also needed for bank holidays and New Year's Eve, and the possible use of the area opposite the premises, which may be used as a gathering point.

Mrs Stone, who was attending for Mrs Harris, asked that there be an adjournment as she felt there had been a Data Protection breach.

Mr Wallsgrove summed up on behalf of the applicant, stressing the need for an evidence-based decision, and pointing to the expert opinion from 2 Responsible Authorities. The police's data had shown that things had not changed and they were not concerned that there would be an adverse impact. He indicated that if there were concerns by the panel member regarding the Bank Holidays a condition relating to this security could be accepted by his client. He wished to reply to Mrs Stone's remarks, asking that it be recorded that she had said it had been improperly advertised and his response had been to ensure that his client had a fair hearing as he was obliged to do.

Mr Stone summed up on behalf of the Licensing Manager, whose report had set out evidence back to 2008 and the duty to consider the protection of the community (Licensing Act 2003 paragraph 11.1). He reported that at any stage a Responsible Authority or "other person" can request a review (as had happened in 2008).

Mr Baulf, as the legal adviser to the committee, advised Mrs Stone of her courses of redress regarding her complain of a Data Protection breach (through the Council, the Local Government Ombudsman or the Commissioner of Data Protection). Mrs Stone wished to clarify that she had not suggested that the advertising had not been correct, just that she had not seen it.

Decision

In the Matter of the Licensing Act 2003

In the Matter of application for variation of the current premise licence - Best One, 140-144 Fratton Road, Portsmouth, Hants

The Committee heard 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.

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

The committee was satisfied that the application was correctly advertised. This committee was seized of this application by reason of there having been a range of formal complaints (2 in number) 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 its individual facts.

The alleged failing upon the part of the applicant is that the application should be refused as there is no basis for it to be concluded that the relevant licensing objectives are 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 issues as to public safety.

The Committee look to all the Responsible Authorities, but mainly the police, for guidance and assistance in determining the effect of a licensing activity in terms of all the licensing objectives, but principally in terms of the police, prevention of crime and disorder - the Committee should, but are not obliged to accept all reasonable and proportionate representations made by the police. It was noteworthy that the police and all other responsible authorities had made no representations to this Committee.

The Committee was aware that at paragraph 9.12 that each of the responsible authorities is an expert in their own field, again it was noteworthy that no representations had been received by the Licensing Authority.

The above stated, the Committee had balanced within their consideration all representations made by the applicants through their advocate and by way of comments made by the local residents.

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

In considering the application the Committee was mindful of the following and considered that having heard all matters on the day could conclude that the following facts had been established:

1. There is an extensive history of engagement with the Licensing Authority in that there had been a number of applications for licence variation post a review dealt with in 2008, the last application being on 11 April 2014.
2. The Committee noted that the Licensing Authority were engaged in a review in 2008 and was of the view that this was 10 years ago and that the current application be looked at within the current operating schedule and upon its own facts.
3. The applicant, through his advocate, offered a range of conditions to be attached to any grant of variation.

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 the licensing objectives and as such the application was granted subject to the following conditions:

- 1. As set out in the operating schedule on page 19 of the application**
- 2. SIA Door Supervisors to be present on any Bank Holiday and Easter Sunday and upon any New Year's Eve.**

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

The Committee has been shown the relevant Statutory Guidance which had been referred to and was fully set out in the presenting officer's report. In addition and for the avoidance of doubt the Committee did consider the ability under the 2003 Act to consider a review and how and by whom a review could be initiated but were minded that this was an appropriate safety mechanism.

(There is a right to appeal this decision.)

The meeting concluded at 4.05 pm.

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Chair