



## **LICENSING ACT 2003**

### **Application for the variation of a Premises Licence Decision Record**

**APPLICANT:** Keith Cupid

**PREMISES:** Hori2on, Nos. 9A-11A High Street,  
Aldershot

**DATE OF HEARING:** 7th December, 2020

**MEMBERS SITTING:** Cllrs Veronica Graham-Green, Christine  
Guinness and S.J. Masterson (Chairman)

## DECISION

To reject the application for the variation of the premises licence.

The Sub-Committee considered that, on a balance of probabilities, this was necessary for the promotion of the licensing objectives, namely the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

## REASONS

In coming to its decision, the Sub Committee took into account:

- The Licensing Act Section 35, which states that the Sub-Committee must take such steps it considers necessary for the promotion of the licensing objectives;
- The Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003, particularly
  - Paragraph 2.19 regarding public nuisance, in particular noise pollution during the sensitive periods of the night and early morning;
  - Paragraphs 2.22 and 2.29 which state that licensing authorities should give considerable weight to representations about child protection matters and that the protection of children from harm includes the protection from moral, psychological and physical harm;
  - Paragraphs 8.41 – 8.49 which outline the steps to promote the licensing objectives, in particular an expectation that applicants would include positive proposals in their application on how they will manage potential risks and to work in partnership with the licensing authorities;
- The Council's Statement of Licensing Policy and Guidance (Version 2 2018), especially paragraphs 6.11 and 6.12 as outlined below; and
- All the written representations and oral evidence presented at the hearing.

The Legal Advice given at the outset of deliberations was that the Sub-Committee must take such steps as are appropriate for the promotion of the licensing objectives, having regard to national and local policy.

The Sub-Committee considered that its jurisdiction was engaged in

relation to the licensing objectives of the prevention of public nuisance, the prevention of crime and disorder and the protection of children from harm having regard to the evidence submitted prior to the hearing and the representations made during the hearing.

The Sub-Committee considered the area of the premises to have a mixture of commercial and residential properties. The Hori2on premises adjoin residential flats and further residential properties are located nearby.

The Applicant and his business partner, Mr McLean explained that they would like to change their restaurant into a late night food and entertainment venue to cater for all different types of cultures. Due to the financial impact of the pandemic, they stated that it has been difficult to run the restaurant within the present time restrictions. Also, they feel that this type of venue is lacking in the community. If granted, their intention was to remove some of the chairs and tables in the restaurant at about 9-10pm to make way for a dance floor. They reiterated that it will be a restaurant first and foremost but that they would like the flexibility to run it later and offer alcoholic drinks.

The Environmental Health Officer, as Responsible Authority, gave evidence about the history of noise disturbance at the premises. The Sub-Committee appreciated that the Applicant was not managing the premises at the time of those complaints but, nonetheless, found the evidence useful with regards to the nature of the complaints raised and the steps taken previously to reduce noise emanating from the premises. This assisted them in considering whether further steps could be taken to reduce the noise from and associated with the premises being heard by residents in the vicinity, thereby promoting the licensing objectives of the prevention of public nuisance.

In 2007, when the premises operated as a nightclub (under different management), various steps were taken to reduce noise levels, including sealing the roof, closing all vents, keeping windows and doors closed. However, overall, they were not successful and the noise complaints continued. This led to a Review of the premises in 2007 and the hours of operation were limited to closure at midnight, with the music being turned off at 23:30 hours. Since then, there have been complaints from the commercial business below in the hours leading up to 23:30 hours of drumming noises from the premises above, although none since 2013. The Applicant made the Sub-Committee aware that one half of the commercial premises below Hori2on is currently empty and the other is a hairdressers who close at about 18:00 hours. He believes that the new tenant is going to be a convenience store.

In addition, the Sub-Committee noted the following more recent complaints of noise from residents (again, under different management):

- Flats to the rear of the premises on Nelson Street complained of noise from loud music on 29/7/2019. The business operator

was spoken to and no further complaints were received.

- Complaint from resident about noisy customers outside the premises and fighting. Also, complaints of loud music. Letter sent by Environmental Health to business operator and no further complaints were received.

The Sub-Committee noted from the evidence of the Environmental Officer that noise limiters only assist in relation to amplified noises and do not assist in relation to other noises caused by late night venues, such as shouting, singing or talking outside in the smoking area. The Sub-Committee felt concerned about the likely impact the noise would have on the local residents during sensitive hours (after 23:00 hours) should the venue be open until 3am and, occasionally, 5am. The Sub-Committee accepted the view of the Environmental Officer that the best way to limit the excess noise during sensitive hours was to limit the hours of operation at the venue.

The Sub-Committee heard representations from the Police Officer about a previous business run by the Applicant and his business partner (together with other business partners) called Fu2ion, which had originally been a restaurant but had become a nightclub. The Police identified several incidents of crime and disorder earlier this year, which gave cause for concern about the way in which those premises were managed. The Applicant was the Designated Premises Operator at Fu2ion at the time.

The Sub-Committee had particular regard to:

- An allegation of a sexual assault on the evening of 01/01/20, whereby the staff did not detain the suspect despite interrupting the scene. The Applicant advised the Sub-Committee that he was not aware of this incident until he was told about it by the Police Officer, which the Sub-Committee found concerning.
- Ineffective security at the premises on 25/01/20 during an incident of disorder.
- An allegation that security staff assaulted a customer on 08/02/20.
- On 28/02/20, that one business partner assaulted another while the premises were open.

The Sub-Committee heard from the Applicant that following some of these incidents, he agreed a minimum level of what was expected from the security firm he had instructed in January 2020, however the Sub-Committee was not satisfied that those measures were being properly enforced. The Applicant advised the Sub-Committee that he intended to use a more reputable security firm in the future however had not yet identified one. The Sub-Committee also found that concerning. The Sub-Committee felt that there was a lack of proper management control at Fu2ion. As a result, the licensing objective of the prevention of crime and disorder had not been promoted and the

Sub-Committee were concerned that similar issues would arise at Hori2on.

The Sub-Committee were swayed by the concerns from the Police Officer in relation to a failure to promote the licensing objective of the Protection of Children from Harm, in light of the inappropriate condition proposed by the Applicant to allow children under 18 into the premises until, potentially, 5am, providing they were accompanied by an adult. The Police Officer felt strongly that this would put children at risk of harm. The Applicant explained that he put that condition in when he was focusing on it being more of a restaurant. The Police Officer also highlighted his concerns about the lack of proposals made by the Applicant for measures to protect children from harm, such as staff training, recording of any incidents, refusals of service logs, body worn video and an ID scanner.

The Sub-Committee had regard to the Statutory Guidance, in particular paragraphs 8.41 – 8.49 and noted that the Applicant has not included positive proposals in his application to address how they will manage any potential risks. Paragraph 6.11 of the RBC Licensing Policy emphasises the recommendation of a Risk Assessment.

The Police Officer gave evidence that the Applicant did provide an incident log, however it was well below standard. Additionally, that the Applicant did not respond to an email from the Police Officer trying to engage and discuss this application with the Applicant. Neither did he engage with Environmental Health or the Licensing Officer. The importance of the liaison with Responsible Authorities is emphasised at paragraph 6.12 of the Licensing Policy.

Furthermore, the Licensing Officer, as Responsible Authority, gave evidence that she and the Police Officer attended Fu2ion on 31/12/19, following reports that an underage male had gained entry using another person's identification (ID) card. The ID scanner revealed that the photograph on the ID card looked very different from the underage male. A further visit on 24/01/20 revealed that an intoxicated female was allowed into Fu2ion without any ID and after the permitted time on the licence. At the time, the Applicant, who was the Designated Premises Supervisor, was working in a different capacity as a DJ. The Licensing Officer noted that the premises had an 'unsafe vibe' and she was concerned that the Applicant was distracted in his role as DJ and therefore not running the premises effectively or safely. The Licensing Officer is concerned that the Applicant's intention is to change Hori2on into the same type of venue as Fu2ion and this will give rise to similar issues.

Because of the concerns about the lack of proper management at the other premises, it was not felt that conditions would address the Sub-Committee's concerns. The Sub-Committee was not satisfied that appropriate conditions would be complied with or that necessary lessons have been learned following the incidents that have arisen at Fu2ion. For all the reasons above, the first part of the application ((1)(a) above) was refused.

In relation to the second part of the application ((1)(b) above), the Sub-Committee concluded for the reasons outlined above, particularly in paragraphs 4 – 9, that it would not promote the licensing objective of the prevention of public nuisance to remove condition (2) from Annex 2 of the licence.

The Applicant is hereby notified that he may appeal against this decision to the magistrates' court within 21 days, beginning with the date of notification of this decision.