

Crawley Borough Council



Minutes of Licensing Sub Committee 8 February 2012 at 5.30pm

Present:

Councillors B K Blake, P K Lamb and B MeCrow

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer
Sharon Rana	Legal Clerk - Solicitor

Also in Attendance:

Applicant	Jean Irving (Sussex Police – Licensing Manager)
	Tony Jared (Sussex Police - Police Sergeant)
	Claire Levett (Sussex Police – Police Constable)
	Peter Savill (Barrister for Sussex Police)
Licence Holder (Jasmine Court Associates Limited)	Zamir Butt (Designated Premises Supervisor)
	Doug Simmonds (Licensing Consultant for Zamir Butt)
Interested Party	Graham Hobden (Patron of the Apple Tree)

14. Appointment of Chair

RESOLVED

That Councillor B K Blake be appointed Chair for the meeting.

15. Members' Disclosure of Interests

No disclosures of interests were made by Members.

16. Application to Review the Premises Licence Applicable to 'Apple Tree', Ewhurst Road, West Green, Crawley

The Sub Committee considered an application to Review of the premises licence currently held by Jasmine Court Associates Limited (licence holder) in respect of the premises known as 'Apple Tree', Ewhurst Road, West Green, Crawley submitted by Chief Inspector Steve Curry on behalf of the Chief Constable of Sussex Police (the Applicant/The Police).

Following the introduction of those present at the meeting, the Legal Clerk asked all parties present, if they wished to make any relevant applications, for example to adjourn or to cross-examine the opposite party and no applications were made.

The Legal Clerk informed all parties that the Sub Committee had requested a briefing meeting with the Legal Clerk prior to the commencement of the Sub Committee to confirm the procedure that would be followed during the meeting. The Legal Clerk stated that the Memorandum of Agreement reached between Sussex Police and Mr Butt had been circulated to the Sub Committee at the briefing meeting. The Legal Clerk reminded the Sub-Committee of the wording of Regulation 18 which stated that: "In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing." Accordingly, the Sub Committee and those present at the meeting agreed the acceptance of the Memorandum of Agreement as additional information for the purposes of Regulation 18.

The Legal Clerk then confirmed that the Sub Committee Members had not previously asked for clarification of any aspect of the application or the representations received from any party. The Legal Clerk outlined the procedure for the meeting.

Report PES/062 of the Council's Head of Planning and Environmental Services was presented by Mike Lyons, a Senior Licensing Officer for Crawley Borough Council.

The Application

The Senior Licensing Officer, Mr Lyons, informed the Sub Committee that on 28 November 2011, Sussex Police as a 'responsible authority' had submitted an application to the Council as the Licensing Authority for the Borough of Crawley for a review of the premises licence in respect of the premises known as 'Apple Tree'. The reasons for their request were on the grounds that the licence holder was not promoting the statutory licensing objectives of preventing crime and disorder and the protection of children from harm. The application for a review was detailed in Appendix A to the report with additional information attached as Appendix B to the report. On 23 December Mr Butt, as the Designated Premises Supervisor, had submitted a letter outlining his response to the Police submissions (Appendix D to the report).

Mr Lyons informed the Sub Committee that the Public Entertainment Licence (PEL) conditions referred to in Annex 2 (8) of the current licence (Appendix C to the report) had been omitted from the report. A copy of the PEL conditions were circulated to all parties present.

Mr Lyons also confirmed that the application had been advertised in accordance with legislation and as a result of the consultation process, six interested parties had submitted representations. Enterprise Inns Plc, as an interested party, had submitted a relevant representation (set out in Appendix E to the report) and respectfully

suggested that the Sub Committee, in determining the application for review, consider imposing conditions relating to the adoption of Challenge 25, maintenance of a refusal register, and implementation of a staff training programme. Further, five other letters, which also constituted relevant representations, had been received in support of the premises and were set out in Appendices F, G, H, I and J to the report.

The Sub Committee were then guided through the remainder of the report which set out the reasons for the Hearing and the matters which the Sub Committee should take into consideration when dealing with the application, including the relevant sections of the Guidance issued by Government pursuant of Section 182 of the Licensing Act 2003, and the Council's policy considerations.

Mr Lyons then proceeded to inform the Sub Committee of the options available to it in respect of the application, and reminded the Sub Committee that any decision must be based upon the promotion of the four licensing objectives. The options were to:

1. Modify the conditions of the licence;
2. Exclude a licensable activity from the scope of the licence;
3. Remove the designated premises supervisor;
4. Suspend the licence for a period not exceeding three months; or
5. Revoke the licence.

The Sub Committee asked Mr Lyons to explain why the representations detailed in Appendices G to K of the report did not contain signatures or dates. The Senior Licensing Officer stated that those details had been provided and redacted, as was common practice under the Data Protection Act.

The Applicant

The Applicant's representative, Mr Savill, addressed the Sub Committee and drew the Sub Committee's attention to the detailed application for review (Appendix A to the report), plus the witness statements which had been submitted as additional information (Appendix B to the report). He informed the Sub Committee that the Police Officers present would be able to answer any questions posed by the Sub Committee.

Mr Savill stated that the original application had sought the revocation of the licence, but that should the Sub Committee have not considered revocation proportionate or necessary, the application then proposed suspension of the licence for a period of three months and additional conditions.

Mr Savill stated that the application and additional evidence provided in the report proved that the licensing objectives had been severely undermined. Problems relating to underage sales of alcohol had persisted since the application. Mr Savill highlighted that the Police only proposed revocation in serious cases such as this, where previous warnings had been given by the Police but no action had been taken by the licence holder. Mr Savill explained that the Police had made every effort to help the licence holder to rectify the situation but that the licence holder had not taken any action.

Since the original application to review had been submitted, the licence holder had entered into dialogue with the Police which had resulted in the Memorandum of Agreement (MoA) which was before the Sub Committee. The MoA proposed the following:

1. A suspension of the licensable activity of allowing the retail sale of alcohol on the whole premises for a six week period which would allow the licence holder

- to put in place the new conditions and to carry out the required training (detailed below);
2. A future reduction in trading hours on a Friday and Saturday night so as not to sell alcohol after 23:00 hours and to be closed by 23:30 hours to assist the operating of the premises within the law;
 3. The imposition of conditions relating to:
 - (i) Door supervisors;
 - (ii) The Personal License Holder or Designated Premises Supervisor to be on duty from 19:00 until close every day;
 - (iii) Challenge 25 Scheme;
 - (iv) No persons under the age of 18 permitted in the bar area after 21:00 hours;
 - (v) Reporting incidents of crime and disorder;
 - (vi) Refusals Register;
 - (vii) Training of staff;
 - (viii) Only alcohol purchased on the premises to be consumed on the premises;
 - (ix) Designated Premises Supervisor to receive BIIAB training during the suspension period
 - (x) All members of staff employed in the sale of alcohol to receive BIIAB training during the suspension period
 - (xi) All future staff members employed in the sale of alcohol to receive BIIAB training

Mr Savill stated that both the Police and the licence holder had mutually agreed the MoA and were of the view that the proposals contained within it were proportionate. Mr Savill drew the Sub Committee's attention to the MoA and outlined several minor amendments to it. Following a question from the Sub Committee, it was agreed that only staff employed in the sale of alcohol would be required to undertake the BIIAB training.

Mr Savill stated that if the Sub Committee were minded to agree the proposals contained within the MoA, the Police would work alongside the licence holder and that should the problems persist, the Police would not hesitate to bring action against the licence holder.

Jean Irving also addressed the Sub Committee and stated that Sussex Police would not have applied for suspension of the licence if it had been deemed avoidable. However, in the case before the Sub Committee, no progress had been made following interventions by the Police, and therefore no other alternative was appropriate. Ms Irving stated that a mediation meeting had taken place on 6 February 2012 where it had become evident that Mr Butt's intention was to uphold the licensing objectives. Ms Irving informed the Sub Committee that the function rooms within the premises had been converted into a restaurant, and therefore the business was evolving into a mainly food based premises. As the premises were now mainly food based, Ms Irving was of the opinion that a long suspension period was not necessary. Sussex Police were therefore proposing a six week suspension of the sale of alcohol within all areas of the premises, as the sale of alcohol was the main problem area. Ms Irving pointed out that during the suspension period, all necessary staff could be trained. Ms Irving informed the Sub Committee that, in the opinion of the Police, the proposals put forward in the MoA were both reasonable and proportionate.

In addition to the proposed suspension, the following points relating to the MoA were made by Ms Irving:

1. It proposed a reduction in the trading hours on a Friday and Saturday night;
2. The employment of Door Supervisors would create a visible barrier for under age drinkers;

3. Ensuring that a Personal Licence Holder or the Designated Premises Supervisor was on duty within the premises from 19:00 until close every day would make sure that responsibility was taken for running the premises;
4. The introduction of 'Challenge 25' would require everyone who looked under 25 to produce ID. The Scheme would assist staff and Door Supervisors;
5. Maintaining and checking the refusals record would ensure staff kept the situation under control;
6. The Police were concerned about the current lack of training. A condition was proposed which would ensure all staff employed in the sale of alcohol were suitably trained;
7. A condition was proposed which would only allow people to consume alcohol in the premises which was purchased on the premises. That condition would allow the licence holder to remain in control of the situation;
8. The MoA proposed that staff undertake the BIIAB Level 1 Training Award. Ms Irving stated that it would be prudent to change the condition to allow staff to undertake either the Level 1 or Level 2 Award, in case there were no training courses available for Level 1 at any time. She advised the Sub Committee that the Level 2 Award provided more substantial training than the Level 1 Award.

Questions to the Applicant

Following a question from the Sub Committee, Ms Irving stated that before Mr Butt retained Mr Simmonds, he had not fully appreciated the situation. Mr Butt now understood the seriousness of the circumstances. Ms Irving stated that following the mediation, she was as happy as she could be with the situation, but she assured the Sub Committee that Police Officers would keep an eye on the premises and even if there was a small condition breach she would not hesitate to apply for revocation of the licence.

Ms Irving informed the Sub Committee that the problems surrounding the sale of alcohol on the premises had been due to a lack of training. She assured the Sub Committee that she was of the view that the suspension proposed was acceptable and proportionate.

Following a statement by the Sub Committee, Ms Irving acknowledged that any suspension would take place following the appeal period.

Interested Party

Mr Graham Hobden addressed the Sub Committee as an interested party and a patron of the premises. Mr Hobden had submitted a representation in relation to the application for review (set out in Appendix I to the report). Mr Hobden stated at the hearing that he was of the opinion that it would not be feasible to suspend the sale of alcohol in both the restaurant and bar areas of the premises. Mr Hobden stated that less people would use the restaurant if they were not able to purchase alcohol along with their meal.

In response, Ms Irving advised the Sub Committee that the MoA had been jointly agreed between Sussex Police and Mr Butt.

Licence Holder

The licence holder's representative, Mr Simmonds addressed the Sub Committee and stated that he was glad that considerable progress had been made regarding the situation following mediation. Mr Simmonds made the following points:

1. Mr Butt acknowledged the problems of the past regarding the sale of alcohol to minors, and understood that training was required;
2. The premises consisted of a large bar and two function rooms (both of which were restaurants);
3. The following actions had taken place following mediation:
 - (i) Mr Butt had installed CCTV with eight cameras costing over £3,000;
 - (ii) Staff from the Council's Environmental Health Team had inspected the premises and had set the sound limiters;
 - (iii) Mr Butt had re-joined Pub Watch and either he or a staff member attended all meetings;
 - (iv) Training had increased and a training record was being maintained;
 - (v) Challenge 25 was in existence;
 - (vi) A refusals register was being maintained;
 - (vii) A staff member had been given a written warning;
4. It was crucial to recognise the work which had been undertaken by Mr Butt, the Police and other responsible authorities;
5. He (Mr Simmonds) provided BIIAB training courses and had offered to assist Mr Butt in training his staff;
6. If the premises were to close, it would be a loss to both the community and staff;
7. Although suspension of the licensable activity to allow the retail sale of alcohol on the premises would lead to a small loss for the premises, Mr Butt was confident that if the MoA was agreed the Apple Tree would clearly be able to promote the licensing objectives and satisfy the responsible authorities;
8. There had been no recorded incidents since October 2011, which had been partly due to the policies which had been put in place following Mr Butt's meeting with the Police.

Closing Comments by the Applicant

The Applicant's representative, Mr Saville, addressed the Sub Committee and gave his closing statement as follows:

1. The MoA proposed:
 - (i) Suspension of the licensable activity for the retail sale of alcohol;
 - (ii) A reduction in trading hours;
 - (iii) Eleven conditions (three of which related to training to be completed before the final day of the period of suspension);
2. The proposed suspension would:
 - (i) Provide an opportunity for new practices to be put in place,
 - (ii) Provide an opportunity for training to take place before the premises was allowed to resume selling alcohol;
 - (iii) Deter any future breach of conditions;
 - (iv) Act as a sharp reminder to the licence holder that if problem behaviour persisted there would be consequences.

Mr Savill reminded those present that Mr Butt had agreed to all the proposals included within the MoA and he invited the Sub Committee to accept those proposals.

Closing Comments by the Interested Party

Mr Hobden, as an interested party, addressed the Sub Committee and gave his closing statement as follows:

1. He had never witness any problem behaviour, violence or trouble at the premises;
2. It would be a shame if the Apple Tree closed;
3. The restaurant could not remain viable if the licensable activity for the retail sale of alcohol was suspended in both the bar and restaurant.

Closing Comments by the Licence Holder

The licence holder's representative, Mr Simmonds, addressed the Sub Committee and gave his closing statement as follows:

1. A long mediation meeting had taken place on 2 February 2012 between the Police and the licence holder which had resulted in the MoA before the Sub Committee;
2. He commended the MoA;
3. Mr Butt was working with the Police;
4. Mr Butt was aware that there would be serious consequences if there were any problems in the future.

RESOLVED

In accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the public be excluded from the following part of the hearing. The Sub Committee considered that the public interest in taking such action outweighed the public interest in the hearing taking place in public.

17. Application to Review the Premises Licence Applicable to 'Apple Tree', Ewhurst Road, West Green, Crawley

The Sub Committee gave further consideration to the application and to the matters raised at the meeting.

18. Re-Admission of the Public

The Chair declared the meeting re-open for consideration of business in public session. He drew those present to the proposed reduction in trading hours cited on page 2 of the MoA. The Chair asked the Applicant to explain why a reduction in trading hours was only requested for a Friday and Saturday night, when incidents had previously occurred on weekdays.

Ms Irving addressed the Sub Committee and stated that the reduction in hours had been offered by Mr Butt at the mediation meeting and had not been suggested by the Police. The reduction in hours had been included as part of the mediation package detailed in the MoA.

The licence holder's representative, Mr Simmonds, informed the Sub Committee that due to the location of the premises, people often drifted back from town on a Friday and Saturday night and came into the Apple Tree. The reduction in hours for a Friday and Saturday night would reduce the potential for trouble.

RESOLVED

In accordance with Regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005, the public be excluded from the following part of the hearing. The Sub Committee considered that the public interest in taking such action outweighed the public interest in the hearing taking place in public.

19. **Application to Review the Premises Licence Applicable to ‘Apple Tree’, Ewhurst Road, West Green, Crawley**

The Sub Committee gave further consideration to the application, to the MoA and to the matters raised at the meeting. In formulating its decision, the Sub Committee took into account the options that were available to them and considered what was necessary to ensure that the licensing objectives were achieved.

RESOLVED

The Sub Committee, having considered the application, the MoA and the relevant representations in detail, resolved to take the actions detailed in Minute 20 “Re-admission of the Public” because it considered that necessary to promote the licensing objectives.

20. **Re-admission of the Public**

The Chair declared the meeting re-open for consideration of business in public session and asked the Legal Clerk to read out the Sub Committee’s decision and their rationale to those present. Prior to reading out the decision, the Legal Clerk informed all parties present that they would receive a copy of the decision notice within five days of the Hearing. The decision, as set out below, was read out by the Legal Clerk.

1. *“The original application sought a revocation of the licence in the first instance and in the alternative sought a suspension for a period of 3 months along with a number of changes to the licence which mainly included the addition of a number of new conditions.*
2. *The Sub Committee, in determining the application, carefully considered the following:*
 - 2.1 *The application and all the material provided in support of it by Sussex Police (appendices A, and B to the report), and the submissions made during the hearing in support of it.*
 - 2.2 *Relevant representations made by interested parties (appendices E, F, G, H, I and J to the report).*
 - 2.3 *The submissions made during the hearing by and on behalf of the Licence Holder.*
 - 2.4 *The memorandum of agreement submitted by both the applicant (Sussex Police) and the Licence Holder (Jasmine Court Associates Ltd).*

2.5 *The guidance issued by the Secretary of State pursuant to s.182 of the Licensing Act 2003.*

2.6 *The Council's own Licensing Policy.*

DECISION

Revocation/Suspension

3. *The original application requested that the Sub Committee consider a revocation in the first instance due to the seriousness of the allegations of incidents involving both the sale of and consumption of alcohol by persons under the age of 18 years at the premises and involving crime and anti-social behaviour in and around the vicinity of the premises. The original application also requested that if the Sub Committee decided it was not proportionate and necessary to revoke then to seriously consider suspending the premises licence for a period of 3 months.*
4. *The Sub Committee however recognises that the memorandum of agreement (an agreed document between the parties) now requests a suspension restricted to the licensable activity of the supply of alcohol, rather than an entire suspension of the premises licence, for a period of 6 weeks. The Sub Committee also noted the submissions made during the hearing by the Police which included that the Police were satisfied that this was sufficient time to implement the changes jointly proposed with the Licence Holder and put other measures in place without the period being so long that it would effectively close the premises.*
5. *The Sub Committee paid regard to the Council's policy in which it states that in looking to matters of reduction of crime and disorder it will give the Police's advice considerable weight. It was also mindful that information was given at the hearing indicating that many of the changes are under way, including the installation of a new CCTV system approved by Sussex Police, the DPS (Mr Butt) re-joining and engaging with the Pubwatch scheme and the implementation of the challenge 25 policy.*
6. *The Sub Committee therefore agreed that a period of 6 weeks suspension in relation to the supply of alcohol was both proportionate and necessary to promote the licensing objectives – including to ensure that there is adequate time for the Licence Holder to implement all the necessary changes required by the amended and new conditions. Therefore, the Sub Committee decided that there shall be a suspension of the supply of alcohol from these premises for a period of 6 weeks.*

Additional training conditions to be completed during suspension

7. *The Sub Committee noted the proposed requirement in the memorandum of agreement for the DPS and bar staff to undertake training whilst the suspension was in place. The Sub Committee agreed with this and that it would assist the management and staff involved in the sale of alcohol to be aware of their responsibilities under the Licensing Act 2003 and further that the training would be necessary to promote the licensing objectives.*
8. *Therefore the Sub Committee was minded to require and make this as a further condition of the premises licence. For the avoidance of doubt that condition would read as follows:*

8.1 *The following training to be undertaken by the DPS and all staff employed within the premises, who are involved in the sale of alcohol. This training is to be completed by the final day of the period of suspension of the premises licence (which came about as a consequence of the determination of the application for review). That training to specifically include:*

- *The Designated Premises Supervisor to receive specific BIIAB approved training for the job role. Proof of attendance must be provided to the Local Authority and Sussex Police Licensing Team.*
- *All members of staff employed in the sale of alcohol at the time of the commencement of the suspension period who undertake the sale of alcohol will attend the BIIAB Level 1 Award in Responsible Alcohol Retailing or Level 2 (Personal Licence course). Proof of attendance must be provided to the Local Authority and Sussex Police Licensing Team.*

Opening hours and hours of supply of alcohol

9. *Whilst there was no proposed amendment to either the opening hours or the licensable activity hours in the original application, there was a proposed amendment contained within the memorandum of agreement put before the Sub Committee today.*
10. *The proposed amendments were to change the hours of the supply of alcohol from the current hours, which are 10:00-00:30 on a Friday and a Saturday, to 10:00- 23:00 on a Friday and Saturday. The Sub – Committee agree with this change.*
11. *The proposed amendments to the opening hours of the premises were to change the current opening hours of 10:00 – 1:00 on a Friday and a Saturday, to 10:00 - 23:30 on a Friday and Saturday instead. The Sub Committee also agreed with this change.*
12. *It was decided that both of the proposed amendments to the opening hours and the hours of supply of alcohol were necessary to promote the licensing objectives of the prevention of crime and disorder and the protection of children from harm, having heard submission from the Licence Holder that Fridays and Saturdays were mostly the nights when young people tended to drift back to the premises to continue drinking from the town centre.*

Conditions

13. *The Sub Committee considered the proposed addition of the conditions in paragraphs numbers 1 to 8 in the memorandum of agreement and agreed that these were necessary to promote the licensing objectives, specifically the objectives of the prevention of crime and disorder and the protection of children from harm. It also considered the proposed condition bullet pointed at the end of the memorandum of agreement relating to the training of future staff and agreed that such a condition was also necessary to promote the licensing objectives. Therefore the following conditions are to be added to the premises licence subject to the following amendments:*

- 13.1 *Paragraph 1 to be adopted and amended to include the word “be” after the words “this will” in the penultimate line of the paragraph so that it reads:*

*“Door supervisors will be employed at any time and for such duration as the Designated Premises Supervisor identifies the need and will include all such times and duration as Sussex police identify to the DPS in writing that such a need is required. Any written request from Sussex police shall stipulate the times, duration and numbers required. The Door Supervisors will not have a dual role within the premises. A written record of those occasions when Door Supervisors are employed shall be kept and this will **be** made available to police and licensing officers from Crawley Borough Council immediately upon request.”*

- 13.2 *Paragraph 2 of the memorandum of agreement to be adopted in its entirety.*

- 13.3 *Paragraph 3 of the memorandum of agreement to be adopted in its entirety.*

- 13.4 *Paragraph 4 of the memorandum of agreement to be adopted in its entirety.*

- 13.5 *Paragraph 5 of the memorandum of agreement to be adopted in its entirety.*

- 13.6 *Paragraph 6 of the memorandum of agreement to be adopted in its entirety.*

- 13.7 *Paragraph 7 of the memorandum of agreement to be adopted and amended to include the words “a record of” before the words “which must be signed” so that it reads:*

*“Training will be given to all new and current staff members **a record of** which must be signed and fully documented. Refresher training will be implemented by the management once every three months and a written record will be kept and provided to police and licensing officers from Crawley Borough Council.”*

- 13.8 *Paragraph 8 of the memorandum of agreement to be adopted and amended to include the words “internal parts of” before the word “premises” so that it reads:*

*“Only alcohol purchased from the premises may be consumed on the **internal parts of** the premises. The DPS will not allow alcohol to be brought onto the premises by any patrons or third party.”*

- 13.9 *Finally, the final bullet pointed proposed condition on the memorandum of agreement to be adopted and amended and added as a condition on the premises licence to read as follows:*

“All future staff employed in the sale of alcohol at the premises will receive immediate training in their responsibilities under the Licensing Act 2003 from the DPS and undertake the BIIAB Level 1 Award in Responsible Alcohol Retailing or Level 2 (Personal Licence course). within 12 weeks of commencement of employment. Proof of attendance must be provided to the Local Authority and Sussex Police Licensing Team.”

Conclusion

14. *In concluding, the Sub Committee was encouraged by the apparent genuine concern and remorse of the Licence Holder that the situation had become so serious and shared Sussex Police's cautious optimism that real and significant changes will be made with the new conditions of the premises licence, to address previous failures. However, the Sub Committee are grateful to the police for their dedication in trying over a long period to improve the problems linked to this premises and noted with satisfaction that the police will be monitoring the situation and will consider in the future bringing a further review if there isn't the hoped for improvements.*
15. *The Sub Committee wished to end on a positive note and extended its gratitude to the Police and the Licence Holder for their co-operative working, and expressed a hope that this will continue into the future to the benefit of all."*

21. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 8.50pm.

B K BLAKE
Chair