

**MINUTES OF A MEETING OF THE LICENSING COMMITTEE
HELD AT THE TOWN HALL, PETERBOROUGH ON 21 JULY 2011**

Present: Councillor Dobbs (Chairman), Benton (Vice Chairman), Allen, Peach, Todd, Simons, Miners and Khan

Officers in attendance: Adrian Day, Licensing Manager
Darren Dolby, Regulatory Officer
Colin Miles, Lawyer
Gemma George, Senior Governance Officer

1. Apologies for Absence

Apologies for absence were received from Councillors Saltmarsh and Ash.

2. Declarations of Interest

Councillor Peach declared that he was the Ward Councillor for the location of the proposed trading pitch in Central Park, but that he did not have a personal or prejudicial interest.

3. Minutes of the Meeting held on 15 February 2011

The minutes of the meeting held on 15 February 2011 were approved as a true and accurate record.

4. Appeal against the Revocation of an Ice Cream Trading Consent

The Regulatory Officer addressed the Committee and advised that the appeal was from Mr Wajid Hussain, the applicant, against the revocation of an ice cream trading consent. The appeal was for the Committee to reverse the decision of the Licensing Authority to revoke Mr Hussain's ice cream trading consent.

The report detailed the background to the appeal and the revocation letter, which had been sent to Mr Hussain detailing the number of complaints and alleged breaches of the trading conditions, was attached at Appendix A.

Members were advised that the sheer volume of complaints and breaches highlighted, in the opinion of the Licensing Authority, that Mr Hussain had little or no regard to trading in a lawful manner. Mr Hussain had been given numerous warnings with regards to his trading practices and it appeared that those warnings had been ignored.

The appeal letter received from Mr Hussain was attached at Appendix B to the committee report. This contained information which contradicted information that had been provided by Police Officers and the Local Authority. Members were further informed that the Licensing Manager was in attendance to address

the Committee, if it so wished, in order to support his written statement which was included in Appendix C, attached to the committee report.

Appendix E to the committee report highlighted the ice cream trading 'check sheet' which had been personally signed by Mr Hussain. The Regulatory Officer advised that he had personally been through each individual point on the sheet with Mr Hussain and had explained in detail what each point meant. Mr Hussain had subsequently signed the sheet to indicate that he had read and understood the conditions placed on his street trading consent. It was highlighted to the Committee that on the sheet, it clearly stated that trading should not take place in Park Farm or in Central Park. It was therefore the opinion of the Licensing Authority that Mr Hussain had breached these conditions on a number of occasions, despite acknowledging that he was aware of the conditions.

The Regulatory Officer further advised that the decision to revoke the trading consent had not been taken lightly. Mr Hussain had been contacted on a number of occasions in order to try and dissuade him from breaching the conditions on his licence and he was forewarned that if he did continue to breach the conditions, his licence may be revoked. The advice had been disregarded and Mr Hussain had continued to breach his conditions.

Mr Hussain's ice cream trading consent had been withdrawn from Peterborough, therefore this did not restrict him from plying his trade outside of the Peterborough area. Mr Hussain did regularly trade in Whittlesey.

The Regulatory Officer requested that the decision of the Licensing Authority be upheld.

Members requested clarification as to comments contained within witness statements. It had been stated that Mr Hussain was in situ on certain days, and Mr Hussain had subsequently refuted these claims in his appeal letter. Members sought clarification as to how the Licensing Authority could be sure that Mr Hussain was in situ on those occasions. The Licensing Manager addressed Members and stated that he had personally seen Mr Hussain in the location on the occasions outlined in his witness statement. The Licensing Manager lived in the vicinity and had been at home at the times detailed.

Clarification was sought as the origin of the complaints as they all appeared to be from officers. Was this normal practice? The Regulatory Officer advised that there were a large number of complaints received against ice cream vans each year, therefore all of the sixteen vans currently licensed were being proactively monitored by officers in order to ascertain alleged breach of conditions.

Members questioned what the time limit was for an ice cream van to be stationary by the side of the road. In response, Members were advised that the time limit was fifteen minutes in a stationary position, at one time, in one street. The van must then move away and it was permitted to return to the same location after two hours.

Councillor John Shearman, speaking as Ward Councillor, addressed the Committee on behalf of the applicant and responded to questions from Members. The main issues in respect of the appeal were highlighted, these included:

- It was believed that the report contained a number of inaccuracies
- Within the documents, Mr Hussain had been accused of selling ice cream in Walgrave. A letter had subsequently been received from Licensing Officers retracting this accusation stating that it was not Mr Hussain. Did this mean that the notes which had been made about the vehicle were inaccurate, and could the same be said of notes made on other occasions?
- On 21 May 2011, Mr Hussain had been seen to be selling ice creams in Park Farm at 13.45pm. However, Councillor Shearman had received verbal confirmation from a lady who ran a football club in Whittlesey stating that she had hired Mr Hussain for the duration of a junior football competition from 1.00pm to 7.00pm, on Saturday 21 May 2011
- On 28 May 2011 Mr Hussain had obtained petrol for his Toyota Verso at 7.00pm that evening in Oldham, for which he had a receipt. The receipt did not have a registration number on it, but it was for diesel, which Mr Hussain's car was. Mr Hussain maintained that he could not have therefore been in Peterborough at the time
- There were no double yellow lines on Kings Road opposite Kings School, as stated in one of the witness statements
- In a witness statement it was claimed that on Tuesday 5 April 2011 Mr Hussain had been witnessed driving off of the grass verge onto Central Avenue. A van could not be parked on this verge opposite Dogsthorpe School as there were metal posts and railings. But perhaps the railings had been put up subsequently?
- There had been sufficient questions raised over a number of entries contained within the witness statements, could this mean that there may be more inaccuracies?
- A strong warning was sought instead of revocation of the licence, and a time period for surveillance to ensure that the conditions were being adhered to

The Regulatory Officer addressed the Committee in response to points raised by Councillor Shearman and advised that a mistake had indeed been made in relation to the time Mr Hussain had been trading along Walgrave. It had been acknowledged that this was a mistake and this was highlighted in the committee report.

In response to the point raised by Councillor Shearman in relation to the inability of ice cream vans to mount the verge opposite Dogsthorpe School, the Regulatory Officer advised that he had two photographs in his possession taken on 5 April 2011, at 3.10pm, which showed Mr Hussain parked on the grass verge. It was also believed that Mr Hussain did not have his licence at that time, and was therefore trading without consent. Mr Hussain had collected his consent later on in the day.

These photographs were circulated to Councillor Shearman, the applicant and the Committee.

In response Councillor Shearman stated that the verges across from Dogsthorpe School were bounded by metal railings, therefore perhaps the railings had been put up after 5 April 2011, or perhaps Mr Hussain's van had actually been located further up the road away from the school when the photographs were taken.

As a point of information, Councillor Miners, a Committee Member and Dogsthorpe Ward Councillor stated that it was a regular occurrence for people to park on the other side of the barriers which were in place, he had never seen an ice cream van do so, but cars certainly did.

For clarification as to where the photographs had been taken, the Regulatory Officer addressed the Committee and stated that the location was opposite the Methodist Church on the corner of Birchtree Avenue and Central Avenue.

Members further queried whether it was Mr Hussain driving the vehicle at all times when breaches had occurred. In response, Members were advised that all persons wishing to trade in the van must be identified and on Mr Hussain's application there was only Mr Hussain permitted to trade in that vehicle within the Peterborough Licensing Authority.

The applicant addressed the Committee and responded to questions from Members. The main issues in respect of his appeal were highlighted, these included:

- Mr Hussain had paid his fees for his licence on 5 April 2011 and his licence had been issued on 21 April 2011
- Mr Hussain had been approached with regards to trading in Central Park for 45 minutes in May 2011 and he had told the truth and admitted to this, however he had not been told of the laws as to how long he was permitted to remain in one location. He presumed that the time may have increased as the fees had increased year on year
- There had been a lack of communication between Mr Hussain and the Licensing Team
- New papers had not been sent to Mr Hussain in the first instance, he had had to chase them
- Mr Hussain had not been notified previously of the complaints against him
- There were three or four other vans that used the chime of 'Teddy Bear's Picnic' not just Mr Hussain's van
- Had the Licensing Officers got him mixed up with another trader?
- Why was Mr Hussain the only one to be identified? There were other vans trading in a similar manner
- Mr Hussain tended to work until about 7.00pm and he didn't just work in the Peterborough area
- If his licence was removed, Mr Hussain would not be able to support his family or pay his bills
- Mr Hussain had never traded along Fletton Avenue
- Mr Hussain admitted that he had traded in Central Park and he should not have done so

Following questions to the applicant, the Regulatory Officer summed up the case for the Licensing Department.

Councillor Shearman addressed the Committee and summed up the case for Mr Hussain. It was acknowledged that there had been some breaking of the agreement made by Mr Hussain but there had also been errors highlighted on the part of officers. It was therefore suggested that a further extension of time be given to Mr Hussain where he be strictly monitored going forward.

Following summing up, both parties and the press and public left the committee room while Members debated the application and made their decision.

RESOLVED: (6 for, 1 against)

The Committee agreed to refuse the appeal against the revocation of an ice cream trading consent.

Reasons for the decision:

1. The applicant had breached the conditions of his trading consent on a number of occasions;
2. The applicant had signed a consent checklist stating that he understood his consent and the conditions placed upon it;
3. The applicant had been forewarned on a number of occasions that if he continued to breach his consent then his licence may be revoked; and
3. The volume of complaints received against the applicant and the number of breaches against his consent, highlighted that the applicant had shown disregard for trading in a proper manner.

5. Appeal against the Refusal to grant an Ice Cream Trading Pitch, Central Park, Peterborough

The Chairman addressed the Committee and advised that in light of the outcome of the previous item, this item was irrelevant and was now withdrawn.

7.00pm – 8.10pm
Chairman

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