

LICENSING SUB-COMMITTEE

MINUTES OF A MEETING of the Licensing Sub-Committee held on Tuesday, 5 March 2024 at 9.00 am in the executive meeting room, floor 3 of the Guildhall, Portsmouth

Present

Councillors Stuart Brown
 Jason Fazackarley
 Leo Madden

8. Appointment of Chair

Councillor Jason Fazackarley was duly appointed as Chair of the panel.

9. Declarations of interest

There were no declarations of interest.

10. Licensing Act 2003 - Southsea Brunch Klub, 119 Elm Grove, Southsea, PO5 1LH

Summary of Application and Representations

Licensing Officer

Derek Stone, Principal Licensing Officer outlined the application, relevant representations, and highlighted points relevant to the Licensing Authority's statement of licensing policy and statutory guidance.

The purpose of the hearing was to consider and determine the review application pursuant to section 52 of the Licensing Act 2003 in respect of Southsea Brunch Klub, 119 Elm Grove, Southsea, PO5 1LH. The holder of the premises licence was recorded as Elm Grove Enterprises Ltd. The application and the grounds for the review were attached in the bundle at Appendix A and they had been submitted on behalf of the Chief Officer of Police. They related to the following licensing objectives:

- Prevention of Crime and disorder
- Prevention of public nuisance
- Public safety.
- Protection of children from harm.

The Principal Licensing Officer advised that CCTV footage would be shown during the hearing, by the Applicant, and noted this had not been provided or shown to members in advance of the hearing at the request of Mr Wallsgrove, the solicitor acting on behalf of Southsea Brunch Klub.

Members Questions to Licensing Officer

There were no questions.

Applicant for the Review questions to Licensing Officer (Police)

There were no questions.

Responsible Authorities questions to Licensing Officer (Fire & Licensing)

There were no questions.

Interested parties' questions to Licensing Officer

There were no questions.

Premises Licence Holder questions to Licensing Officer.

There were no questions.

The Applicant's Case (Police)

Colin Pollard, Police Staff Licensing Officer, on behalf of the Chief Officer of Hampshire Constabulary presented the case for the applicant.

He noted in requesting the review he had regard to the 182 guidance and in particular the following sections:

- 2.1 - the Licensing Authority should look to the Police as the main source of advice on crime and disorder.
- 2.8 - Licence holders hold the responsibility for the safety of premises users.
- 2.21 & 2.22 - Licensing authorities and responsible authorities in relation to public nuisance should focus on the effect of licensable activities of persons living and working in the area relating to a broad definition of what constitutes public nuisance.
- 2.28 - the protection of children from harm, including moral, psychological, and physical harm.
- 11.2 - at any stage a responsible authority may request a review of a premises licence in connection with any of the four objectives.
- 11.10 - it is good practice to notify licence holders of concerns for the need for improvement prior to a review.

Mr Pollard noted he had partially deviated from section 11.10 in his decision making, when bringing the review, as section 1.8 of the 182 guidance stated the Police were not bound to the guidance as it was there for advice, and they could deviate should they see a need to do so. He further outlined this deviation only happened in exceptional circumstances, and that in seven years, this was the first time he had made that decision.

Mr Pollard believed there to be an ongoing and present risk to members of the public, which was unlikely to be removed through engagement, given the branding of the business, operational decisions of the premises licence holder and the negative impact on the licensing objectives. He referenced the comments from the Licensing Sub-Committee on 9 October 2023 and considered the premises were not operating as the Sub-Committee were led to believe at that hearing.

Mr Pollard outlined the grounds for the review, as detailed in Appendix A of the agenda, due to a serious incident of crime and disorder on New Year's Eve (NYE) which impacted all four licensing objectives.

CCTV related to three separate incidents of crime and disorder at the premises on 8 September 2023, 23 September 2023, and NYE, were viewed. These incidents were attributable to licensable activities at the premises.

Mr Pollard reviewed the website for SBK and noted the venue advertised itself as "The Home of the Bottomless Brunch". This was the provision of unlimited amounts of alcohol, which came with food, for a fixed fee and with a time limit of 90 minutes.

Mr Pollard referred the Sub-Committee to Appendix 1 in the Police Bundle which detailed a number of adverts and statements from the SBK website that were of concern to the Police.

1. The advertisement for SBK as the home of the bottomless brunch.
2. Happy hour offering 2 for 1 cocktails.
3. Drinks packages & discounted drinks.

The drinks packages encouraged the purchase of an increased quantity of alcohol in a single transaction. This encouraged more alcohol to be consumed than if the customers were purchasing one drink at a time - thereby increasing the intoxication of customers. The purchase of a package negated the need for customers to revisit the bar or interact with staff, meaning the opportunity for early intervention by staff to identify intoxication early was vastly reduced.

Mr Pollard noted it was common in the industry to have some drinks promotions to drive footfall during quieter periods, however, it was not common to build the whole business model around a bottomless provision of alcohol. He considered this irresponsible and carried a significant risk in relation to four licensing objectives.

Mr Pollard referenced Appendix 13 of the Police bundle which provided the definition of an irresponsible promotion within the mandatory conditions of the Licensing Act. He stated the contention of Hampshire and Isle of Wight (IOW) Police was that the bottomless brunch at SBK was a clear breach of the mandatory condition as it was the provision of an unlimited and unspecified quantity of alcohol for a fixed fee which must be consumed within 90 minutes. This carried a risk of leading to or contributing to further impact on the

licensing objectives. He went on to state that consequently, provision of licensable activity at SBK was being conducted in a way not in accordance with the premises licence and was an offence under Section 136.

Mr Pollard noted that in reviewing the drinks promotions he had regard to the section 182 guidance and in particular the following sections:

- 10.28 - DPS and Premises Licence holder remain responsible for the premises at all times including in compliance with the terms of the 2003 Act and the conditions attached to the premises licence and the objectives.
- 10.35 - It must be remembered that while the DPS or premises licence holder may authorise certain individuals to sell alcohol in their absence, the DPS is still responsible for the day-to-day management of the premises. Similarly, the premises licence holder remains responsible for ensuring the licensing law and licence conditions are observed at the premises.
- 10.39 - the responsible person as defined by the Act, including the premises licence holder should be able to demonstrate they've ensured that staff do not carry out, arrange, or participate in any irresponsible promotions.
- 10.41 & 10.42 - which describes irresponsible promotions.

The concerns in relation to the drink's promotion were their impact on drunkenness at SBK. Mr Pollard detailed the unique drinks promotions offered:

- A Jeroboam size bottle of vodka which held 3000ml of spirit (more than 4 standard bottles of Vodka or 120 standard pub measures) available in a single transaction.
- The sale of whole bottles of spirits.

Mr Pollard questioned how a licence holder, DPS or members of staff could control the supply of alcohol when the alcohol was already bought and paid for.

He noted these types of promotions were usually utilised by larger nightclub operations where bottles of spirits were sold as part of a package but the number of people consuming them was not capped and not limited and usually required a minimum number of people to ensure they do not end up with two people sharing a bottle of vodka on the premises. In contrast, SBK had a maximum number of customers for a package. Silver - advertised for up to 4 people, Gold - up to 8 people and Platinum - up to 12 people. The amount of alcohol supplied for these amounts of people was excessive and was causing drunkenness.

Mr Pollard referred to Appendix 16 of the Police bundle detailing the 'Friday Flavas' advertisement, which stated that the last dinner sitting was at 9pm. He considered this was not in accordance with the condition applied by the Sub-Committee in October 2023 as detailed in Appendix 14 of the Police bundle and was therefore a breach of the condition and an offence under section 136.

Mr Pollard then outlined his concerns in relation to the provision of CCTV footage from SBK.

8th September - PC Vincent requested CCTV from Sam Wellington (DPS) who agreed to provide it as part of the premises licence conditions. The request was passed to Mr Hudson's legal representative and the process was frustrated and delayed by challenges to the request resulting in the Police solicitor stating a review would be called and the CCTV was then produced.

NYE - A request was made to Mr Hudson by email (see Appendix 5 of the Police bundle). Mr Hudson did not respond further to Mr Pollard and suspecting a further attempt to delay and frustrate the CCTV request he submitted the review paperwork, on the morning of 12th January, including reference to a breach of the CCTV condition. Mr Hudson called Mr Pollard on 12th January informing how he could collect the CCTV and Mr Pollard noted he believed this was prior to Mr Hudson being aware the review paperwork had been submitted.

Mr Pollard told the Sub-Committee that the CCTV from the main camera inside the venue was found to be corrupted and could not be viewed. At a meeting with Mr Hudson and Mr Wallsgrove on 24th January they were advised of this fact. Mr Hudson agreed to upload it on receipt of an electronic request. Mr Hudson then uploaded a still image from the CCTV and not the actual footage. Mr Pollard considered the CCTV was being deliberately withheld and agreed to the breach of the CCTV condition in the review. This prompted the footage to be provided by Mr Wallsgrove on his client's behalf.

Mr Pollard considered Police had not been given access to the CCTV quickly or easily as stated in the condition under annex 2 of the premises licence and was therefore a breach of the condition.

Mr Pollard noted the premises had been licensed for a number of years trading as food led businesses with almost no reported crime and disorder. Since April 2023 the following reports had been received:

29th April 2023 - A female contacted Police to report she had been assaulted by security at SBK. She was described by the call taker as very much in drink. Attempts were made to take a statement, but she failed to engage with Police and the matter was closed.

6th May 2023 - A male contacted Police to say that security needed help dealing with people at SBK. He had seen someone throw a punch. Police attended and the situation had calmed, and no offences were disclosed.

22nd July 2023 - A female contacted Police to report suspected spiking of her drink in SBK. She disclosed she had consumed up to 10 vodka drinks, she felt extremely drunk and contacted a friend to take her home. There was no evidence of spiking, and the incident highlights the excessive alcohol consumption at SBK.

As these were the only incidents reported when the variation application was made in October 2023 the Police did not consider there was a need for a representation.

8th September 2023 - A manager at SBK contacted Police to report a male trying to fight staff and customers. He had been removed from the premises and became out of control, placing keys in his hand and trying to punch staff and customers. On Police arrival the male was still present, but staff did not wish to provide statements and support the police investigation.

Mr Pollard then moved on to viewing of CCTV as detailed at Appendix 2 & 3 of the Police bundle, from 8th September 2023. This showed an extremely intoxicated customer being removed from the premises. The later footage showed a male being extremely violent, with customers and staff fighting in the road with cars driving around them. Police were concerned about the lack of control over the people in and out of the road and the risk to public safety.

Mr Pollard noted that on 16th September a member of the public contacted the Police and made the disclosure at Appendix 10 of the Police bundle. He stated that lack of evidence did not necessarily mean it did not happen and the Sub-Committee should decide based on the balance of probabilities.

The CCTV detailed at Appendix 4a; b & c was viewed from 23rd September 2023. A male assaulted a number of people and was harassing women in the venue. Police described the male as very drunk and un-cooperative, and he was arrested for four ABH offences. Officers arranged to take statements at a later date. Of the four staff assaulted only one made a statement, the other three refused/did not turn up to the appointment. The male was issued an out of court disposal.

During viewing of this CCTV Mr Wallsgrove noted that Mr Hudson could be seen wearing a gilet and white sleeves and one of the males was sat on his car.

Mr Pollard observed that events were unfolding out in the road mixing with traffic - again causing a public safety concern.

Mr Pollard referred to Appendix 11 of the Police bundle and the disclosure from a member of the public to Police on 27th October. He again noted the Police cannot provide evidence as to what happened.

Mr Pollard then moved on to the incident on NYE. A member of the public contacted Police about a massive brawl outside SBK in the early hours. A

young male had been knocked down. Further calls were received from multiple members of the public and the ambulance service making similar reports to the Police. The incident required significant security, Police, and ambulance resources on a night of high demand. SBK had only booked 2 security staff that night who were ill equipped to keep staff and customers safe. Security staff from nearby venues had to attend to assist their colleagues during the protracted incident of violent crime.

Mr Pollard showed CCTV footage from NYE as detailed at Appendix 6, 7, 8, 9 and 17 of the Police bundle.

Mr Wallsgrove asked if there was an ongoing criminal investigation against the perpetrators of the violence and if so, the sound should be turned down. Mr Pollard confirmed there was no ongoing investigation.

The CCTV showed the incident starting on the dancefloor with glasses/drinks (polycarbonate) being thrown by customers. The incident then moved outside, and the violence became more serious. A young male was punched repeatedly in the head right outside the front door until he fell to the floor. He was then kicked in the head with significant force and his head struck the building and he became unconscious. Children then appeared in the footage just before the kick to the head. A young female with two very young children and a pram was forced to flee into the middle of the road and tried to stop oncoming traffic as she was pushing the pram. A second person was knocked unconscious in the middle of the road. A belt was used as a weapon.

Mr Pollard told the Sub-Committee that he was aware of other incidents in Hampshire and elsewhere involving much less violence that had led to a death in the nighttime economy, showing the level of risk and concern that had been reached. He was concerned that another similar incident may occur if the licensable activities at SBK were allowed to continue.

Mr Pollard highlighted the report from a local resident at Appendix 12 of the Police bundle detailing what she witnessed on NYE and having to ask for an escort to reach her home.

Mr Pollard advised they had not had an aggrieved party come forward in relation to the NYE incident so could not conclude the investigation.

He stated the CCTV footage had not been seen prior to submitting the review application and Police were unaware just how serious the level of violence was. Once this was known, and due to the seriousness of the incident he had considered proceeding with a summary review process but on discussion with his Sergeant a decision was made to continue with the standard review process as it was already underway. He stated the kick to the head met the threshold for serious crime under Section 53a of the Licensing Act 2003.

In summary, Mr Pollard stated that as far as the Police were concerned the licence holder and DPS had failed to promote all four of the licensing objectives, were in breach of the mandatory conditions as they relate to

irresponsible drink promotions and were in breach of their CCTV condition. He also noted they were in breach of the new Annex 3 condition relating to the provision of food as applied by the Licensing Sub-Committee in October 2023. They were committing section 136 offences by conducting licensable activities in a way that was not in accordance with their licence.

He noted that any decision made on whether the mandatory condition was breached by the bottomless brunch offer was a decision relating solely to the provision at SBK. He noted it did not necessarily follow that a better run premises could not carry out a similar promotion in a more restrictive or controlled way which did not breach the mandatory conditions.

Mr Pollard drew attention to Appendix 15 of the police bundle and the Sub-Committee decision in October 2023, which noted the strength of the assertion of the nature of the business and the process of review should the premises change or not be genuinely run as a restaurant with ancillary alcohol provision. Mr Pollard noted the level of risk presented by a food led business was significantly lower than the risk from a vertical drinking establishment with music and dancing into the early hours. Mr Pollard considered this aspect of the business was significantly underrepresented to the Sub-Committee in October 2023 and as such the impact on the licensing objectives could not be assessed by the committee in making their decision.

Mr Pollard noted that any action short of revocation would require the Sub-Committee to rely on promises and assertions given by the Licence holder but with the escalating levels of violence, public safety concerns and irresponsible trading as highlighted, the chances of further incidents was significant and could be tragic.

Mr Pollard drew the Sub-Committee's attention to the final section of 11.23 of the 182 guidance where it states:

"where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and where other measures are deemed insufficient to revoke the licence".

Members questions to applicant

In response to questions from Members, Mr Pollard responded as follows:

- Were there problems during the week or only on Friday and Saturday?

Mr Pollard was not aware of the full opening hours but believed they were limited during the week - problems were mainly on Friday and Saturday and NYE.

- What did you consider should have happened on the nights to minimise or prevent the incidents occurring?

Prevention starts at the bar, with trading and refusals to avoid the situation entirely. Ensuring there were enough eyes front of house, and not just bar staff, to identify when early intervention was required. Identifying when customers may be getting upset, language was changing, becoming loud in terms of aggression, starting to exhibit signs of intoxication. More door staff were required on NYE and probably on 8th September.

- How unusual was it for venue staff to decline giving statements to Police following an incident?

This was unusual and was usually addressed by the Police with licence holders but not in this case. Mr Pollard considered this may have been because the cases did not become ongoing investigations and did not have any aggrieved parties making complaints. Police would expect security to provide statements, but security did not want to support on these occasions.

- How much of an obstruction did the seasonal decorations in the video at Appendix 17 cause in terms of the purpose of CCTV?

The decorations were not ideal, and Police would advise not to put anything in front of the CCTV, however in this instance it did not obscure the images.

- Had this decision to apply for a revocation only been taken once in the last seven years?

Once in seven years was in relation to deviating from section 11.10 of the guidance not in relation to a decision to apply for a revocation. This had been noted because it was unusual for the Police not to adhere to the guidance. Police did not consider, on this occasion, that engagement would fix the problems at the venue.

- Had there been any midweek observations by the Police?

Not that he was aware of, but he did not think the venue was open Monday to Wednesday.

- Did the Police consider that even if the points listed on page 12 of the report were implemented by the venue that would still not be enough to avoid revocation of the licence?

The Police did not feel they were enough as they did not feel the licence holder agreed with the cause of the issues that the Police were highlighting of the bulk quantity of alcohol, mismanagement, and prevention of intoxication. He referred back to the inability of staff to refuse service and prevent intoxication once customers already had large quantities of alcohol in front of them. If the drinks promotions were ended that did not change the vertical drinking aspect and would not reduce the current levels of risk being presented by the clientele

coming in at the present time. Police would then want to look at the provision of regulated entertainment after 11pm and a prohibition to that.

The provision of door staff needed to be enhanced if the venue was opening after 11pm.

Mr Pollard noted that a food led business had a much lower risk but the condition of alcohol ancillary to a table meal was difficult to enforce and conditioning the provision of food until 90 minutes before closing did not necessarily impact on the licensing objectives by people eating and soaking up the drink. What was being demonstrated at the venue was that people were going in and just drinking and the provision of food did not, in any way, impact on that. A condition that people were seated and dining would reduce the risk.

If the bulk of the conditions were applied the venue would see a reduction in issues but if the licence holder wanted to continue as the Southsea Brunch Klub - the home of the bottomless brunch it would be a concern to the Police due to the impact on the licensing objectives.

Other responsible authority questions to applicant (licensing and Fire authority)

No questions

Interested parties' questions to applicant.

No questions

Premises Licence Holder questions to applicant

In response to questions from the Premises Licence Holder, Mr Pollard responded as follows:

1. Did Mr Pollard recall, at the meeting on 24th January, stating, before any discussions, that the Police were intending to apply for a revocation?

He confirmed that he did recall that.

2. Did Mr Pollard recall, at the same meeting, discussing the request for CCTV from 8th September, and Mr Wallsgrove providing an explanation regarding the challenge being made about the request and that it was in relation to the Data Protection Act?

He recalled it being partially to do with the Data Protection Act.

3. What was Mr Pollard's understanding of what a lawful request was from Police for CCTV under the Data Protection Act?

That there was no such thing as an unlawful request as the request itself was not a matter of any legislation.

4. Did Mr Pollard consider that the Police could ask any licensed premises in the city to provide any amount of CCTV just because they had asked for it?

Yes, the Police could ask and that was not unlawful.

5. Was Mr Pollard saying his understanding of the duty was that every licence holder must provide every request for CCTV to the Police?

No, he was saying it was not unlawful for the Police to make a request for CCTV.

6. Could Mr Pollard explain how Mr Wallsgrove had frustrated the process following the initial request made for CCTV from the 8th and 9th September? The initial request was said to be in relation to levels of intoxication with no specifics on the investigation.

Mr Pollard considered the delays were unnecessary due to the nature of the condition of the licence which compels the licence holder to provide CCTV or access to the CCTV to Police on request. The 2003 Licensing Act exempts the licence holder from certain aspects of the Data Protection Act. The Police had stated what they were investigating.

7. The reason for the request changed 3 times from intoxication to drugs offences and then licensing act breaches. How was Mr Wallsgrove frustrating the process, having made clear to the Police officer and the Police solicitor that the CCTV had been downloaded and was available once it was clear a proper request had been made and that it was not simply a fishing expedition?

The frustration was the delay in the provision. The CCTV was going to be made available by the DPS Sam, but once the request reached Mr Wallsgrove the provision stopped, and a difference of opinion ensued which slowed it down and the footage was not provided quickly or easily in line with the licence conditions.

- Whilst the difference of opinion was still ongoing, the Force Solicitor requested it be produced within 7 days. How was the process frustrated when it was produced within the time frame provided by the Police Solicitor?

Because the Police had to make more than one request. Mr Pollard considered it a moot point, as the Licence holder was exempted from the aspects of the Data Protection Act when the provision of the information related to the prevention of crime or when compelled to share it under legislation.

At this point the Chair noted the difference in opinion on the matter and requested PCC legal advisor provide the Sub-Committee with some clarification on the points that had been raised.

Ben Attrill, PCC legal advisor stated the Sub-Committee should just observe the facts as they were - that there was some delay and some legal argument. A request had been made and the CCTV had been provided. It was up to the Sub-Committee how much weight they attached to the matter when they made their decision. He noted that everybody was entitled to legal representation and to raise legal argument and that had led to Mr Pollard considering the process had been frustrated.

Mr Wallsgrove stressed the point of the questions was because Mr Pollard was stating the failure to provide CCTV in September and NYE was a breach of the licence conditions even after a legitimate reason was provided for the delay and it was important for the Sub-Committee to understand how that came about and why the CCTV was not produced on the day requested.

- Were any concerns raised with Mr Hudson following the incidents in September?

Apart from the request for CCTV for the 8th September there were no other concerns raised.

- When the variation application was submitted in August 2023, did the Police, at that stage, have any concerns with the way the premises were being run?

The Police had no evidence to support a representation.

- Could the Police confirm what time the visit was to the premises on 15th December, how long they were at the premises and were any matters of concern raised with the DPS?

The visit was at approximately 10:50pm for about 10 - 15 minutes. The purpose of the visit was to ask for the details of Christmas and NYE opening times - it was not a compliance visit. 20 - 30 venues were visited that evening.

- Had the Police visited the premises before 15th December and had they had any previous discussions with Mr Hudson?

The Police had but the Police Licensing Team had not. There had been no previous discussions with Mr Hudson.

- Had any Police visits been carried out since NYE?

The understanding was that SBK had been on the Police patrol route for visits at the weekends, but Mr Pollard was not aware how many times they had visited the premises. The premises had been raised to the local policing team as a venue they needed to be aware of.

- Had Mr Pollard's colleague visited the premises since NYE and were any concerns raised with Mr Hudson during any visits?

PC Ben Lewington had visited the premises on a couple of occasions a couple of weeks previous but he did not know the exact date. It had been on a busy evening, at about midnight, and whilst speaking to Mr Hudson at the rear of the premises a couple of agitated males squared up to him and his colleague in an attempt to intimidate them out of the premises and were asking why they were there. They left the premises and he spoke with Mr Hudson.
It was a compliance check.

- Could Mr Pollard provide the name and rank of the Officer who said that Mr Hudson had refused to provide a statement? This had been requested at the meeting on 24th January after providing an explanation as to why Mr Hudson did not provide a statement following the NYE incident and the Police were now attempting to draw a negative inference from this.

The other requests from that meeting had been provided but Mr Pollard noted that this was a mistake on his part in not providing the information. The information had not been requested for the hearing and Mr Pollard agreed to provide the details outside of the meeting.

- Was there any follow up with Mr Hudson to provide a statement by Police as was offered to another of the witnesses?

The police officer was led to believe that Mr Hudson categorically did not wish to make a statement and consequently no further attempt was made to get a statement from Mr Hudson.

- Had Mr Pollard listened to the full variation hearing in October 2023?

He had listened to most of the hearing but not all of it.

- Did Mr Pollard recall Mr Wallsgrove telling the Sub-Committee that from 10/11pm there would not be anybody sat down and eating at tables in the premises as that was effectively the time most people would be just drinking? Were the visits made to the premises after that timeframe?

He did not recall it verbatim but accepted that something was discussed around that topic. He did recall Mr Wallsgrove stating, 'having a few quiet drinks after dining earlier on in the evening'. The visits were after that time.

- Referencing the screenshots provided from the SBK website, why were the committee not provided with the full brunch menus?

This was because he was showing the drinks promotions and the bulk purchase of alcohol. The Licence holder had the opportunity to provide the menu information.

Mr Pollard stated he was producing the evidence which suggested to him that there was a bulk purchase of alcohol being marketed at all times at SBK which was impacting on the objectives of intoxication.

- Had Mr Pollard noted a lot of other premises in Portsmouth offer the bottomless brunch?

He confirmed there were other premises which offer it for four or five hours on a Saturday afternoon, for example. He was not aware of any other premises who had set themselves up as the home of the bottomless brunch.

- Did Mr Pollard accept that only Friday and Saturday nights have had issues? That there was no evidence to support any issues at other times?

That was when the Police had seen the issues or had reports but that did not mean there weren't other issues. The Police did not have evidence but observed that just because it was not reported to the Police did not mean nothing had happened. Local residents had noted incidents.

- Returning to the meeting on 24th January - Did he accept he had agreed that, had the incident on NYE not happened, he would not have been issuing a review of the premises licence?

Mr Pollard agreed to the extent that he would not then have looked back over recent police reports and the SBK website and pulled all the information together.

- What specifically linked the brunch offer to people consuming alcohol after 10pm who had come in just for a drink?

The violent customers could not be shown to have consumed a brunch on the premises and then going on to commit the violent acts. However, the sum of the drink's promotions on offer, with the biggest promotion being the brunch, were likely to be causing the intoxication and then fuelling the incidents. Whilst the premises were offering all the different types of bulk alcohol purchases and bulk consumption of alcohol there would remain an ongoing risk.

- Did he speak to any of the other responsible authorities at the time of submitting the review application or during the consultation period?

Mr Pollard had spoken to PCC, licensing to find out if they had any ongoing concerns.

- On the second email request for the NYE CCTV on 3rd January, did he specify a time by which it needed to be produced? Why didn't he phone Mr Hudson if his suspicions were aroused by the DPS being on leave?

Mr Pollard did not specify a time and did not phone Mr Hudson as he had already made the request.

- Given that the Police Solicitor, when asking for the September CCTV, had asked for it to be produced within 7 days could he not have said he needed the CCTV urgently?

The licence condition does not require that and given the previous email from the force solicitor threatening review, Mr Pollard considered it would have been self-explanatory that the next request would need to be provided in line with the licence condition.

- Did he agree that the CCTV was provided before Mr Hudson was served with the review application?

Mr Pollard confirmed this was correct to the best of his recollection.

- How was the review served on Mr Hudson?

Mr Pollard had taken advice from the local authority when submitting the review application in the morning, that they would be advising Mr Hudson of the review.

- Why did he not contact Mr Hudson and advise him the CCTV was corrupted earlier than 24th January after receiving it on the 12th January?

Prior to the 24th January, Mr Pollard was not aware what was missing as had not got to that point in his work on the case. The 12-day period was not an extensive period and during that time Mr Pollard was not just working on the SBK review. The meeting on the 24th January seemed the opportune time to raise the concern.

- Did he accept that he did not raise the issue of the still image until the 7th February within the supplemental papers stating it was a breach of the condition of the licence?

Mr Pollard accepted that the footage was eventually provided. However, it was not provided quickly or easily as per the condition which is what was being referred to when stating it was a breach of the condition.

- Was he aware that there was a food menu available at all times, in accordance with the condition, up to 90 minutes before the premises

closed and did he have any evidence saying the menu hadn't been made available?

Only the advertisement for Friday Flavas stating the last dinner service was 9pm and a condition stating that food as a main meal or entrée must be available for 90 minutes before closing. The advertisement did not state it was the brunches that were finished at 9pm - it stated it was dinner service. He did not have evidence that there was no other food available after 9pm.

The Responsible Authorities Case (Fire)

Simon Wood, Portsmouth Support Officer for Hampshire Fire and Rescue Service presented the representation in support of the review for SBK.

The service had fire safety concerns that were being dealt with through the Fire Safety Matters process and had hands on experience with the premises at the time the review was raised.

He advised there were 3 levels to the Fire Safety Matters process with Level 1 being advisory and Level 3 requiring a follow up visit. Level 3 usually arose after an audit of the premises and issues were found that fell short of formal enforcement action or prohibition action. Failure to comply within the time allowed could result in the issue being escalated to enforcement notices. The ethos of the regulatory work was that all parties were working together to come to a satisfactory outcome.

Mr Wood outlined the details of their involvement as per Appendix C of the agenda and stated they supported the recommendations made in the review document to reduce the opening hours and to put more of an emphasis on the use of the premises as a restaurant.

Members questions to Responsible Authority (fire)

In response to questions from the Members, Mr Wood responded as follows:

1. Did he find Mr Hudson responsive to the points raised during visits?

The visits were carried out by the Fire Inspectors. Mr Hudson was co-operative which was why the visit went to a FSN3 and not enforcement. Mr Hudson was present, on time and had already carried out some of the items from the original visit on 1st November 2023.

Applicant for the review questions to responsible authority (fire)

No questions.

Responsible Authority (Licensing) questions to responsible authority (Fire)

In response to questions from Licensing, Mr Wood responded as follows:

1. During both visits to the premises, was Mr Hudson the point of contact given to the fire authority or was there any other person who had a

controlling aspect? Was the fire authority aware of anyone else managing the premises, apart from Mr Hudson?

Not that they were aware of. The letter was addressed to Mr Hudson and they had no indication of anyone else that dealt with it.

Interested parties questions to the responsible authority (fire)

No questions

Premises Licence Holder questions to the responsible authority (fire)

In response to questions from the Premises Licence holder, Mr Wood responded as follows:

1. Was the view that the premises were operating other than a traditional restaurant based on what had been written in the police review papers or on actual visits to the premises by fire officers?

It was based on information coming in to them that it was not being run entirely as a restaurant. This had come from a member of the public. Information had also been sourced through news reports and police reports - a variety of sources.

The Responsible Authorities Case - Licensing

Nickii Humphreys, Licensing manager presented the representation on behalf of the Licensing Authority and set out the reasons for the representation as per Appendix C of the agenda.

She stated the licensing authority believed that the incidents that brought about the review could be linked directly with the premises and were therefore available to be scrutinised by the Sub-Committee.

Ms Humphreys drew attention to the details of visits undertaken since September 2023 and noted some satisfactory outcomes, but also references to availability of food on the premises and it being very much similar to a late-night bar. She noted episodes of drunkenness were observed and episodes of vomiting. There was evidence to show excess amounts of alcohol consumption associated with the premises.

Ms Humphreys noted a pending investigation regarding a visit to the premises on 22 December and could only say that the investigation amounted to non-compliance with conditions in relation to covers at the restaurant, the provision of substantial food and failing to provide CCTV as required by way of the licence.

Ms Humphreys was clear that, from the licensing authority's perspective, concerns raised by local residents and the fire officer, that the premises were not being utilised as what would typically be regarded as restaurant type premises as was purported to the Sub-Committee in October 2023.

She went on to state that, whilst the licensing authority accepted that some diversification in any business was necessary to keep the premises strong and sustainable, it was necessary to consider what the premises purported to be. She noted the reports submitted would suggest that the brunches from lunch time until late afternoon were not necessarily causing problems and it was the transformation later which turned the premises from a brunch type availability of food being the priority, to a venue where people could eat if they want but could also just come in and partake of alcohol. The alcohol availability was promoted in terms of bundles, which advocated more alcohol consumption and the impact of that consumption had led to drunkenness and disorder and a detrimental effect on the community living within close proximity to the premises.

In relation to the alternative conditions available to the Sub-Committee when considering the application, she noted the Sub-Committee in October had worked hard to try and alleviate the problems that had been put forward by the residents. However, she considered those conditions had not assisted, despite the assertions of how the premises would be run by the Licence holder. She was not convinced any other conditions would help and therefore advised the Sub-Committee to consider revocation of the licence.

Members questions to Responsible Authority (Licensing)

In response to questions from the members, Ms Humphreys responded as follows:

1. Had a response been received from South Coast Ambulance Service?

The Freedom of Information (FOI) request made had come back with two incidents in which the service was directed to the premises. The Ambulance service had asked that the request came through as a FOI. There were no dates detailed just the number of visits.

2. The assertion, in her representation, that the Fire Service had made a representation that the premises were not being used as a restaurant was not correct - could she confirm this was correct?

Ms Humphreys said the inference made by that paragraph was in relation to the representations that had been made and were before the Sub-Committee and that the Fire Officer had concerns because of the nature of the premises and about how people react in a restaurant scenario being different to a late-night bar environment. She agreed the paragraph was slightly clumsy in its attempt to explain.

3. Had anyone from the Licensing authority checked the incident log to ensure it was up to date?

Ms Humphreys was not aware if this had been checked.

4. To what extent could a business diversify their operation and business?

There would be occasions where restaurants would want to offer a change such as a dinner dance, or murder mystery event as an accompaniment to the main restaurant use. However, with SBK there was a diversification of the uses of the premises at different times of the day, being a restaurant during the lunchtime/afternoon, but a completely different type of premises in the evening centred around consumption of alcohol, drinks promotions, DJs, dancing and food was not the primary reason for people to be in the premises during the later hours. This diversification was having a detrimental effect on the local residents and the licensing objectives.

Also of consideration would be other legislative matters such as planning.

The licensing act allows maximum flexibility unless there were mandatory conditions or discretionary conditions that had been imposed on the operating schedule. The authority could not enforce against the licence holder saying they are a restaurant and they are not other than by looking at the impact this was having on the licensing objectives.

5. Did the Licensing authority stick by their view that the Licensing Sub-Committee in October were deliberately misled by the Licence Holder as to the true nature of the operation of the premises?

Ms Humphreys confirmed they did. She had watched the proceedings and read the minutes and stated the emphasis was given that it was a restaurant type premises but also that people could come in and just drink alcohol. She had been satisfied the emphasis was on restaurant use.

6. Referencing the investigation of the incident on 22nd December, what were the powers of the Licensing authority?

The Licensing Authority had the same prosecuting authority as Police.

7. With regard to the incident on 22nd December, was there anything contrary to a restaurant being able to book itself out for a private party?

There was no condition preventing that, but the premises would still need to be compliant with the conditions imposed on the licence.

8. NYE was a Sunday - what time was the premises licensed to be open till on a Sunday?

It was confirmed that the licence is for the sale of alcohol until 1am and then closing at 1:30am. It could not be confirmed if an application for a Temporary Events Notice (TENs) had been applied for on NYE but that was not an offence being investigated.

Applicant questions to the Responsible Authority (Licensing)

There were no questions.

Interested parties questions to the Responsible Authority (Licensing)

There were no questions.

Premises licence holder questions to Responsible Authority (licensing)

In response to questions from the premises licence holder, Ms Humphreys replied as follows:

1. Could they confirm there had been no concerns raised with Mr Hudson from the October Sub-Committee hearing until 22nd December?

It was confirmed there had not been any further visits and Licensing had been fully engaging with Mr Wallsgrove as Mr Hudson's representative.

2. When the variation had been prompted by Mr Stone's visit to the premises, was Ms Humphreys aware of the discussion Mr Stone had with Mr Hudson about the brunch offer?

Ms Humphreys noted that as that would be second hand information she couldn't answer.

3. In relation to the bottomless brunch, would she consider it was not an irresponsible drinks promotion per se, only if it could be linked to the serious undermining of the licensing objectives?

Based on the evidence presented Ms Humphreys had nothing to submit for day-time use. The issues raised were an overall problem across the duration of the opening hours.

It would be up to a court to make the definition in relation to the bottomless brunch, but in the statutory guidance and the mandatory conditions, there was a point where you had to consider where the effect was and that was when it had a negative impact which had been evidenced.

There was an element of drinking to excess and promotions which enabled and encouraged that level of drinking and on that basis the promotion was giving rise to disorder, drunkenness and nuisance.

4. Was the Licensing authority aware that the event on 22nd December was a private office Christmas event?

Ms Humphreys confirmed the information they had was that it was a company that had hired the premises but that did not necessarily make it a private event. It was private hire with a portion of the public associated with that company.

Ms Humphreys confirmed no aspect of the licence was suspended when it was a private event.

The Sub-Committee adjourned at 11:44 and recommenced at 12:02.

Interested Parties' Case

Adrian Bird, Local Resident presented his case.

He stated that a Police surgery had taken place in the local Co-op in Elm Grove in late October where Police had the opportunity to hear from residents about their concerns. He noted that most of the behaviour witnessed was confined to weekend evenings, but anti-social behaviour was also witnessed during the weekend daytime with raucous shouting, people being sick or slumped against the walls of SBK. His son had had to step over a woman who had been sick in the street and was leaking blue liquid. Mr Bird had witnessed a group of women come out of SBK with one or two of them so intoxicated they could not support themselves and were slumped against the wall. He noted it was not always appropriate to take photos of them and not always appropriate to ring the authorities, but it was an example of the low grade ASB local residents were experiencing. The weekend daytimes were not without their problems.

He had been asked by other residents to summarise their concerns about SBK. They fully supported the application for a review of the premises licence having witnessed the business, particularly at weekends operating as a drinking establishment, bar or nightclub and not as a restaurant. They believed there was a clear causal link between the operation and the recent upsurge in ASB and criminal activity in the neighbourhood.

He noted there had been restaurants for many years at 119 Elm Grove with no concerns. He noted the Elm Grove pavement was narrow and became blocked with people queuing to go in and the crowds of people congregating outside the building caused people to have to walk in the road.

Incidents witnessed were:

- Screaming and shouting in the early hours of the morning by drunk people as they dispersed and got into taxis.
- Loud thumping music which could be heard up the street and in local homes till the early hours, made worse when the front doors of the premises were open.
- Numerous incidents of vomit outside SBK and in St Peter's Grove.
- Customers slumped in the street.
- Men and Women urinating in the streets, against houses and on private property.
- Blood spills on the pavement.
- The area around SBK had become more littered.
- Drug taking in St Peter's Grove and drug dealing at the back of the Co-op on Elm Grove.
- People having sex near the rear of the funeral parlour.
- People sitting on cars and vandalism to cars in the form of broken wing mirrors and scratched paint work.
- Threats of violence and abusive behaviour towards residents.
- Fighting between SBK customers in the street.

Mr Bird considered the most appropriate course of action for the safety of the community and to stop the degradation of the residential area would be revocation of SBKs premises licence.

Pauline Howarth, local resident of St Peter's Grove presented her case. Her representation was also available at Appendix 12 of the Police review (page 26).

She described her experience of returning home on NYE. She had spent the evening with friends at Portsmouth Sailing Club and walked home with two friends, leaving the last one in The Retreat, and continuing on alone. She heard shouting coming from Elm Grove, from the Retreat, which was a good block away at 12:50pm. Ms Howarth was apprehensive walking towards the shouting and noted she should not be afraid to walk down her own street at night. She observed that most weekends there were drunken people coming out of SBK.

She told the Sub-Committee that two Saturday's previously to the hearing, she had gone to catch a bus at 6pm and there was a group of women outside SBK, one being sick in the gutter.

Ms Howarth stated she had lived in St Peter's Grove for 40 years, with an occasional incident but never as frequent as since SBK had opened, with vomit in the streets, mess and anti-social behaviour. Since SBK had opened the atmosphere of the area had changed.

Matthew Scott-Joynt presented his case.

Mr Scott-Joynt advised his written representation was available to read at page 115 - 117 of the agenda pack.

He told the Sub-Committee he lived the closest of all the residents to SBK with his flat being at the Elm Grove end of St Peter's Grove. He had bought it 3 years ago and it had been a good place to live. Once SBK opened it had routinely been an unpleasant, stressful and at times threatening experience living there. It had been so bad that from the beginning of last summer his stress levels were so high he had tried to be away from his flat as many weekends as possible.

Mr Scott-Joynt thanked the Police and PCC licensing for their representations and the Police for bringing the review, which had brought a sense of relief. He was in no doubt that the SBK licence should be revoked and considered, having watched the hearing in October, that the committee had been misled as being so close to the premises he considered its primary function was not as a restaurant - it was a club.

The representations from the Police and PCC matched his experience of living near the club.

He had been staggered as to how long the premises had been able to remain open as the level of disturbance and disruption to residents' lives had been immense. He and others had repeatedly described to members of the

management about the issues, about being disturbed and kept awake by their customers, the shouting and swearing during the evening and early hours. He had described customers gross behaviour and threatening ways in the streets, about the loud music coming from the club which he could hear in his flat.

Mr Scott-Joynt stated the concerns had been dismissed and it had been inferred by members of the management, Mr Hudson included, that residents were being thin skinned, intolerant, or unreasonable and unfairly attributing incidents to their customers. Mr Scott-Joynt's windows looked onto the corner of SBK so it was obvious they were customers of SBK.

He considered the decision in October to allow SBK to continue had been disheartening. He considered SBK to be in the wrong place - it should not be in a residential community.

Members' questions to Interested parties

In response to questions from the members, local residents responded as follows:

1. What sort of hours was the late music and what was the latest it had gone on?

The music was mainly from 8pm till close which was past midnight. Mr Scott-Joynt could hear it in his flat with all the windows closed. It was worse in the warmer weather when windows in his flat were open. He had complained to Fabio and had met the response of 'ah, but we've just turned it up for the last bit of the night'.

2. How can you prove all the anti-social behaviour comes from the club?

Mr Scott-Joynt stated he had very, very large windows looking out onto the club and the behaviour was either from people walking into the club, to the corner or walking away from it.

Mr Bird stated the behaviours they see from the club led to the view that the majority of the ASB going on in the streets did relate to SBK and that started with their understanding of the type of customer they were trying to draw in, the way they operated and the types of drinks promotions they offered. They saw incidents of daytime drinking, people being raucous and screeching and drunk people coming out of SBK being sick, and that was part of the build up to the evening. Then the SBK music came through the walls and people were coming out in a raucous manner, urinating against walls.

Mr Bird described a group of males dumping the contents of their car rubbish in his pathway after he remonstrated with them. All three residents described further anti-social behaviour.

3. What took place at the meeting in October between the residents and Mr Hudson and why did they feel that hadn't achieved what they were looking for?

Mr Hudson provided his telephone number as a line of contact, but in reality it was not used as the problems were so large and normalised that they would be ringing Mr Hudson all the time, every single Friday and Saturday night. They asked Mr Hudson, at the meeting, if he had been the overall manager at SBK throughout the whole year and he did not want to answer the question because he was aware of the implications. This impeded any positivity they were trying to create as they were aware he was the same person who had been managing the establishment throughout all the problems already. That broke the purpose of the meeting.

Mr Hudson offered to do alterations that had minimum effect such as replacing a window with soundproofing. Residents came away with the sense that the model was so fundamentally broken and so fundamentally at odds with responsible community living that for any meaningful change to occur SBK would have to completely reinvent itself and Mr Hudson was not open to that. A second meeting was set up but that did not take place.

4. Could they clarify that they were given the opportunity to detail any problems to Mr Hudson but nobody actually went back to him after that meeting?

Mr Hudson and Mr Bird exchanged numbers and they had texted Mr Hudson on a number of occasions, for example, when there had been unreasonable littering or rubbish building up outside. There had been some co-operation but not enough to get to the bottom of the issues.

Applicant for the review questions to interested parties

No questions

Responsible authorities questions to interested parties

No questions

Premises licence holder questions to interested parties

No questions

The Sub-Committee adjourned at 12:41 and recommenced at 13:15

Premises Licence Holder Case

Mr Wallsgrove, Mr Hudson's legal representative, presented the premises licence holders case on his behalf.

He noted the review had arisen out of the incident on NYE which was he considered to be an isolated incident and stated that Mr Hudson had put in place measures to address the cause of the review to ensure such a serious incident did not occur again.

He considered revocation of the premises licence was disproportionate and a punitive measure. His view was that the Sub-Committee had a duty to do no more than was necessary to maintain the licensing objectives and recommended they impose conditions and reduce the hours for the sale of alcohol. The Sub-Committee had been addressed by the Police and the Licensing Authority on the matter, and he considered they had failed to draw any of their concerns to the licence holder and his contention was that the review arose from and was solely about the incident on NYE.

Mr Wallsgrove stated he intended to present the following:

- Background and History of the premises
- The variation hearing in October 2023
- Whether the Brunch offer was irresponsible.
- The principal incidents alleged by the Police - NYE, CCTV requests, Mr Hudson's alleged failure to co-operate with the Police.
- Actions Mr Hudson had taken and the proportionate measures taken to address the cause of the review and to ensure the premises could continue trading.

Mr Wallsgrove asserted there were 6 key points for the Sub-Committee to keep in mind when making their decision:

1. Burden of proof which sits with the Police and those making representations.
2. Burden of proof is on the balance of probabilities.
3. Seriousness of the case - to have an open mind, listen to what was said, analyse the evidence and make findings of fact.
4. Prior to the variation hearing in October 2023, Police confirmed no cause for concern with the premises. They had not raised concerns with the licence holder. Since then, there had been two incidents - a telephone call from a resident and the incident on NYE.
5. The seriousness of the incident on NYE was accepted by Mr Hudson and should not have happened.
6. Mr Hudson's business and premises were at stake as well as the livelihood of the 15 members of staff.

Mr Wallsgrove asked the Sub-Committee not to solely focus on the CCTV images but to put the images in the context of all the representations and not in isolation. Mr Hudson wanted to reassure the Sub-Committee that another incident like NYE would never happen again at SBK, in terms of the level of violence. It was a one-off incident.

Background and History

SBK opened in November 2022 with a long lease through Elm Grove Enterprises Ltd who are named as the Licence holder. Mr Hudson was the sole director of the company.

From November 2022 to April 2023 the management of the premises was under Mr Hudson's direct control with the brand focusing on brunches. In late March 2023, Fabio Mazzone sublet the premises and took on the brand and premises whilst Mr Hudson's company remained as Premises Licence holder and effectively as landlord. Mr Hudson did not have a huge amount of day-to-day involvement in the premises but maintained an interest in how it was operated. Following the variation hearing in October, which prompted significant representations from residents, Mr Hudson confirmed he would have more day-to-day responsibilities to ensure those issues did not arise.

From October to NYE, the Police only raised one issue, the telephone call from a member of public on 27 October and then the incident on NYE. Following those incidents and the meeting on 24 January, Mr Hudson ended the agreement with Mr Mazzone and became the DPS for the premises. His contention was that if that had happened prior to NYE the incident would not have happened.

Mr Hudson had accepted the incident on NYE was not managed properly by the management or staff. Mr Wallsgrove noted there had been no police investigation and the perpetrators not held to account despite being provided with the names of those individuals they believed were involved.

Variation Hearing - October 2023

The Sub-Committee had to consider whether they were misled at the hearing that the premises were being utilised as a restaurant with alcohol ancillary to a meal.

The premises success was built on the brand of the brunches although customers could choose other substantial food from the menus and purchase drinks separately.

Brunches were minimum two courses with variations at different times of year. Choice of drinks were limited.

There were 85 seats when the premises were open. The venue offered entertainment alongside the brunches. Mr Hudson stated he had told the Sub-Committee in October that it was not a typical restaurant with white tablecloths, cutlery, and condiments on the table and that was not their target market for that meal. For the business to survive it needed the flexibility of allowing people to just drink after 10 - 11 in the evening. The key times for people ordering food at the premises was 12 - 3pm, 5 - 8pm and 8 - 10pm. From 10pm onwards no one tended to come in and order food but it was available. He advised the premises were open till 11:30 on Thursday, 1:00 - 1:30am on Friday, 1:30am on Saturday and Sunday between 12 - 7pm.

Mr Wallsgrove stated the brunch offer was unquestionably substantial food. The last brunch sitting was at 9pm but menus for food were available thereafter.

Mr Wallsgrove referred to the old 1964 Licensing Act and a number of cases around what constituted substantial table meals, and that licensed premises could sell alcohol past 11pm if it was ancillary to a substantial table meal. He noted there was no definition in the Licensing Act 2003. Mr Hudson considered a couple of the old cases would still be relevant in a court determining what constituted a substantial meal and that what SBK were offering in terms of the brunches were substantial meals. The majority of people going to SBK were eating a meal primarily through the brunches.

Mr Wallsgrove stated he made it clear to the Sub-Committee that the Licensing Act did not categorise licenced premises as a restaurant or define what a restaurant was. He had also made it clear the primary focus of the business was the brunch. He stated he made it clear to the Sub-Committee the changes would allow people to remain after eating and drink there rather than go on to other licensed premises. He also made it clear people could come in for a drink, but the focus would remain on the provision of food. He had made it clear that around 10 - 11pm at SBK, people would be finishing their food and although food would be available, they did not expect there would be much take up of that offer. People on the premises would just be consuming alcohol.

Mr Wallsgrove had told the Sub-Committee it was highly improbable there would never be incidents of ASB on the premises. No concerns were expressed to the Licence Holder or DPS prior to the hearing in October. The representations that came in were mainly about what had been going on in the locality with it all being allegedly associated with SBK.

Mr Wallsgrove observed that the Sub-Committee was being asked to determine the October hearing had been misled on the following basis:

- A visit to the premises by Mr Pollard after 10pm, the time when Mr Wallsgrove had stated most people probably wouldn't be eating. The CCTV clips were all around midnight to 1pm.
- A poster stating last dinner sitting was 9pm.
- Visits from the Licensing Authority, only one of which was before 10pm.

Mr Wallsgrove stated that on the basis that neither the Police nor licensing authority raised any concerns to the Licence Holder there was no other conclusion that could be reached other than the Sub-Committee were not deliberately misled.

Brunch - Irresponsible Drinks Promotion

Mr Wallsgrove noted there were at least 17 other premises in Portsmouth offering a bottomless brunch. There was no evidence presented that supported the assertion the incidents of disorder had any correlation to the brunch offer.

Meeting 24th January

Mr Wallsgrove noted Mr Pollard had stated he was intending to take the matter to review before any discussions had taken place.

Mr Wallsgrove asked Mr Pollard to provide evidence at this hearing in relation to whether there was any correlation between the brunch offer and NYE - this had not been provided.

Mr Pollard was asked to provide further information regarding Mr Hudson refusing to give a witness statement. The Sub-Committee had heard why he did not provide it that morning. Mr Hudson was not contacted further by the Police to make a statement. Mr Wallsgrove stated this was inappropriate and that in the absence of any evidence, the Sub-Committee should accept Mr Hudson's account and find that he had he had not breached the licensing condition by not providing a statement.

Production of CCTV

The initial request in September was made to the DPS who confirmed to Police he would secure the footage. The call was made by PC Vincent and Mr Hudson passed the phone to Mr Wallsgrove who asked what the request was for. PC Vincent stated it was regarding the levels of intoxication but could not identify the exact day and time of the complaint, having asked for two days of footage. PC Vincent then stated there was an investigation into potential drug use on the premises.

Mr Wallsgrove considered the request for 10 hours of CCTV footage excessive, a fishing expedition and wanted to establish what the investigation was about and to narrow down the timescale. An email was received from the Force Solicitor, stating they needed to hand over the CCTV and considered the emails an attempt to frustrate the requirement of a key licensing condition and should be handed over within 7 days. Mr Wallsgrove complied but stressed that in his view this request was not Data Protection Act compliant and an unlawful request and should not be viewed by anyone other than the Police.

Mr Wallsgrove advised that Mr Hudson had never refused to supply CCTV footage and was entitled to legal advice, it was not a frustration of the process.

NYE CCTV request

The request for CCTV from NYE identified the incident and specific time periods and was a valid and lawful request. However, the email request did not specify when it needed to be provided. The premises were closed from NYE to 5th January. Mr Hudson arranged for the CCTV to be downloaded and provided on 12th January before he was aware the review application had been submitted and Mr Pollard was told this at the meeting on 24th January.

Mr Wallsgrove stated there was no question that Mr Hudson would not provide the CCTV as requested.

Mr Wallsgrove stated the key point was that the footage was provided unconditionally in terms of the review proceedings and that no negative inference should be drawn.

Mr Wallsgrove stressed he was not attempting to detract from the seriousness of the incident on NYE and understood it would trigger serious concerns from the Police and could have triggered an expedited review. However, he noted there had been no working in partnership with the licence holder, no working through the issues which happened on NYE to see if there were any alternatives that could be put forward apart from revocation.

The Sub-Committee took a short adjournment at 14:14 and recommenced at 14:16

New Year's Eve

Following the hearing in October Mr Hudson had a more hands on involvement with the premises because of concerns from residents. However, he was not present at the premises on NYE and Mr Mazzoni was the manager responsible and at the premises. Since the incident Mr Hudson had terminated the agreement with Mr Mazzoni to run SBK and the premises were now back with Mr Hudson in their entirety.

Mr Wallsgrove noted there had been the potential to have stopped what happened on NYE by members of staff and the SIA security staff had they intervened at an earlier point. He stated the responsibility lay with the staff behind the bar as the initial altercation started directly in front of the bar. He stated that if Mr Hudson had been present, he would have immediately spoken to the people, contacted the doormen to separate them and remove them from the premises.

Mr Wallsgrove noted the urgent need for staff to be retrained, not just those who were working in the bar but also other members of staff. Going forward there would be a better line of communications with Vespasian door security who work at SBK and other venues in the vicinity. This would be needed as the individuals involved on NYE had been involved in an earlier altercation at another licensed premises and SBK door staff were not aware of this.

Fire officers representations

Mr Wallsgrove noted their concerns that the premises was trading as anything other than a restaurant. He advised that all the works, bar one, had been carried out despite the deadline being 1st May and the fire risk assessment was in Mr Hudson's possession. Mr Hudson had been fully co-operative, and the Sub-Committee should have no concerns that the premises were not safe for people to use.

Residents' representations.

Mr Wallsgrove observed that the residents had picked up on the comments from the Police about misleading the Sub-Committee in October. He noted there are allegations from residents that are not related to SBK or SBK customers as some are when the premises were closed. Any incidents of ASB, residents can and do contact Mr Hudson but on occasion do not accept that incidents do not have anything to do with SBK even if they had been closed.

Changes to Premises

In order to make a difference to the operation of the premises and to remove the risk of high levels of intoxication Mr Wallsgrove outlined the following changes:

1. The removal of Mr Mazzoni as the DPS, replaced by Mr Hudson as an experienced licensee in Portsmouth, which had already been done. An application had been submitted for Mr Hudson to no longer be a DPS at another premises, so he could concentrate solely on the management of SBK.
2. The hours for the sale of alcohol to be cut on Friday and Saturday to 12:30pm with the premises closing at 1:00am. Mr Wallsgrove noted it may be in the minds of the Sub-Committee to cut the hours further instead of revoking the licence and that Mr Hudson would not challenge that if the hours for the sale of alcohol were cut to midnight.
3. A condition on the licence for the venue to have a minimum of 2 SIA door staff with body worn cameras to ensure that any footage of issues of ASB outside of the premises can be collected evidentially to assist the Police in any investigation.
4. Withdrawal of the drinks promotions which were introduced in response to competitors elsewhere in the city offering similar packages. He noted it was rare that anyone bought the packages - since the last hearing only 3 silver promotions had been ordered. The brunch offer would remain in place as they did not consider it was an irresponsible drink promotion. Mr Wallsgrove was instructed by Mr Hudson that the flyer for the drinks packages was a miscommunication and should have stated a minimum number of customers.

Mr Wallsgrove concluded by alluding to the Section 182 guidance and the financial impact of a decision to revoke the licence which should be considered. It would lead to a devaluation of the premises, a capital depreciation, loss of business for Mr Hudson and people would lose their jobs.

He asked the Sub-Committee to take the action he had suggested with encouragement to the Police to work more closely with the Licence holder and to communicate in a better way going forward.

Mr Wallsgrove asked the Sub-Committee to allow the premises to continue trading, albeit on the restrictive terms suggested which would address the causes of the review - consumption of alcohol - along with cutting the hours back. He considered this would deal with the causes of the review and considered revocation would be disproportionate.

Members questions to Premises Licence Holder

In response to questions from the members, the Premises Licence Holder responded as follows:

1. What sort of training had the staff undertaken since NYE? Did the premises have a training log?

They had undertaken full licensing training and talked about intervention, body language, looking at how people were behaving, watching what was going on around and in front of them. Detailed conversations had been held with Vespasian security about doing a training session which they had committed to doing.

There was a training log and it had been shown to the Licensing Officer.

2. What did a typical brunch food menu consist of?

A traditional starter such as halloumi fries, chicken wings or fishcakes. A main course such as SBK burger or SBK hanging kebab.

There were special occasion menus - for instance on Mother's Day consisting of items such as ham hock terrine, roast dinners, and various desserts. The chef was a very experienced chef from the Courtyard restaurant.

3. After 10pm, when the venue shifts to more wet trade, were there any changes in the venue.

There was no change in terms of seating but food from the menu would have to be ordered at the bar.

4. Was there entertainment going on all the time?

It was a whole experience with the brunch and entertainment.

5. Was the raised area primarily where the restaurant seating was?

That was correct, with a table of 12 in the lower area and some seating in the basement.

6. How much floor space did 80 - 85 covers take up in the venue?

The tables were available all the time and the only time they may be taken away was at the end of the night.

The area by the bar was kept clear, and there weren't any tables on the lower level of the ground floor as that was where the entertainment was set up although there were sometimes tables there for Sunday lunch.

7. Referring to the CCTV at Appendix 8, facing the bar, the dance floor was just people with a row of tables by the window and a row of tables like a divider whilst the rest of the upper area appeared empty. What proportion is usually tables?

The upper level normally has tables and chairs, but they were not present on NYE when Mr Hudson was not present. The upper level and basement were where the majority of tables and chairs were.

8. Was it true to say that most people at the venue after 10pm, had been at the venue for the brunch offer, eating food with unlimited alcohol for 90 minutes and were remaining to carry on drinking? And that the majority of the eating trade was through the brunch meal?

Yes, people who had been there eating would stay for a drink. It was the responsibility of the staff not to serve anyone who was intoxicated which was why the brunch offer itself was not an irresponsible drinks promotion. Within the terms and conditions for the brunches was the right to refuse service and staff would stop serving a customer even though they had technically paid for the rest of the 90 minutes.

9. Did the training help staff to spot the signs of intoxication?

Yes, it did.

10. Could they clarify who was doing the security at the premises?

There had been a commercial decision to change from Vespasian to Taurus but after the incident on 8th September they had changed back to Vespasian as the door staff had not been operating as they were expected to.

Vespasian manage the doors of other premises in the vicinity, and they were all in radio contact with each other.

11. Did Fabio Mazzoni own the company that owns the SBK branding?

He did not own the branding - he had a licence to operate the premises which had been terminated and he no longer had anything to do with the premises or running the premises. The company still existed.

The intention was for Mr Hudson to continue with the same branding.

12. Having only discussed the incident on NYE, was the premises licence holder saying the other serious incidents, such as on 23rd September, did not happen and that people called the Police and made it up?

The incident on 23rd September did happen but occasionally people did make things up, such as on 28 November 2023 when a resident called the Police about 'carnage' in the streets, but SBK was closed.

The incident on 27th October was a phone call from a resident about disorder outside the premises but a licensing officer was sat outside in his car and did not witness any disorder.

13. Was the Premises Licence Holder being dismissive of the vast majority of reports residents had made?

That was denied. But what was said was that there would be incidents at licensed premises, but it was about the degree and proportionality of how many incidents actually occur and how they are dealt with by the licence holder or DPS. What was being said by residents was not sufficient for a revocation of the premises licence.

What was disputed was the degree that the ASB was caused by customers of SBK and some of it could not be proven to be from SBK customers.

14. The Premises Licence holder appeared to be blaming staff for not doing something about the incident at the bar on NYE? Why was Mr Hudson not at the premises on NYE?

Mr Hudson was not present as it was not his business and as such considered it should be left in the hands of the DPS, Fabio Mazzone. Mr Hudson was not blaming the staff - but was saying they could have intervened and got security involved. They blamed the individuals who caused the violence who had already been involved in a fight at another premises.

15. Did Mr Hudson consider it acceptable that they were allowed on to the premises and why wasn't he taking some responsibility for the ensuing incident?

Mr Hudson was taking responsibility having dismissed and terminated the contract with Fabio as DPS, taken the premises back and retrained all the staff himself as they should have been adequately trained to spot signs of intoxication.

16. Why did Mr Hudson not send the CCTV from NYE anyway despite not being provided with a deadline? In relation to the statement, why did Mr Hudson not go voluntarily without being asked again?

Mr Hudson stated he had worked as licensees since 1986 and had never stood in the way of the police or not provided a statement. He was called at 3:30am and was in bed. He ran a bed and breakfast and had to provide breakfast at 7am and explained that to the officer. He could not call the withheld number back and was not offered another opportunity. He was not trying to obstruct.

There was no prevarication in relation to the CCTV. The request came in on 3rd January, the premises did not re-open until 5th January. The Police had previously asked for CCTV within 7 days, so Mr Hudson did not consider it unreasonable to provide it within that timescale. On the 24th January it was noted the CCTV was corrupt, but Mr Wallsgrove had been able to view his copy.

17. Did the licence holder not consider the incident on 23rd September was serious?

He did consider it a serious incident. But that incident along with the NYE incident and considering the one on the 8th did not warrant revoking a premises licence.

18. What was Mr Hudson's view on the meeting that took place with residents in October?

He had noted the level of anger towards the venue with some wanting it closed and others wanting the level of music turned down. They discussed the sound insulation which had now been installed. He noted the EHO did not consider it a noisy venue. The interactions since had been about glass on the floor for example. He discussed an email from a lady about noise from the venue at 2pm and on viewing the CCTV on his phone found the venue closed and had been for 2 hours. Police requested CCTV from outside the venue due to an incident further down the road at the Deco pub. Mr Hudson said he had walked around the venue outside at night and had not heard excessively loud music.

19. Was there an incident log on the premises and was it completed and made available when requested?

There were two different incident logs, one from Vespasian and one on the premises which was completed as appropriate.

20. The Police report noted a reluctance of staff to co-operate and yet Mr Hudson was disappointed the police had taken no action against the perpetrators.

This point was taken on board. The Police were asked at the meeting on 24th January which staff did not co-operate, and it was believed to be door staff and not SBK staff. The information had not been forthcoming.

21. Was the CCTV corrupted?

Mr Wallsgrove received a copy at the same time as the Police and it was not corrupted.

22. Was the business registered with the ICO and had they completed their Data Protection template?

Yes, they were and had.

Applicant for the review questions to Premises Licence Holder

In response to questions from the applicant, the Premises Licence Holder responded as follows:

1. If the name of the officer who asked Mr Hudson to make a statement was so important, why did he not follow up for that information from Mr Pollard?

Because he knew he could address the Sub-Committee to say he had not done that and knew he did not need the information for the purposes of the hearing.

2. By advertising that the last dinner service was at 9pm, did Mr Hudson consider this would discourage people from ordering food?

That was denied as the premises did offer food after the last serving of brunch at 9pm.

3. The CCTV from NYE was provided on a USB stick, did Mr Hudson recall a telephone call to arrange collection and where and to whom they were asked to drop the USB stick to?

Yes, it was taken into the council offices and handed over to a council licensing officer as arranged with the Police.

Mr Wallsgrove added, the request for NYE footage was a valid request under the Data Protection Act investigating a specific incident, during a specific time so Mr Hudson was happy to provide to the licensing authority. The request on 8th September was not considered valid and the fact that a licencing officer was collecting it made it more suspicious.

4. Were the changes to the measures proposed prior to the meeting on 24th January? And did Mr Hudson consider taking ½ hour off the sale of alcohol would address the problems raised and have a positive impact on the licensing objectives?

That was their contention that this would be sufficient, given the contention that NYE was an isolated incident and a night like no other. The door staff condition would not have been sufficient on NYE and Mr Hudson would have provided more than two door staff as that night was more prevalent for risk.

The reduction in time should not be taken in isolation but with the other measures and the change in DPS it would have a positive impact.

5. What positive impact would adding a condition for security staff make when they were already in place?

Making it a condition of two minimum and to have body worn cameras would be a greater deterrent for those people who wanted to cause trouble.

6. Did Mr Hudson recall the police, at the meeting on 24th January, stating the measures would not have a positive impact?

Yes, he recalled that conversation but did not agree with it and considered the measures would be sufficient.

7. Did Mr Hudson see the similarities between the CCTV footage on 8th September, 23rd September and NYE in regards to the intoxication, violence and all unfolding in the public safety risk in the road and traffic?

He did not see the September incidents as being like NYE. That was rare and unlikely to happen again.

8. Could Mr Hudson explain why he emailed on 4th January stating he would advise the best method for collection of the CCTV and then did not contact the Police again?

There was no specific reason, he may have just forgotten despite actively trying to get it done. He may have been off work whilst it was quiet.

9. Does Mr Hudson agree that, as sole director of Elm Grove Enterprises Ltd, who holds the premises licence, that he was and would have been at the time of the sub-letting, the responsible person as defined under the licensing act?

He was the responsible person under its legal definition but referred to the case of Paul v Woodhouse which Mr Wallsgrove considered relevant in this instance although it was a criminal case. Similarly, Mr Hudson was having active management in the premises, but under the definition a responsible person legally does not make them responsible for everything that happens at the premises in terms of breaches of licence conditions.

Responsible Authority - Licensing questions to the Premises Licence Holder

In response to questions from the Licensing Authority, the Premises Licence Holder responded as follows:

1. When did Fabio Mazzoni become Mr Hudson's tenant and start running the brunch clubs on his own?

In March - April 2023.

2. Why was there no reference to the arrangement at the October variation hearing?

That was an error on the part of Mr Wallsgrove. The DPS had changed from Sam to Fabio, and he used the term Manager as that was his assumption. It was only when the review was served that he saw the documentary proof of the arrangement.

Mr Hudson stated he emailed the council in March 2023 with a copy of the licence to occupy held by Fabio.

3. Why was Fabio not involved in the discussion about the issues at the premises at the meeting in October, as the impression was given that Mr Hudson was in a position to act on the complaints being put forward.

Mr Hudson had an asset to protect and as effective landlord he had sufficient power to ensure that decision making, as far as the premises were concerned, was still under his control. Most landlords who are premises licence holders are absentees. Fabio had the day-to-day responsibility for running the premises.

4. Did he consider having three separate managers since taking over in November 2022 had had a negative impact on the way the premises had been conducted?

It did not help which was why Mr Hudson had made the decision to take back control of the business and become hands on.

5. How did he consider the reduction in hours would bring about a reduction in drunkenness at the premises?

Mr Wallsgrove considered the cut in hours would be a proportionate solution and would have a positive impact to avoid the late-night disorder. The proposals were like a 'layered cake' and put together would achieve the required outcome.

6. With the bottomless brunch at the bottom of the 'cake', providing unlimited alcohol during the day, did the licence holder not consider it would fall over?

The alcohol was not unlimited. Bottles of drink were not placed on the table, customers were served one drink at a time allowing for the chance at each interaction to decide if the customer has had too much to drink.

7. What was the earliest sitting for brunch bookings from Wednesday to Friday? And was it £30 for one main course and drink for 60 minutes?

Mr Hudson confirmed it was one main course and drink for 60 minutes with the earliest sitting at 6pm.

Ms Humphreys concluded by noting Mr Wallsgrove's observation that the licensing act should not be a punishment in terms of sanctions, and drew attention to 11.23 of the guidance:

'where premises are found to be trading irresponsibly, the licensing authority should not hesitate when found to be appropriate to do so, to take tough action to tackle the problems at premises and where other measures are deemed insufficient, to revoke the licence'

She observed it was not a punishment, if it was appropriate to do so, revocation may be the preferred option given other suggestions that may come forward.

Interested parties' questions to Premises Licence Holder

In response to questions from the Interested Parties, the Premises Licence Holder responded as follows:

1. What had happened on the evening of Friday 15 December as there were 6 security guards outside at 11:30pm?

There had not been an incident. Mr Pollard visited the premises that evening. The security company had a van with door staff which goes around the area, and they had pulled up outside, got out and were chatting with the other door staff.

2. Why did the follow up meeting on 5th December not go ahead?

It could not go ahead due to building work going on inside the restaurant. Mr Hudson apologised for missing the meeting.

3. If the staff stop serving drunk people, why did residents see so many drunk people on the street outside - in particular a group of drunk women one of whom was being sick.

Mr Hudson stated he was with the lady (who was in her 40s) who was being sick, she had 3 drinks but as she did not normally drink, she was ill. Mr Hudson and staff took care of her until her husband came to collect her.

4. Mr Hudson seemed to be suggesting that resident's anxiety and stress caused overzealous reporting?

Resident's anxiety was a genuine concern. What was said was there were incidents where residents had reported things which had nothing to do with SBK and that there appeared to be a thought process that everything that happened around the venue was down to SBK customers.

5. Did the control of the sale of alcohol inside the premises, result in people leaving the premises drunk?

There were margins in how people present when drinking and they can appear perfectly well in the premises while they are consuming alcohol and then when walking out into the fresh air, may be the worse for wear. Mr Hudson taking back the reins of the business would ensure staff were as well trained as they could be to make the appropriate interventions at the right time.

6. The level of ASB throughout the last year had been bad so what exactly was the level of involvement of Mr Hudson with the business throughout the last year?

Mr Hudson was more hands on following the hearing in October 2023 although he had been keeping an eye on it for the rest of the time prior to that.

Summing Up

Ben Attrill, Legal Advisor for the Sub-Committee, provided some context around irresponsible promotions for the Sub-Committee prior to the summing up.

Mandatory licensing conditions attached to every premises licence contain one which deals with irresponsible promotions and in particular the provision of alcohol free or for a fixed or discounted fee. The condition prohibits the provision of an unspecified quantity of alcohol for free or for a fixed or discounted fee if there was a significant risk that such provision would undermine the licensing objectives. Mr Attrill drew the Sub-Committee's attention to the Home Office guidance on how to assess significant risk which states:

The application of these prohibitions is subject to an assessment in any case about whether the activity in question would give rise to a significant risk of breaching one or more of the four licensing objectives ... Factors that may be considered when deciding if a promotion is irresponsible may include:

- *Type of promotion, how big is the discount, for how long does the discount apply?*
- *Potential customers: is there likely to be a significant increase in the number of customers; what is the profile of the customer base?*
- *Type of premises: is it a high-volume vertical drinking establishment or a community pub?*
- *History of premises: have previous promotions been handled responsibly; has the licence been reviewed recently; have sufficient security measure been taken for any potential increase in the number of customers?*

Mr Attrill noted the guidance then goes on to advise that if there was any doubt, advice should be sought from the Police or the Licensing Authority. He advised that how the Sub-Committee assessed whether or not the promotion was an irresponsible one would be on how the promotion was run and not necessarily just what the promotion was.

Applicant for the Review Summing Up

Mr Pollard summed up as follows:

- Crime and disorder from patrons of SBK was the primary cause for the review. Intoxication was commonplace when crime and disorder had occurred at SBK. Violence was occurring at SBK or in the immediate vicinity due to the licensable activities of the premises.
- Drinks promotions and in particular the Bottomless brunch were in breach of a mandatory condition around irresponsible drink promotions as they were causing intoxication which was either having a negative impact or was likely to have a negative impact on all four of the licensing objectives.
- There were breaches of mandatory conditions and others.
- The actual risk of the licensable activities at SBK was significantly higher than the potential risk as in reality the premises was a popular nightclub, a vertical drinking establishment and not as portrayed as a seated restaurant requiring drinks after dining.
- Poor management of the premises by the previous DPS's and Mr Hudson had resulted in the problems.
- Mr Hudson should not be permitted to continue to conduct licensable activities in such a way as to undermine all four of the licensing objectives.
- Incidents of crime and disorder had escalated to a point which presented a real risk of serious harm or even death to a member of the public.
- The Sub-Committee should be guided by their main source of advice on crime and disorder, the Police, as under 2.1 of the guidance documents and have regard to section 11 of the guidance stating they should not hesitate to take tough action to tackle the problems at the premises.
- The Police were advising revocation of the premises licence in the strongest terms.

Responsible authorities - Licensing

Nickii Humphreys had nothing further to add.

Interested Parties

Ms Howarth stated she had lived in the area for 40 years and other residents for that period of time and they had never complained about the restaurants or other incidents before. It was no longer a pleasant place to live.

Premises Licence Holder

Mr Wallsgrove summed up for his client, Mr Hudson, and made the following points:

- Revocation of the licence would be disproportionate as he had shown the cause of the review was essentially the incident on NYE. No concerns had been expressed to the licence holder by the police before that incident and the Police confirmed in the meeting on 24th January if the incident had not occurred, they would not have brought a review.
- He did not consider the issue of whether the premises was a restaurant or not and was the committee misled as such was relevant. Consideration should be given as to whether, if the licence were to continue, it would have an adverse effect on the local amenity and whether the licence holder and DPS would promote the licensing objectives.
- There was insufficient evidence, both from the Police and the Licensing Authority, to satisfy on the appropriate standard of proof that there had been any breaches of the licensing conditions.
- Although the Sub-Committee had been referred to the Home Office guidance, he considered they needed to be satisfied that, if they allowed the licence to continue, would the provision of brunches, given the reduction in hours and assurances by Mr Hudson on the change of DPS, etc, taken together ensure the risk of serious disorder would reduce a satisfactory level, which was their contention.

The Chair then confirmed that all parties had had their say and were happy for the meeting to move into private session for a decision to be taken. Everyone confirmed they had.

The Decision

Before moving to private session, the decision was made, due to the length of the proceedings, in agreement with all parties, for the decision to be communicated as soon as possible the next day noting the Sub-Committee had five working days to notify of the decision.

The Sub-Committee moved into private session at 16:28pm to consider their decision.

Decision

In the matter of: Licensing Act 2003 - Application for review of a premises licence - Southsea Brunch Klub, 119 Elm Grove, Southsea, PO5 1LH

All parties shall receive written confirmation of the decision and reasons.

The Sub Committee has considered very carefully the application for review of a premises licence at the Southsea Brunch Klub. It gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of licensing policy.

The Sub Committee considered the relevant representations, both written and given orally 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 review application was submitted by Hampshire Constabulary. Representations were additionally made by the Licensing Authority, The Fire and Rescue Service and residents (11 raising concerns plus 2 in support of the premises) both in writing and by way of attendance at the Sub Committee hearing.

After having heard all of the above evidence and considering all of the options set out within the legislation (ranging from taking no action to revocation of the premises licence) the Sub Committee determined that it was appropriate that **the premises licence should be revoked.**

Reasons

The Sub Committee noted that the application was made by the chief officer of Hampshire Constabulary citing all four of the licensing objectives. The issues raised relate to the operation of the premises - in particular drunkenness, violent crime, disorder and anti-social behaviour. It was stated that the premises had been running irresponsible drinks promotions prohibited by a mandatory condition attached to every alcohol licence by operation of the Licensing Act 2003. These promotions were twinned with a failure of the DPS and staff to prevent drunkenness. The operating style of the premises is as a vertical drinking establishment with little or no food offering, despite conditions attached to the licence and assurances provided by the premises at a hearing relating to a variation application on 9th October 2023. It is noted that the decision from that hearing draws reference to concerns raised that the business is not being genuinely run as a restaurant with alcohol as ancillary to food. The police evidence issues of concern relating to the premises in April, May, July, September (x3), October 2023 and January 2024 (New Year's Eve) with a fight reported to have started within the premises and spilling into the street. The Sub Committee heard that CCTV footage covering this incident in particular was not provided when requested and in breach of the CCTV condition attached to the licence. Some argument was made during the course of the hearing that the delay was due to legal advice and challenge raised as to the basis for the request. The Sub Committee is concerned that a reluctance to provide CCTV, particularly given the nature of its content does not show, at the very least, the level of co-operation and assistance that would be expected by the Sub Committee, even if some time for legal advice was justified. Police concerns about the level of intoxication at the premises (as indicated as the initial reason for the request) would so far as the Sub Committee is concerned, justify a request for CCTV footage in the first instance. The Sub Committee viewed CCTV footage relating to three dates. This footage showed large numbers at the premises, very clearly in drink, multiple assaults, vomiting from a vehicle in the street, anti-social behaviour

leading to public nuisance and crime and disorder. The number of doorstaff at the premises was clearly insufficient to deal with the level of violence and disorder. The police stressed that the provision of alcohol in bulk and in a single purchase and irresponsible drinks promotions were of greatest concern. The level of violence emanating from the premises was described as of a nature that could easily have resulted in a death (reference a customer being punched repeatedly and kicked in the head in particular).

The Licensing Manager confirms the premises has historically been run as a restaurant type venue and sets out a chronology of compliance visits. This indicates that the premises are run more as a bar (alcohol led with music provision) and with a young clientele in large numbers and very much the worse for wear from drink. Again, there is concern regarding the provision of alcohol and drinks promotions undermining the licensing objectives. There is current and ongoing investigation as to non-compliance with conditions attached to the licence (offences contrary to s136 of the Licensing Act 2003) namely, non-compliance with the requirement of 85 covers, provision of substantial food and a failure to keep and provide CCTV. The Licensing Manager was not convinced that further conditions would lead to compliance given the recent hearing of the Sub Committee and assertions at that hearing not coming to pass.

The Fire and Rescue Service have highlighted issues concerning public safety at the premises with basic fire safety practices not being followed and users of the premises being put at risk in case of fire. It appeared to the service that the venue was more alcohol led and that the nature of use of the premises required a different approach in standards. It is clear that, even if it is accepted that the required steps have now been imposed that the fire authority is concerned that the premises was putting users of the premises at risk.

Residents complain of the use of the premises as a nightclub and anti-social behaviour including drunken intimidating behaviour, blocking of the pavement, the use of drugs, loud music, shouting - particularly at night, litter and vomiting / urination nearby. They make the point that issues highlighted by the police are "the tip of the iceberg" and meeting and discussing matters with Mr Hudson has had no impact with concerns dismissed. Promotional materials, photographs and video are produced in support of the review. Residents' video was not viewed, however, during the course of the hearing.

Two representations in support of the premises had been received from other persons. Indicating the premises is family friendly, good for food and that conditions sought by the police were unrealistic and that issues raised had not been witnessed by them.

The following points, amongst others, were raised in support of the premises:

The review arises out of the event on New Year's Eve, this was an isolated incident (the seriousness of which is not denied).

The premises licence holder put in place measures to ensure such an incident does not reoccur.

Revocation would be disproportionate and punitive.

The proportionate response is to reduce the sale of alcohol and opening hours at the premises with SIA doorstaff required to wear body-worn video.

There has been a failure by residents to draw issues to attention of Mr Hudson.

Steps taken - dismissed the DPS, terminated contract of the company (the DPS being the director of that company) that ran the premises at the time.

That the burden of proof is upon those bringing the review to establish facts on the balance of probabilities.

There is no cause of concern prior to 9th October, since then only 2 incidents of concern.

The premises licence holder accepts that New Year's Eve should never have happened.

There are financial implications to revocation in terms of loss of capital value, loss of business, loss of employment.

Visits, CCTV footage shown and enforcement was undertaken at times that people would not likely be eating (i.e. past 10pm).

Denied that the Sub Committee were deliberately misled at the last variation hearing.

The bottomless brunch provision is not an irresponsible drinks promotion - there are 17 other premises offering similar promotions. There is no evidence that the brunch promotion led to the New Year's Eve incident.

Mr Hudson has co-operated with the fire service - all works required to be undertaken are now complete.

The Sub Committee considered carefully all the points raised for the premises licence holder, including the financial ramifications. It is not accepted that the incident on New Year's Eve was an isolated incident, there are various incidents cited by the police, licensing enforcement officers and residents that together present a picture of a premises that is heavily alcohol led and not focussed on food. The evidence from these independent sources corroborate each other. The Sub Committee had to consider whether the bottomless brunch, in particular, noting that other promotions are in place for the sale of alcohol at the premises, is or amounts to an irresponsible promotion. In the view of the Sub Committee the promotion at the premises does amount to an irresponsible promotion in this case. It is important to stress "in this case" because it is entirely plausible that the same promotion that is run at different premises is not operated in such a manner as to lead to the crime and disorder that has been evidenced. The Sub Committee was referred to Home

Office guidance that sets out the factors to determine whether the promotion poses "significant risk" that the promotion might undermine the licensing objectives. There is overwhelming evidence of excessive drinking at the premises and residents have clearly confirmed that this is also evident during the daytime when bottomless brunches are available. Given the weight of evidence that directly links anti-social behaviour and excessive drinking at the premises the Sub Committee is satisfied that SBK is contributing directly to anti-social behaviour in the direct vicinity of the premises. There has been some considerable confusion, not least as presented to the Licensing Authority at the last hearing as to the involvement of and level of control of the premises by Mr Hudson. This is deeply concerning and the licensing authority would expect a clearer demarcation where there is a disposal of the business or handing over of control. The fact that this arrangement was not disclosed during the previous hearing and that Mr Hudson continued to represent the premises with residents by attending a meeting and providing contact details undermines the assertion that it was leased to another and not within his control at material times. The incoherence in this regard only serves to undermine the credibility of assurances that further review would not be necessary.

The Sub Committee did deliberate on whether amendment of the licence might be effective, however, given that the conditions imposed at the October 2023 hearing do not seem to have had the desired effect it was decided that revocation was the only means of promoting the licensing objectives at this stage. This is in line with the police recommendation, in particular, as they are indicated to be the lead authority on crime and disorder matters in accordance with the statutory guidance. The Sub Committee also noted statutory guidance at paragraph 11.23 indicates that tough action, including revocation, should be taken without hesitation where other measures are not considered to be sufficient to tackle problems at the premises.

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.

11. Exclusion of Press and Public

Consideration of the application was adjourned to 25 March at 10am.

12. Licensing Act 2003 - Application to vary a premises licence to specify an individual as designated premises supervisor - Consideration of Objection Notice

Consideration of the application was adjourned to 25 March 2024 at 10am.

The meeting concluded at 6.00 pm.

Chair