
LICENSING (LICENSING AND GAMBLING) SUB-COMMITTEE
MINUTES OF THE MEETING HELD ON 20 OCTOBER 2011

Present: Councillors Cunio, Drake and Osmond

Apologies: Councillor Councillor Parnell

47. **ELECTION OF CHAIR**

RESOLVED that Councillor Cunio be appointed Chair for the purposes of the meeting.

COUNCILLOR CUNIO IN THE CHAIR

48. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The Panel noted that Councillor Osmond was in attendance as a nominated substitute for Councillor Parnell, in accordance with Council Procedure Rule 4.3.

49. **EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED that in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 that the press and public be excluded at a predetermined point whilst the Sub-Committee reach its decisions.

50. **APPLICATION TO VARY A PREMISES LICENCE - UNIT, 113 ST MARY'S ROAD, SOUTHAMPTON, SO14 OAN**

The Sub-Committee considered the application to vary a premises licence in respect of Unit, 113 St Mary's Street, Southampton, SO14 OAN. (Copy of the report circulated with the agenda and appended to signed minutes).

Mr Kirk (Counsel for Unit), Mr Rathore (Solicitor), Mr Lovell, Owner, Mr Downton, Designated Premises Supervisor, PC Harris, PC Wood and Miss Jerran, Hampshire Constabulary and Mr Pitt, Resident (Objector) were present and with the consent of the Chair, addressed the meeting.

The Sub-Committee considered the decision in confidential session in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

Legal advice was accepted by the Sub-Committee in relation to the Cumulative Impact Policy. It was noted that the premises is located within the boundary of a previously identified stress area, and was subject to the provisions of the formally adopted Cumulative Impact Policy "CIP" (adopted 13 May 2009, confirmed upon review 17 November 2010) that applied to that area.

The Committee noted in particular that:-

- one effect of the CIP was that a *rebuttable presumption* applied to applications for substantial variations to existing premises, and that whether a variation was substantial for the purposes of this policy was a matter that the Licensing Authority had to determine in any instance of doubt.
- The *rebuttable presumption* was that such applications should be refused.
- the standard of proof for the consideration by the Committee of any matter relating to cumulative impact should be on the balance of probabilities.
- Licensing Policy CIP2 16.9 provides that the onus was upon applicants to demonstrate through their Operating Schedule and where appropriate supporting evidence, that the operation of the premises would not add to the cumulative impact already being experienced

RESOLVED that the application for the variation of this premises licence, be refused in its entirety.

REASONS

The Sub-Committee considered very carefully the application to vary the premises licence at Unit and gave due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance, the adopted statement of Licensing Policy, in particular policies CIP 1- CIP 5, human rights legislation and the evidence submitted by all parties, both written and given orally today.

1. The Sub-Committee determined that the variation sought was substantial because it would extend the licensable activities on the days specified further into the early hours of the morning.
2. Having determined that the variation sought was substantial the rebuttable presumption that the application be refused applied and the burden of proof was upon the applicant to establish on the balance of probabilities that there would be no cumulative impact on one or more of the licensing objectives.
3. The Sub-Committee accepted the evidence of the Police concerning incidents connected with the premises and in the vicinity, although not directly linked to the premises.
4. Further, the Sub-committee accepted the police statistical analysis concerning the night time economy and the conclusions drawn as to the likely effect of any increase in opening hours.
5. The Sub-Committee accepted the evidence of the local residents as to the noise and other nuisance they have experienced in the early hours, arising from patrons leaving Unit and also from other persons moving through the area as part of the night time economy. The Sub-committee gave significant weight to the evidence of Mr Pitt in this regard and noted the proximity of the premises to the neighbouring residential properties.
6. The Sub-Committee carefully considered the submissions made on behalf of the applicant, and in particular concerning a suggested reduction in problems of nuisance that would result from an extension of hours. However, the committee

was not satisfied that this assertion in relation to an increase in Wednesdays and Saturdays was supported by sufficient evidence, and although there had been a limited number of TENS during September and October, again the committee found that these did not provide sufficient weight.

7. The Sub-Committee noted that the applicant had introduced some improvements and positive measures including sound attenuation and CCTV, new door staff and revised policies, however, determined that these measures did not resolve the main issues.
8. Weighing up all these findings and evidence, the Sub-Committee decided that the applicant had not satisfied the burden of proof imposed upon it and consequently refused the application.

RECOMMENDATIONS

The Sub Committee suggested that the applicants:-

- join Licensing Link ;
- make and keep contact with local people through the Residents Association;
and
- engage with the local engagement officer (via the police)