

**LICENSING SUB – COMMITTEE**

14 April 2016

Report of the Head of Environmental Health and Licensing

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Application: Review of Premises Licence

Premises: Shapla Restaurant, 60 West Street, Alresford SO24 9AU

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**Part A.****1. Application**

**Applicant:** PC Brian Swallow, Hampshire Constabulary

**Premises:** Shapla Restaurant, 60 West Street, Alresford SO24 9AU

- 1.1 An application to review the premises licence for Shapla Restaurant has been submitted by the Police Licensing Officer, on behalf of Hampshire Constabulary (a responsible authority), under section 51 of the Licensing Act 2003. The application was received on 10 February 2016 (Appendix 1).
- 1.2 The review application relates to the prevention of crime and disorder and public safety licensing objectives following an assault outside the premises on 16 January 2016.
- 1.3 A copy of the application was sent to the other responsible authorities and to the licence holders.
- 1.4 The notice of review was displayed outside of the premises for a minimum of 28 days starting 11 February 2016. A copy of the notice was also displayed at the City Offices and on the Council's website.
- 1.5 The Shapla Restaurant is authorised under a premises licence for late night refreshment, Monday to Saturday 2300 to 0030, Sundays, Good Friday and Christmas Day 2300 to 0000 and New Years Eve 2300 to 0030 1 January (0000 if on a Sunday) and the supply of alcohol for consumption on the premises only, Monday to Saturday 1000 to 0000, Sunday, Good Friday and Christmas Day 1200 to 2330 and New Years Eve 1000 to 0000 1 January (2330 if on a Sunday).
- 1.6 The premises licence has a condition that "Intoxicating liquor may be supplied on the premises only to persons who are taking table meals there and as an ancillary to that meal". This was converted during the transitional process from the previous Justice's licence to the premises licence issued under the Licensing Act 2003.
- 1.7 Mr Khalique Meah has held the premises licence since the Licensing Act 2003 came into force on 24 November 2005 and is also the designated premises supervisor.
- 1.8 Hampshire Constabulary have applied for a review of the premises licence following an incident on Saturday 16 January 2016, when a male was assaulted whilst standing outside of the premises. He was hit in the face by another male who struck him with a glass bottle. The aggrieved male received serious facial injuries including lacerations.

- 1.9 At the time of the review application being submitted the incident was an on-going live police investigation. PC Swallow shall be able to update the Sub-Committee as much as he can at the hearing. Due to this being a live investigation, some documents are sensitive and not for public viewing. These can be found at Appendix 5.
- 1.10 The police officer attending at this incident details in his report how he was initially delayed entry to the venue. The officer had his request for staff details refused by the duty manager who was described as being “evasive” and goes on to say how part of the recovered bottle of Cobra, was the neck and top with the cap of the bottle still being in place. This would suggest that the bottle was supplied solely for consumption off and away from the premises.
- 1.11 The CCTV at the venue, albeit not a condition upon the premises licence, appears to have been recently removed. There are cameras installed, yet no storage or monitoring facilities.
- 1.12 Due to this incident, the police consider that the premises have failed to promote the licensing objectives, have breached conditions on its premises licence and broken the law. They have supplied alcohol for consumption off the premises, supplied alcohol to intoxicated persons, supplied alcohol to persons not taking a table meal and they have not assisted with a live police investigation.
- 1.13 The Chief Officer of Police does not consider the imposition of conditions as appropriate in this case and requests removing the supply of alcohol as a licensable activity from the licence.
- 1.14 Notices of the hearing were sent to all parties on 31 March 2016.

**Current Designated Premises Supervisor**

Khalique Meah (from 24 November 2005)

**Relevant Representations**

**2. Responsible Authorities**

All of the Responsible Authorities have been served with a copy of the application. The representations received are as follows:

**Hampshire Constabulary**

Applicant

**Environmental Health**

No representations received.

**Hampshire Fire and Rescue Service**

No representations received.

**Child Protection Team**

No representations received.

**Building Control**

No representations received.

**Head of Safety Standards**

No representations received.

**Public Health Manager**

No representations received.

**Licensing Authority**

No representations received.

**3. Representations from Other Persons**

Two representations were received by Ms Coles and Mr Tester supporting the Shapla Restaurant premises licence.

#### **4. Observations**

- 4.1 The Sub-Committee is obliged to determine this application with a view to promoting the Licensing Objectives:
- The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 4.2 In making its decision, the Sub-Committee is also obliged to have regard to the National Guidance and the Council's Licensing Policy.
- 4.3 The Sub-Committee must have regard to all of the representations.
- 4.4 The licensing authority must, having regard to the application and any relevant representations, take such steps shown below as it considers necessary for the promotion of the licensing objectives:-
- a) Modify the conditions attached to the licence either permanently or for a period not exceeding three months.
  - b) Exclude a licensable activity either permanently or for a period not exceeding three months.
  - c) Remove the Designated Premises Supervisor.
  - d) Suspend the licence for a period not exceeding three months.
  - e) Revoke the licence.
- 4.5 If the Sub-Committee decides that none of the above measures are appropriate, it may take no action.

#### **Human Rights**

It is considered that Articles 6 (right to a fair trial) 8 (right to respect for private and family life) and Article 1 of the First Protocol (right to peaceable enjoyment of possessions) may be relevant. As there is a right of appeal to the Magistrates' Court, it is considered that there would be no infringement of Article 6. Article 8 is relevant, insofar as the nearby residents could claim that this right would be infringed by disturbance from customers. This should be balanced against the applicants' right to use of their premises under Article 1 of the First Protocol. Interference with these rights is permitted, where this interference is lawful, appropriate in a democratic society, and proportionate. Likewise, the residents may argue that their rights under Article 1 of the First Protocol would be infringed. If conditions are imposed, there should be no interference with any convention rights. To the extent that any interference may occur, it would be justifiable in a democratic society, and proportionate.

## 5. Conditions

The Mandatory Conditions are imposed on a premises licence in any case.

Mandatory Conditions

### **Where the Licence Authorises Supply of Alcohol:**

1. No supply of alcohol may be made under the premises licence:
  - (a) At a time when there is no designated premises supervisor in respect of the premises licence, or
  - (b) At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

### **Where the Licence requires Door Supervision:**

Where individuals are required on premises to carry out security activities, they must be licensed by the Security Industry Authority.

### **The Licensing Act 2003 (Mandatory Licensing Conditions) (Amendment) Order 2014**

*– effective from 1 October 2014*

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
- (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
  - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
    - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
    - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
  - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
  - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
  - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can

- reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;
- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
  3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
    - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
    - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
      - (a) a holographic mark, or
      - (b) an ultraviolet feature.
  4. The responsible person must ensure that—
    - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
      - (i) beer or cider: ½ pint;
      - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
      - (iii) still wine in a glass: 125 ml;
    - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
    - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

**Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014**  
**– effective from 28 May 2014**

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1-
  - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
  - (b) “permitted price” is the price found by applying the formula-  **$P = D + (D \times V)$**   
 where-
    - (i) **P** is the permitted price,



- (ii) **D** is the rate of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
  - (iii) **V** is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence-
    - (i) the holder of the premises licence,
    - (ii) the designated premises supervisor (if any) in respect of such a licence, or
    - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - (e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
  4. (1) Sub-paragraph 2 applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.
    - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### **Possible Conditions**

The Sub-Committee may wish to consider whether any further conditions are considered necessary to promote the prevention of crime and disorder and public safety licensing objectives, in the light of the application by Hampshire Constabulary. The Chief Officer of Police does not consider that the placing of conditions is appropriate in this case and therefore, requests that the supply of alcohol to be removed from the licence.

## **6. Other Considerations**

### **Community Strategy and Portfolio Plans (Relevance To:)**

This report covers issues which affect the Outcomes of High Quality Environment and Active Communities.

There is no direct link to Portfolio Plans as the requirements under the Licensing Act 2003 are statutory functions.

### **Resource Implications**

No fee is applicable for this application. In regulating the activities it is anticipated that an appropriate level of officer attendance will be provided within the existing budget.

### **Appendices**

1. Application by PC Brian Swallow on behalf of Hampshire Constabulary
2. Representations by other persons
3. Current premises licence (redacted) and plan
4. Map of premises location
5. Sensitive information (not for publication)
  - a. Witness statement A
  - b. Witness statement B
  - c. Photograph of injury