

## LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Thursday, 11 November 2021 at 10.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

### Present

Councillor Claire Udy (in the Chair)

Councillors Ian Holder  
Lee Mason

### Also Present

Ben Attrill - Legal Advisor

Derek Stone - Principal Licensing Officer

Karen Whiteaway - Applicant - local resident

Nickii Humphreys, Licensing Manager, representing the Licensing Authority

Councillor Hugh Mason, ward Councillor, making representations

Jon Wallsgrove - solicitor representing the Premises Licence Holder

Panchalingham Aranan - Premises Licence Holder

### **36. Appointment of Chair**

Councillor Claire Udy was present as Chair. She welcomed everyone and explained how the meeting would work and the procedure that would be followed. Introductions were made by those present.

It was agreed that the hearing would adjourn shortly before 11.00 am and resume 10 minutes later to allow those present who wished to attend the war memorial for remembrance observance to do so.

### **37. Declaration of Interests**

There were no declarations of members' interests.

### **38. Licensing Act 2003 - Review Application - Kwiki Mart Food n Tipple, 111-113 Albert Road, Southsea, Hants**

Derek Stone, Principal Licensing Officer, explained that the purpose of the meeting is for the Licensing Sub-Committee to consider the application for a review of the premises licence made by Karen Whiteaway, a local resident. He explained that representations had been received from the Licensing Authority as responsible authority, ward Councillor Hugh Mason and several

local residents supporting the review application; one representation supporting the business and its operation was received from a local business owner. The Premises Licence Holder had, through his solicitor, submitted a representation including details of a previous review in 2014 and the Licensing Sub-Committee's decision.

### Questions

There were no questions for the Principal Licensing Officer from members, the ward Councillor or Responsible Authority.

In response to a question from the Premises Licence Holder's representative who sought clarification about mobile phone footage and photographs submitted as part of the review by two residents, the Principal Licensing Officer explained there were two clips which had been provided to Mr Wallsgrove before the hearing.

The footage had not been provided to members of the Licensing Sub-Committee prior to the hearing at the request of the Premises Licence Holder's representative.

Mr Wallsgrove stated that individuals that had produced the footage were not present to be questioned about their actions and that this would mean the evidence could not be challenged and ought not be viewed. Further, that it was not acceptable for footage of activities within private premises (the shop under review) to be seen. The Legal Advisor advised that it was for the Licensing Sub-Committee to decide on the relevance of the footage and consider what weight to give it. He explained that he had not seen the clips, but believed it had been taken from the Applicant's home, in the main showed public areas (the street) - which was confirmed by the Principal Licensing Officer and that even if it was considered to be unlawfully obtained, it was for the Licensing Sub-Committee to determine if it was relevant and whether it was reasonable to view the clips.

The Principal Licensing Officer commented that Mr Wallsgrove correctly directed at the previous review hearing in 2014 that there was nothing to directly link concerns around the activities and behaviour of people frequenting the premises to the Kwiki Mart Food n Tipple. The mobile phone footage now presented, however, seemed to provide a causal link of anti-social behaviour to the premises.

It was proposed that it would be helpful in determining the review application to view the footage available.

### Exclusion of Press and Public

It was agreed that the following motion be adopted: Under the provisions of Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005 the public be excluded from that part of the hearing that the licensing authority considers the public interest in so doing outweighs the public interest in that

part of the hearing taking place in public. The public shall be excluded for the viewing of CCTV or other recordings that may identify third parties.

The Legal Advisor advised that Councillor Hugh Mason, as a party to the review (and similar to all parties at the hearing), could remain.

Various clips of video footage were viewed in exempt session.

The Principal Licensing Officer then showed two clips of mobile phone footage:

- The first showing a man handing contents of blue bag to others
- The second showing a man coming out of the premises and handing things to a person sitting on the ground.

Mr Wallsgrove stated that he had not previously seen either of these clips. The Licensing Sub-Committee hearing paused at 10.24 am while the licensing officers attempted to confirm the date it had been shared with Mr Wallsgrove.

At 10.28 am, members enquired if the reference in the report to mobile phone footage related to these clips or others. Mr Wallsgrove confirmed it was other footage and that as the clips were large one, had been sent to his personal email address.

The Legal Advisor advised that as the Premises Licence Holder and his representative had not seen the footage, they should be given time to consider their response. In response to a question from members, the Principal Licensing Officer confirmed that he had other footage available to view and that it had been supplied by the Applicant (present) and another person who was not present. The Legal Advisor, in order to address Mr Wallsgrove's earlier point that footage should not be viewed if the person producing it is not present, explained that the Licensing Sub-Committee could view the footage taken by the other person, hearsay is admissible in such hearings and if the Committee were unable to ask relevant questions, they would simply have to attach relevant weight to the evidence.

Mr Wallsgrove agreed that it was a matter for the Licensing Sub-Committee to decide what weight to apply to the mobile phone footage. The Principal Licensing Officer confirmed that all other persons making representations had been invited to the hearing.

With the agreement of all parties, the Principal Licensing Officer then showed additional footage including:

- Mobile phone footage taken by the Applicant at 03:52 hours of individuals who seemed drunk being shown, looking at, and discussing, the review notice in the window of the premises.
- A photograph taken at 05:11 hours by the Applicant showing a person asleep/ unconscious in doorway.

In response to questions by members, Mr Wallsgrove explained that the individual seen had been refused entry to the store on a number of occasions, he had been told he could not enter the premises as his behaviour was putting the licence at jeopardy but he wanted to swap shoes with Mr Aranan. He had eventually moved on and it had not been necessary to call the emergency services

- Mobile footage taken at 08:30 hours by the Applicant showing a group of young men exhibiting rowdy behaviour including one of them urinating in the street.

Mr Wallsgrove confirmed he had seen this footage previously. The Applicant confirmed the footage had been taken on 19th October and the group had been outside the premises for several hours.

- Footage of a man on the corner by the premises, confirmed by the Applicant has having been taken on 26th September shortly after 03.00 hours.

Mr Wallsgrove stated he had not seen the footage previously and that four clips shown to the Licensing Sub-Committee had not been made available to him.

Nickii Humphreys informed the Licensing Sub-Committee that there had been several attempts to send Mr Wallsgrove the mobile phone footage and licensing officers had struggled to achieve this due to the size of the files.

Mr Wallsgrove agreed that the footage could continue to be seen and he would then take further instructions from his client, the Premises Licence Holder.

- Footage taken by the Applicant of music and noise from people/ cars gathered outside the premises
- Footage taken by Ross Lee, Licensing Officer, of people gathered outside the premises

Mr Wallsgrove confirmed he had seen the footage provided by the Licensing Officer and that he would like the date and time of the clip taken by the Applicant as he had not seen it before.

The hearing adjourned at 10.44 am for remembrance observance and resumed at 11.14 am.

Mr Wallsgrove confirmed that during the adjournment he had taken instruction from his client and Mr Aranan was happy to proceed.

- Clip taken by Applicant showing a man in road outside, people talking loudly and another person lying on the pavement.
- Two photographs provided by the applicant, one showing a man lying on the pavement and the second showing road sweepers cleaning rubbish outside the premises in the morning.

- Video of loud singing by two people during the daytime (taken by another person)

The Applicant confirmed that although she had not taken the last clip, she had seen the incident. Mr Wallsgrove confirmed he had seen the footage and was seeking clarity of the date and time it had been taken.

- Clip of go-kart and group of people outside the premises

Mr Wallgrove confirmed he had seen this clip previously but did not know who had taken it, or the date and time of the event. The Applicant confirmed that although it was not her footage, she had clips of the same event and the incident had taken place on 26th September at 04:00 hours.

- Long clip of people milling around taken on 2nd September at 02:30 hours, supplied by the Applicant.

Mr Wallsgrove commented he had not seen the clip previously and that if dated 2nd September, it should have been submitted with the review application.

- Audio clip.

The Licensing Sub-Committee resumed in public at 11.23 am.

The Legal Advisor commented that during the private session the Licensing Sub-Committee had seen footage of anti-social behaviour outside the premises. An issue had arisen in that a substantial amount of the mobile phone footage had not been served on the Premises Licence Holder or his representative in advance of the hearing. This was regrettable. The Hearing Regulations require that where other persons wish to submit new evidence the consent of all parties must be sought. However, in this case the parties had complied with the regulations as they had submitted the footage in advance to the Licensing Authority. In the interests of natural justice, the Premises Licence Holder and his representative should be offered the opportunity of an adjournment, short (i.e. during the hearing) or longer (adjournment), to take instructions.

Mr Wallsgrove stated that he had taken instructions. He stated that his client had suffered prejudice. Having not seen the footage earlier, his CCTV, which could have been used to corroborate the evidence, had been deleted as it overwrites after 31 days.

#### Questions from members

In response to questions from members, the Principal Licensing Officer advised that:

- The Rainbow convenience store, in proximity to the premises, has an alcohol licence to 02:00 hours.
- Door staff are not required at the Kwiki Mart by condition, but the premises is required to have 3 staff including the Designated Premises Supervisor present at all times

The Principal Licensing Officer also advised that in determining the review, the Licensing Sub-Committee may take such of the following steps as it considers appropriate for the promotion of the licensing objectives:

- a) Take no further action;
- b) Modify the conditions of the licence which may include adding new conditions;
- c) Exclude a licensable activity from the scope of the licence;
- d) Remove the designated premises licence supervisor;
- e) Suspend the licence for a period not exceeding three months; or
- f) Revoke the licence.

#### The Applicant's Case

Ms Whiteaway included the following points in her representation:

- She wanted to find common ground with the premises relating to the anti-social behaviour outside the premises and did not want to remove the alcohol licence.
- The anti-social behaviour seen in the mobile phone footage takes place outside the premises not inside.
- When called, the police have attended but have just driven past and not stopped.
- Concerns relate to rubbish and littering, noise, anti-social behaviour including playing of loud music and people urinating in the vicinity of the premises.
- Closing the premises between the hours of 02:00 hours and 07:00 hours, or not selling alcohol during those hours would help alleviate the problems, as the premises is known to be open all night and is a draw to some people.
- She had lived in the area for 7 years and did not want to move; it was a residential area and lots of residents suffer because of the behaviour outside the premises.
- The premises needed to do more to control what happens immediately outside the shop.
- Their blue plastic bags, left as rubbish outside, are further evidence of purchases made inside the premises and then consumed outside.
- The Council's road sweepers come every morning and are followed by refuse collectors and this was an indication of the known litter problem the premises generates.
- Anti-social behaviour is a problem because of the premises and residents needed more consideration.

#### Questions from members

In response to questions from members, the Applicant explained:

- She had no objection to people going into the store and buying alcohol; she uses the shop, and it is convenient.
- Most pubs close at 02:00 hours and residents should not have to suffer noise and anti-social behaviour all night, including loud music coming from cars and people partying on the street.
- She believed that if alcohol was not available all night, residents would not have suffer these problems.

- She had been in contact with the Licensing Police Unit and they agreed to look into the issues in the area.
- The Police had driven past 6 times on one evening but did not stop once and she feels let down as anti-social behaviour is rife outside the premises.
- When asked why they had not stopped, the Police said they may have been on their way to a more pressing situation. However, they had stopped at the traffic lights so it could not have been an emergency. The people on the street just laughed and made hand signals at the Police as they drove past.

Mr Wallsgrove commented that after the first review application had been made, he had offered to meet the Applicant on behalf of the Premises Licence Holder, but this offer had not been accepted. The Applicant stated she had no memory of an offer for a meeting.

The Legal Advisor commented that the Applicant had suggested that the opening hours of the store be restricted. However, the only licensable activity is the sale of alcohol by retail for consumption off the premises and while the Licensing Sub-Committee does have the power to control this, it cannot control the opening hours or the operation of premises as a shop (generally). He reminded the Licensing Sub-Committee of its powers (as set out by the Principal Licensing Officer in points a-f above).

In response to a question from members, the Legal Advisor confirmed that although separate regimes, the use of the premises and hours of operation could fall within the planning regime. Mr Wallsgrove agreed and stated that the Kwiki Mart operated 24-hours a day, will continue to do so and that its hours of operation having been granted planning permission cannot be changed retrospectively by way of enforcement action.

The Applicant then provided information in response to further questions:

- Cars pull up outside the shop and people bob around to music which comes from the cars or from mobile phones.
- While the cars are parked (and playing music) people go into the store so the cars are parked there for 10 minutes or so.
- The noise nuisance and anti-social behaviour has got worse; in the summer it was happening 5-6 nights a week until around 08:00 hours.

There were no questions from the Licensing Authority representative, ward Councillor Hugh Mason, the Premises Licence Holder, or his representative.

Ms Nickii Humphreys on behalf of the Licensing Authority

Ms Humphreys included the following points in her representations:

- The Licensing Authority's representations relate to the Licensing Objectives of 'prevention of crime and disorder' and 'prevention of public nuisance'.
- Any application for a review must relate to the particular premises in accordance with statutory guidance issued in relation to the Licensing Act

2003 (section 182, paragraph 11.7) and must be relevant to one of more of the Licensing Objectives.

- It is the view of the Licensing Authority that a causal link between the premises and incidents at and outside the premises has been made.
- Evidence has been provided showing incidents at and outside the premises and a Licensing Officer visited the premises on 16th October in accordance with section 59 of the Licensing Act 2003 (report circulated at Appendix C of the pack).
- Although further information has been made available to the Licensing Authority by the Police Licensing Unit in terms of incidents occurring directly outside the premises (set out in the representations), the Police have not made representations.
- The Licensing Authority considers that the recorded incidents of anti-social behaviour is having a negative impact on residents.
- The Licensing Authority's representations set out relevant case law which the Licensing Sub-Committee may wish to consider when determining the application.
- At the previous review in 2014, the Licensing Sub-Committee considered that there was insufficient evidence to justify steps to modify the licence.
- The Licensing Authority considers that evidence to support the review application has now been provided.
- It is requested that the Licensing Sub-Committee considers reducing the hours the premises are permitted to sell alcohol from 24 hours a day to ceasing at 01:00 hours.

### Questions

In response to questions from members / parties, Ms Humphreys explained:

- No complaints had been received in relation to the Royal Albert pub next door and that the complaints received specifically relate to this premises or directly outside this premises.
- The Kwiki Mart operates as a 24-hour store and would be able to remain open if the Licensing Sub-Committee was to restrict the hours for sales of alcohol.
- It would be for the Licensing Sub-Committee to determine the start time (for sales of alcohol) but this would normally be 07:00 hours.
- The Licensing Authority had not requested information of any incidents at or outside the Royal Albert pub or Rainbow convenience store when it requested this information about the Kwiki Mart from the Police Licensing Unit.

There were no other questions for the Licensing Authority representative.

### Councillor Hugh Mason

In his representations to the Sub-Committee, ward Councillor Hugh Mason explained that:

- This was an unusual set of circumstances and that he had received numerous complaints linked to the premises from residents over the years.
- The complaints have increased in frequency recently and he believed that the ATM machine was a focus.



- The premises is well run but ill-equipped to deal with unruly people who often seem to go to the premises after other premises have shut.
- There are often people sitting or lying on pavement outside the premises causing public nuisance and noise.
- Ken's Kebab takeaway is open to 04:00 hours but does not seem to have the same issues related to alcohol sales.
- Kwiki Mart is the draw for people throughout the night.
- He lives 3 streets away and can hear noise from the premises.
- In the mornings, he finds discarded cans in his forecourt and these are a brand sold at the premises.
- It is his view that patrons of the store are drinking in the streets in the surrounding area, not just outside the store, and as it is heavily residential, residents would be grateful for any limits on the hours of alcohol sales.

#### Questions from the Premises Licence Holder

In response to questions from Mr Wallsgrove, Councillor Hugh Mason clarified that:

- He had not said that the premises had sold the cans found in his forecourt.
- Different stores sell different brands and generally the cans he found were a Polish brand which the Kwiki Mart does sell.

There were no other questions for Councillor Hugh Mason.

In response to a question from members, the Principal Licensing Officer confirmed that some off licences have agreed not to sell beers, ciders or lager over 6.5% and the Kwiki Mart was one of these premises. Where this condition does not apply, some premises can sell these products with an alcohol content of up to 8.5-9.00%.

#### Premises Licence Holder case:

Mr Wallsgrove representing Mr Aranan included the following points in his representation:

- In the case of review, the burden of proof is on the Applicant and the civil standard applies, namely that it is 'more likely than not' that the link to the premises has been made.
- The Premises Licence Holder did not believe that any such causal link had been made.
- The Applicant said she would like the hours of alcohol sales cut back and it is within the Licensing Sub-Committee's remit to take that action, or to add or modify conditions on the premises licence.

Mr Wallsgrove referred to section 182 statutory guidance which states that the Licensing Sub-Committee must have regard to policy and guidance in equal measure, and he referenced the following paragraphs in the guidance:

- Paragraph 1.5 - legislation aims to protect the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises. Kwiki Mart is a responsible premises.
- Paragraph 1.8 - the Police are the key enforcers of licensing law and the promotion of the four licensing objectives. They had not made

representations in this case and the Sub-Committee should attach considerable weight to that fact.

- Paragraph 2.8 (also replicated in the Council's Statement of Licensing Policy at paragraph 9.10) - sets out the matters which should be considered in relation to public safety.
- Paragraph 2.21 - states that beyond the immediate area of the premises, anti-social behaviour is a matter of the personal responsibility of individuals under the law. There was no evidence of anti-social behaviour inside the shop, it was not taking place 5-6 nights a week and when it did take place it was as a result of people coming with alcohol after the pubs closed.
- Paragraph 9.43 - the licensing authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- Paragraph 10.15 - stores should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.
- Paragraph 11.7 - any application for review must relate to particular premises, must be relevant to the promotion of one or more of the licensing objectives and that a complaint regarding a general issue such as anti-social behaviour in the area should not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to the particular premises. In this case the evidence is not there to make this link.
- Paragraph 11.17 - allows the licensing authority to decide that the review does not require it to take any further steps to promote the licensing objectives, as was the case in 2014 at the previous review.
- Paragraph 11.20 - expects the licensing authority to take remedial action which addresses the causes and these should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- Paragraph 14.13 (and the Council's Statement of Licensing Policy) - states that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of premises.
- Paragraph 14.47 - provides a list of other examples of measures to control anti-social behaviour.

In his representations, Mr Wallsgrove noted that case law referred to by the representative of the Licensing Authority in her representations related to large night clubs. These were a different type of venue, attracted huge numbers of patrons and resulted in different issues. He suggested that the Licensing Sub-Committee should not place any reliance on these in this case.

Mr Wallsgrove, then informed the Licensing Sub-Committee that:

- The standard of proof had not been met to link anti-social behaviour outside the store to purchases of alcohol in the store. As the CCTV

footage was no longer available, it was not possible to review or corroborate the incidents shown.

- The Police have not made representations and did not do so at the last review in 2014. He had contacted Acting Sergeant Rackham and was informed that issues of anti-social behaviour cannot be linked to the sale of alcohol at the premises.
- None of the mobile phone footage shown to the Licensing Sub-Committee show sales of alcohol at the premises and then drinking outside.
- The premises is not responsible for dealing with anti-social behaviour on the street outside. The Police have the powers, including issuing street drinking orders, to control such behaviour.
- Staff at the premises ask customers to turn music down when they can identify where the music is coming from. It does not happen often.
- The footage taken by the Licensing Officer shows individuals eating food from Ken's Kebabs which is a common event, and no-one was drinking.
- In his report, the Licensing Officer suggests that there was someone in the shop who he believed to be drunk. All Kwiki Mart staff are trained, mainly by Portsmouth Council, and they refuse to sell alcohol to people in drink.
- The Licensing Officer states in his report of the visit on 16<sup>th</sup> October 2021, that Mr Aranan could not produce his personal licence and that the premises licence provided was not current. Mr Aranan was taking a comfort break when Mr Lee arrived, and knowing a review was pending, Mr Aranan was in a state of panic. However he found his personal licence and the correct version of the premises licence and emailed copies to Mr Wallsgrove within half an hour. Mr Aranan had two slightly different versions of his premises licence, one which was issued a few weeks after the 2014 review with the additional voluntary condition relating to limiting sales of beers, lagers and ciders to 6.5%. All other aspects of the premises licence were identical. He presented the Licensing Officer with the wrong copy.
- The reference to a warning from 7 years ago was unfair and should not have been included in the representations.
- The Licensing Authority had asked for reports of complaints made to the Police concerning to the premises. This was however just a list of telephone calls and was the weakest form of evidence. There were no witness statements to support the complaints, no follow up by the Police to establish the facts, most relate to activities outside the shop and very few related to the sale of alcohol at the premises.
- Mr Aranan has made his own complaints to the Police about the homeless people and anti-social behaviour.
- The written representations by ward Councillor Hugh accepted that the premises could not be blamed for people drinking alcohol in the bus stop but at the hearing he stated that he could link sales of alcohol to the premises.
- Mr Aranan could have produced a petition of support and most of the local community is supportive of him and the shop.
- The article which appeared in the Portsmouth News article was unbalanced.

- Mr Aranan has found this whole process stressful, it is affecting his livelihood, his staff are worried and it has been noticed that the premises is under surveillance though it is not known by whom.
- The premises has operated successfully for over 20 years.
- There is some anti-social behaviour in the area, but it is not frequent and not related to the shop.
- The store provides key workers and shift workers with an opportunity to buy alcohol at times convenient to them and it has positive affect in the community.
- Mr Aranan is at the premises 7 nights a week, is a qualified SIA door supervisor and employs other door staff on Fridays and Saturdays when necessary. The door staff do their job responsibly, try to move people along when necessary but it is not for them to police Albert Road.
- When anti-social behaviour does take place, it is to the detriment of Mr Aranan's business. His interests are the same as those of local residents.
- It was alleged earlier in the hearing that a group of people were outside the store for over three hours (between 05:00 and 08:00 hours) but CCTV footage from the premises showed that the first individuals arrived at 07:37 hours, a BMW with two women known to the men arrives few minutes later and one man gives one of the women a can. The last members of the group joined the others at 07:52 hours. They were not there for three hours.
- Mr Aranan is happy to work with the Police, ward Councillors and residents and offered a meeting with the Applicant and suggested that the Licensing Authority could be present.
- Within day of that offer, the second review application was submitted.
- In conclusion, the Applicant's request for review does not pass the test of a causal link between anti-social behaviour and the licensable activities at the premises.

#### Questions from members

In response to questions from members, the Premises Licence Holder's representative informed the Licensing Sub-Committee that:

- Mr Aranan and his staff try to move homeless individuals who sit against the building along, but they come back and when reported to the Police they have moved off by the time the Police arrive.
- It would be a disproportionate response and present a significant cost to the business to have SIA door supervisors at the premises every night. Mr Aranan employs door staff on Friday and Saturday nights.
- The shop will continue to operate as a 24-hour convenience store, many people come in for items other than alcohol.
- Mr Aranan does not wear his SIA door supervisor badge in the store unless he needs to step in because one of those employed by him fails to turn up.

#### Question from the Applicant

In response to a comment from the Applicant that she had rarely seen door supervisors at the premises, Mr Wallsgrove explained there was no requirement for the premise to employ door staff and it is not a condition on

the premises licence. There is a general shortage of qualified individuals in the city and they will not deal with issues unrelated to the store.

#### Questions from Councillor Hugh Mason

Ward Councillor Hugh Mason commented that Mr Wallsgrove had mentioned that the Police complaints log was hearsay evidence but he had also provided second hand evidence when reporting a conversation he had with Sergeant Rackham about linking incidents of anti-social behaviour to the store. In response to this and other questions, Mr Wallsgrove explained:

- His evidence was hearsay, but the log provided by the Licensing Authority was second hand hearsay which is even less reliable.
- The store is an asset to the community and to penalise those who shop there because of the actions of a few would be a shame and would not solve the problems outside the premises.
- The Premises Licence Holder does not sell alcohol to people in drink.
- Any problems of anti-social behaviour are for the Police and local authority to resolve, not the Premises Licence Holder.

There were no questions from the Licensing Authority representative.

The meeting adjourned for a break at 12.54pm and resumed at 1.02pm.

Councillor Hugh Mason left the hearing.

#### Summing up

In her summing up, the Applicant, Ms Whiteaway stated that she had listened to everything that had been said. She could have submitted more mobile phone footage, she was disappointed that the Police had not attended when they had been called and she noted that the first time she had seen door staff at the premises had been the previous Saturday evening. Her first application for review had been submitted in the summer when there were issues relating to the premises 5-6 times a week. The more wintery weather now was helping control it but she was confident that the high incidence of anti-social behaviour linked to the premises would return.

Nickii Humphreys, representing the Licensing Authority, commented that she had nothing substantive to add. She asked the Licensing Sub-Committee to have regard to the incidents reported and added that the Licensing Authority supported the Applicant's view that anti-social behaviour outside the premises were directly linked to these premises. The Licensing Authority's understanding of case law was set out in the papers for the hearing and the Legal Advisor will be able to provide members with advice about the relevance of case law in this case.

In his summing up on behalf of the Premises Licence Holder, Mr Wallsgrove informed the Licensing Sub-Committee that where the mobile phone footage had been supplied in advance, he was able to give a response as the shop's own CCTV coverage was available. However, as it was overwritten after 31 days, this was not possible for the other incidents shown to the Licensing Sub-Committee. The Premises Licence Holder accepted that there is anti-

social behaviour in the area, but this is not attributable to the premises. Mr Aranan is happy to work to work with anyone to resolve the issues but cutting the hours for the sale of alcohol, his only licensable activity, would be a punishment for something not attributable to him. There is no evidence that the premises has sold alcohol to the individuals involved in anti-social behaviour outside the premises.

Following a question from members, the Legal Advisor confirmed that it was for the Licensing Sub-Committee to determine whether there was a causal link between anti-social behaviour and the premises and to make its decisions based on that determination.

The Chair asked all parties to confirm they had said everything they wished to.

The hearing ended at 1.10 pm and the Licensing Sub-Committee went into exempt session to consider the representations.

The Licensing Sub-Committee hearing resumed at 3.02 pm.

### Decision

The Licensing Sub-Committee has considered very carefully the application for review of a premises licence at the **Kwiki Mart Food N Tipple, 111-113 Albert Road, Southsea, PO5 2SQ**. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Licensing Sub-Committee considered the relevant representations, both written and given at the hearing, by all parties. Human rights legislation and the public sector equality duty has been borne in mind whilst making the decision.

The Licensing Sub-Committee noted that the application was made by a local resident raising concern regards the prevention of crime and disorder, public safety and the prevention of public nuisance. The issues raised relate to late-night noise and disturbance from people gathering outside the store throughout the week, drinking alcohol purchased in the store and causing general anti-social behaviour. There had been representations from additional residents, a local ward councillor and the licensing authority as a responsible authority. No formal representation had been made by other responsible authorities - notably the police. A residential representation in support of the premises (but still detailing issues) and a representation expressing support from a local business were also noted. The solicitor for the Premises Licence Holder submitted written representations in advance.

Video footage taken by residents was shown to the Licensing Sub-Committee and it was determined that it was in the public interest that this be viewed with the public excluded for that part of the hearing. It came to light that several clips, whilst submitted to the Authority in advance of the hearing, had not been disclosed to the Premises Licence Holder. Accordingly, the opportunity for

adjournment was offered both in today's hearing but also for longer, if needed, to address the evidence.

Issue was raised regards the viewing of footage when the person producing is not present and the incidental filming of the inside of the premises. The Licensing Sub-Committee considered the issues but decided that it should continue to view the footage as it was clearly relevant and internal filming of the premises was likely (based on the description) to be *de-minimis*.

After having heard the above evidence and considered all of the options set out within the legislation (ranging from taking no action to revocation of the premises licence) the Licensing Sub-Committee determined to restrict the sale of alcohol so that it is prohibited between the hours of 02:00 hours and 07:00 hours every day of the week. In addition, the premises will be subject to a condition requiring two dedicated SIA registered door staff to be on duty between the hours of 20:00 hours and 02:00 hours the following morning on Friday and Saturdays. For the avoidance of doubt, the door staff cannot also fulfil the separate pre-existing requirement that a personal licence holder be present.

### Reasons

The Licensing Sub-Committee accepted that it had to make a determination, on the balance of probabilities, whether the licensable activity at the premises (the sale of alcohol) was contributing to the anti-social behaviour identified in the written representations, video footage and oral evidence. The footage showed various anti-social behaviour including urinating in the street, begging, noise nuisance from raised voices and amplified music and various forms of intimidating behaviour - particularly extreme intoxication.

Two clips shown to the Licensing Sub-Committee show people enter the store and return to hand out what in the Licensing Sub-Committee's view is clearly alcohol to those outside the premises. Many of the residents' representations allude to this behaviour but it is noted that one in particular states that she has witnessed people buying alcohol in the store and returning to purchase more when it had been consumed outside. As a result of this evidence combined the Licensing Sub-Committee was satisfied that the evidence did show, on the balance of probabilities, that alcohol was indeed being purchased within the store for and by those outside the store causing nuisance and disorder.

Accordingly, it is agreed that the causal link between the licensable activity and the nuisance has been established and it is entirely in accordance with the guidance and the Council's policy that it should act to address the impact upon the licensing objectives. The Licensing Sub-Committee concluded that the cases referenced established a legal principle that allowed such action to be taken in these circumstances - even if occurring remotely. In this case the nuisance is clearly directly outside the premises. It is accepted that there are distinguishing features between this case and the cases cited. It also is accepted that the anti-social behaviour is not entirely attributable to the premises - there being a number of factors including the consumption of alcohol elsewhere, drug use in the vicinity and systemic issues of

homelessness and begging. However, the Licensing Sub-Committee was satisfied that it was appropriate to take the steps it had to address the extent to which the sale of alcohol at the premises was aggravating these issues in this particular location during the times identified.

To the extent that this action can possibly be viewed as a departure from guidance or policy (and it is not necessarily accepted that it is), for example the guidance indicating that premises ordinarily ought to be allowed to sell alcohol during the hours that they are open - the Licensing Sub-Committee feels the level of disturbance, anxiety and fear caused by the issues in this location, twinned with the clear evidence presented, justify the measured approach taken and would justify any departure.

To be clear, the Licensing Sub-Committee did consider all of its options and discussed during deliberation more restrictive action. However, due regard to the financial implications of any decision were duly noted and carefully considered. The hours imposed will bring the premises in line with the nearest off-licence premises and therefore may reduce the draw to the Kwiki Mart at later hours for alcohol or otherwise.

It was argued that representations or evidence ought not be considered if the proponent is not present to be questioned. The Licensing Sub-Committee carefully considered this point but decided it would consider the evidence, but attach due weight

There is a right of appeal for all parties to the Magistrates' Court within 21 days of formal notification of the decision. The decision has no effect until the expiry of the appeal period or, if lodged, the determination of any appeal.

The hearing concluded at 3.09pm

The meeting concluded at Time Not Specified.

.....  
Councillor Claire Udy  
Chair