
SOUTHAMPTON CITY COUNCIL
LICENSING (LICENSING AND GAMBLING) SUB-COMMITTEE
MINUTES OF THE MEETING HELD ON 11 MAY 2017

Present: Councillors Mrs Blatchford, B Harris and Painton

43. **ELECTION OF CHAIR**

RESOLVED that Councillor Blatchford be elected as Chair for the purposes of this meeting.

44. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meetings held on 30 March 2017 and 5 April 2017 be approved and signed as a correct record.

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

RESOLVED that in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 that the parties to the hearing, press and public be excluded at a predetermined point whilst the Sub-Committee reaches its decision.

46. **APPLICATION FOR GRANT OF A PREMISES LICENCE - TONY'S KEBAB CENTRE, SITE AT SPEEDWELL HOUSE, WEST QUAY ROAD, SOUTHAMPTON SO15 1GZ**

The Sub-Committee waited until 9:45 to determine if the applicant would be present at the meeting.

The applicant having failed to attend the hearing the Sub-Committee was referred to regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005. It was noted that the applicant had emailed the authority and was aware of the time and date of the hearing and had given no explanation for his failure to attend. The one objector had arranged representation and a senior member of staff to attend the hearing. The Sub-Committee heard that adjourning the hearing would lead to additional, significant cost for the objector. Whilst noting that the applicants' absence would mean an inability to present evidence or answer questions, the Sub-Committee none the less determined that the hearing should proceed.

The Sub-Committee considered the application for grant of a premises licence for Tony's Kebab Centre, sited at Speedwell House, West Quay Road, Southampton SO15 1GZ.

Representing Richmond Hyundai Mr Clive Griffiths (Objector), Mr Mark Withers (Solicitor) and Ms Claudia Mihai (Solicitor), 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 (Hearings) Regulations 2005.

RESOLVED that the application for grant of a premises licence for Tony's Kebab Centre, sited at Speedwell House, West Quay Road, Southampton SO15 1GZ be refused.

After private deliberation the Sub-Committee reconvened and the Chair read out the following decision:-

All parties will receive formal written confirmation of the decision and reasons.

The applicant having failed to attend the hearing the Sub-Committee was referred to regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005. It was noted that the applicant had emailed the authority and was aware of the time and date of the hearing and had given no explanation for his failure to attend. The one objector had arranged representation and a senior member of staff to attend the hearing. The Sub-Committee heard that adjourning the hearing would lead to additional, significant cost for the objector. Whilst noting that the applicants' absence would mean an inability to present evidence or answer questions, the Sub-Committee none the less determined that the hearing should proceed.

The Sub-Committee has considered very carefully the application for a premises licence for Tony's Kebab Centre, sited at Speedwell House, West Quay Road, Southampton SO15 1GZ.

It has given due regard to the Licensing Act 2003, the Licensing Objectives, statutory guidance and the adopted statement of Licensing Policy.

The Sub-Committee considered the representations, both written and given orally today, by all parties (in particular the application documents and operating schedule). Human rights legislation has been borne in mind whilst making the decision.

Having considered all the above evidence and after having heard from those present, the Sub-Committee has determined to refuse the Premises Licence.

Reasons

The Sub-Committee heard evidence from a business having control of sites on both sides of the site for the proposed premises licence. The business is intending to invest between £2 and £2.5 million in the refurbishment of the sites. Evidence given to the Sub-Committee indicated that previous trading of a catering vehicle at the proposed premises had created a history of problems, including a vehicle having been set on fire, damage to vehicles, urinating and litter left on their premises. Further, that this general nuisance and crime and disorder was linked to the operation of the catering van at the same location that is now proposed. There is a flow of patrons from the Leisure World

complex nearby and the proposed site is particularly prominent and a natural point for those leaving the site of the Leisure World complex to congregate and loiter. The objectors business is primarily the sale of vehicles and forecourts have many vehicles on display particularly close to the proposed site and on either side. The Sub-Committee heard that it is an important feature that their vehicles be prominent and open for inspection by prospective purchasers. Accordingly the site cannot be secured to prevent access or criminal damage.

In all the circumstances the Sub-Committee found that granting the application would likely increase the issues of concern for the objector and lead to an increase in general nuisance including the depositing of litter and undermine the crime prevention objective (with the increased likelihood of criminal damage).

In addition the Sub-Committee was unimpressed by the application generally and in particular the operating schedule. At part P of the application the applicant is invited to describe the steps intended to be taken to promote the four licensing objectives and "n/a" has been entered for all four of the licensing objectives.

There is a right of appeal for all parties to the Magistrates' Court. Formal notification of the decision will set out that right in full.

47. **APPLICATION FOR REVIEW OF PREMISES LICENCE - BITTERNE EXPRESS, 27 ST. CATHERINES ROAD, SOUTHAMPTON SO18 1LL**

The premises licence holder having failed to attend the hearing the Sub-Committee was referred to regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005. The Sub-Committee heard that papers had been hand delivered to the premises notifying the premises licence holder of the hearing and had been posted to an address in London. No contact had been made by the premises licence holder and the Sub-Committee adjourned whilst an attempt was made to telephone him. Contact could not be made and having delayed the start of the meeting the Sub-Committee determined to proceed in the absence of the premises licence holder.

The Sub-Committee considered the application for review of the premises licence at brought by Trading Standards and supported by Hampshire Constabulary and Public Health.

Lucas Marshall (Trading Standards), Alex Boucouvalas, (Hampshire Constabulary), and Sally Denley (Public Health) 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 (Hearings) Regulations 2005.

RESOLVED that for Bitterne Express, 27 St. Catherines Road, Southampton SO18 1LL to suspend the premises licence for a period of 3 months, to remove the designated premises supervisor and to impose the condition proposed by Hampshire Constabulary and annex 6 of the report, relating to high strength alcohol products.

After private deliberation the Sub-Committee reconvened and the Chair read out the following decision:-

All parties will receive formal written confirmation of the decision and reasons.

The premises licence holder having failed to attend the hearing the Sub-Committee was referred to regulation 20 of the Licensing Act 2003 (Hearings) Regulations 2005. The Sub-Committee heard that papers had been hand delivered to the premises notifying the premises licence holder of the hearing and had been posted to an address in London. No contact had been made by the premises licence holder and the Sub-Committee adjourned whilst an attempt was made to telephone him. Contact could not be made and having delayed the start of the meeting the Sub-Committee determined to proceed in the absence of the premises licence holder.

The Sub-Committee has considered very carefully the application for review of the premises licence at Bitterne Express, 27 St. Catherines Road, Southampton SO18 1LL brought by Trading Standards and supported by Hampshire Constabulary and Public Health. It has given due regard to the Licensing Act 2003, the Licensing Objectives,

statutory guidance and the adopted statement of Licensing Policy. Human Rights Legislation has been borne in mind whilst making this decision.

All the evidence presented both written and given orally today, has been carefully considered and taken into account. The Sub-Committee particularly addressed itself to the licensing objectives for the prevention of crime and disorder and the protection of children from harm.

Having considered all of the above, and all the steps available under section 52, sub section 4, the Sub-Committee has decided to suspend the premises licence for a period of 3 months, to remove the designated premises supervisor and to impose the condition proposed by Hampshire Constabulary and annex 6 of the report, relating to high strength alcohol products.

Reasons

The Sub-Committee heard evidence relating to multiple criminal offences at the premises. Evidence showed that on at least two occasions alcohol had been sold in breach of the mandatory condition requiring alcohol not to be sold below the cost of duty plus VAT. HMRC had provided a view that at the price stated (which was not considered viable), sourcing of the alcohol was of considerable concern. The price indicated an illicit source. Smuggled goods present many risks including risks to health. The Sub-Committee heard that a failure to promptly provide the invoice relating to those goods constituted a criminal offence. It is an offence for non-duty paid items to be kept at the premises also. Food at the premises was displayed past the sale by date, cigarettes were unlawfully displayed and alcohol was not properly labelled. It was also indicated that the current designated premises supervisor was often not present and was failing to manage the premises properly. The premises had been very clearly warned in relation to the mandatory pricing condition and impending test purchase operations, yet had failed to act promptly or at all. This failure is a repeated feature of the evidence provided by Trading Standards and Hampshire Constabulary and shows a deeply concerning lack of due diligence at the premises.

The Sub-Committee considered all of the options available to it and came particularly close to revoking the premises licence. The only reason this was not done is because of evidence given by the Trading Standards Officer that the premises is redeemable and has the capacity, preferably with a new DPS, to learn from the deterrent effect of a suspension of the premises licence.

Public Health gave evidence that confirmed the impact of this type of offending in relation to the particular issues faced in the area in which the premises is located.

In light of the seriousness of the issues and the impact that those issues have in relation to public health the Sub-Committee determined that in absence of a revocation of the licence only a 3 month suspension would sufficiently reflect the importance of compliance with the licensing objectives.

The Sub-Committee did carefully consider the implications of suspension of the licence upon the premises licence holder and were referred to paragraph 11.23 of the statutory

guidance, but in all the circumstances determined that a three month suspension (despite the financial impact) was the appropriate and proportionate step to take.

The Sub-Committee was referred to the statutory guidance during the course of the hearing, notably paragraphs 11.24-11.28 (reviews arising in connection with crime) and noted that where the premises are used to further crimes, revocation should be seriously considered even in the first instance. In this regard the sale of alcohol at below duty plus VAT was determined to mean that the alcohol was more likely than not to be non-duty paid, despite hearing that the premises licence holder's explanation was that the alcohol was simply sold at a loss. The Sub-Committee did not find this explanation to be credible.

In light of all of the above the Sub-Committee decided that suspension for 3 months along with the removal of the DPS and the addition of the proposed condition was appropriate and proportionate. Whilst carefully considered, alternative steps would not be sufficient to address the risks to the licensing objectives posed by the continued operation of the premises. The lengthy suspension would serve as a sufficient deterrent and allow sufficient time for training and proper changes to the operation of the business to be properly be implemented.

There is a right of appeal for all parties to the Magistrates' Court. Formal notification of the decision will set out that right in full.