

Crawley Borough Council



Minutes of Licensing Sub Committee

22 March 2012 at 6.30pm

Present:

Councillors B MeCrow, C Oxlade and D J Shreeves

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Mike Lyons	Senior Licensing Officer
Astrid Williams	Legal Clerk - Solicitor
Chris Pedlow	Democratic Services Officer

Apologies for Absence:

Councillors B J Quinn and K Williamson.

Also in Attendance:

Applicant	Kyle Cherry (<i>Trading Standards Officer</i>)
	Richard Sergeant (<i>Team Manager Trading Standards</i>)
Licence Holder	Preet Singh Dhawan (<i>Premises Licence Holder and Designated Premises Supervisor</i>)
	Yogindar Kumar Bahal (<i>Agent for Licence Holder</i>)
Responsible Authorities	Chris Boyle (<i>Sussex Police – Licensing Officer</i>)
	Sgt Tony Jarred (<i>Sussex Police - Police Sergeant</i>)

22. Appointment of Chair

RESOLVED

That Councillor B MeCrow be appointed Chair for the meeting.

23. Members' Disclosure of Interests

The following disclosures of interests were made by Members:-

Member	Minute Number	Subject	Nature of Disclosure
Councillor C Oxlade	Minutes 24, 25 and 26	Application to Review the Premises Licence applicable to 'Best One, 4 The Broadway, Crawley West Sussex	Personal and Non-Prejudicial Interest. As Member of West Sussex County Council, because Trading Standards is a function of the County Council.
Councillor D J Shreeves	Minutes 24, 25 and 26	Application to Review the Premises Licence applicable to 'Best One, 4 The Broadway, Crawley West Sussex	Personal and Non-Prejudicial Interest in the item as he was a personal licence holder.

24. Application to Review the Premises Licence applicable to 'Best One, 4 The Broadway, Crawley West Sussex

The Sub Committee considered an application to review the premises licence held by Preet Singh Dhawan (licence holder) in respect of the premises known as 'Best One', 4 The Broadway, Crawley West Sussex submitted by Trading Standards as a Responsible Authority as defined under the Licensing Act 2003.

The Legal Clerk informed all parties that the Sub Committee Members 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. It was confirmed that the Sub Committee had not asked for clarification of any aspect of the application or on the representations received from any party.

The Legal Clerk then asked all parties present, if they wished to make any relevant applications, for example additional information or to cross-examine any party. Mr Bahal addressed the Sub Committee and requested that a further piece of information be considered at the hearing, which was an email detailing a number of proposed conditions that his client would find acceptable if imposed on his licence in order to mitigate against similar problems occur again. It was confirmed that both Trading Standards and Sussex Police had received a copy of the new information prior to the meeting. The representatives of both Responsible Authorities confirmed that they did not object to the additional information being included in the Hearing. However they also made clear that by agreeing to the licence holder referring to this documentation did not mean that they agreed or accepted the proposed conditions contained within the document and both requested the right to comment on it. The Sub Committee then agreed to the inclusion of the new information and asked that Mr Bahal during his representation guided them through it, as they had not seen the new information in advance. Following clarification from the Legal Clerk all parties reserved the right, should it be required, to cross-examine which the Sub Committee also agreed to.

Report PES/069 of the Council's Head of Planning and Environmental Services was presented by Michael Lyons, a Senior Licensing Officer for Crawley Borough Council.

The Application

The Senior Licensing Officer, Mr Lyons, informed the Sub Committee that on 6 February 2012, Trading Standards 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 'Best One'. 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 public safety. The application for a review was detailed in Appendix A and a copy of the premises licence was attached as Appendix B to the report. It was confirmed that the application for the review had been advertised in accordance with legislation and as a result of the consultation process, Sussex Police had submitted a representation in support of the review on the grounds of the licensing objectives of preventing crime and disorder and the public safety. A copy of their submission was included as Appendix C.

The Sub Committee were then guided through the remainder of the report which set out the reasons for the Hearing and 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. In going through the report Mr Lyons informed the Sub Committee that there was a mistake in paragraph 6.2, and it should read *The Council is required to consider the impact any decision may have on an individual's Human Rights.*

Paragraphs 4.11 and 4.12 of the report was especially highlighted to the Sub Committee, as 4.11 stated that, *'there is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. The Guidance states that such criminal activity includes the use of the licensed premises for the sale of smuggled tobacco and alcohol.'* Also 4.12 was emphasised, *'where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.'*

He then proceeded to inform the Hearing of the options available to it in respect of the application, and reminded the Sub Committee that any decision must be necessary and proportionate for the promotion of the four licensing objectives. The options were to:

- i. Modify the conditions of the licence;
- ii. Exclude a licensable activity from the scope of the licence;
- iii. Remove the designated premises supervisor;
- iv. Suspend the licence for a period not exceeding three months; or
- v. Revoke the licence.

The Applicant – Trading Standards

Mr Sergeant addressed the Sub Committee and commented that the key reason for applying for a review for the premises licence was about responsibility and that on three occasions the Designated Premises Supervisor (DPS) had not been responsible in respect of the licensing objectives. The three separate incidents occurred throughout 2011 involving criminal offences of selling counterfeit alcohol and

cigarettes, therefore it meant that the DPS had not promoted the statutory objective of Preventing Crime and Disorder, and Public Safety.

Mr Sergeant then guided Members through his application for review and mentioned that there were pending proceedings in the magistrates' court in relation to the issues raised in the application. The Sub Committee asked a number of questions during that process to Mr Sergeant, which included:

<u>Questions</u>	<u>Response</u>
<p>What written information and advice did the premises receive over the inspections?</p>	<p>If potential counterfeit stock was found during an inspection, they would give the premises a disclaimer for goods sheet for the stock that was being seized. The disclaimer explains why it was being removed and what would happen after that in terms of testing the stock. Part of this disclaimer includes a selection for a signature by a staff member prior to the stock removal.</p> <p>After the event the premises would be sent a more thorough report detailing the inspection and the finding, what stock was seized, was it counterfeit and a warning letter of potential prosecution. Within this documentation there is also advice on how to ensure that retailers they were buying legitimate stock and what counterfeit stock looks like. Also there would be a form for the Licence Holder to sign and send back to Trading Standards.</p>
<p>How did you determine in respect of 24 June 2011 that the cigarettes were counterfeit?</p>	<p>A sample of the cigarettes were sent to the trade mark holder for testing, where they test the packaging, against their own branding to confirm if it was counterfeit, which it proved to be. The cigarettes contents were yet to be tested.</p>
<p>On the counterfeit stock do you try and track down the suppliers that produce it?</p>	<p>We always try and catch those up the supply chain, but by their very nature it's very difficult to trace, especially without paperwork.</p>
<p>Reference was made to the DPS admitting in writing to purchasing Jacobs Creek, from the back of a white van where is a copy of this admittance?</p>	<p>Sorry we have not included it within the documentation.</p>

<u>Questions</u>	<u>Response</u>
Was there any reason behind the third inspection?	A member of the public had advised us (Trading Standards) that there might be counterfeit stock following that individual having bought a bottle of Jacobs Creek from Best One, where they found that the bottle's label had incorrectly spelt Australia as 'Austrlia.'

Mr Sergeant then asked the Sub Committee would he be able at that point to comment on the Licence Holder's additional information and proposed conditions. The Chair replied that he would be able to address that information as part of the 'cross examination' aspect of the hearing, once all parties had presented their case.

Responsible Authority – Sussex Police

Sgt Jarred then addressed the Hearing and commented that he had no further evidence to present, just wished to support and to re-confirm the information provided by Trading Standards. He said the evidence showed constant breaking of the law and the licensing objectives; once might be a genuine mistake however three separate cases clearly showed that the premises was not being run responsibly. Sgt Jarred commented that he did not wish to add anything further at that point, as there was a related criminal case occurring simultaneously and he did not wish to affect that. He would however wish to re-emphasise section s 4.11 and 4.12 of the report to the Sub Committee. In closing Sgt Jarred said that he would like to reserve the right, as Mr Sergeant had, to come back later in the hearing to possibly comment on the additional information.

Licence Holder

Mr Bahal addressed the Sub Committee on behalf of Mr Dhawan the Licence Holder and DPS, he firstly read out the additional information, which included that '*My client appreciates that over the past year or so he has not managed his premises in a diligent way*' and '*that my client profoundly regrets his misdemeanours and realises that his actions.*' The statement also made reference to the financial impact that revoking the licence would have on Mr Dhawan and the staff that worked at Best One. The statement also included a proposed set of 11 conditions that the Premises was happy to accept; noting that some of the proposal might already included within the current premises licence. The proposed conditions were as follows:

- 1. That he be removed, both as a premises licence holder and the DPS and be substituted by one of the current partners in the business.*
- 2. That all purchases of alcohol and tobacco be from bona fide wholesalers and all purchases be accompanied by a VAT receipt from the wholesaler.*
- 3. That there be a paper audit trail of purchases.*
- 4. In the absence of a DPS, one Personal Licence Holder will be onsite.*
- 5. Two members of staff to be present on the premises from 1900 till close.*
- 6. Challenge 25 police to be in place.*

7. *The DPS and their staff be able to converse with customers, the public and representatives of statutory agencies to a level that satisfied the Police and Trading Standards that they were able to meet the four licensing objectives.*
8. *To participate in bottlewatch or UV marking scheme if requested by police or trading standards.*
9. *CCTV to be installed in accordance with current or amended Home Office Guidelines relating to UK Police Requirements for Digital CCTV Systems. These cameras shall be located both internally and externally in consultation with the Police.*
10. *CCTV images shall be retained for at least 31 days and except for mechanical breakdown beyond the control of the proprietor shall be made available upon request to the police and authorised officers of the Council.*
11. *Any request from the Police or the Council for a recording to be made for evidential purposes must be carried out immediately.*

Mr Bahal said that his client had to put his “hands up” to what the Trading Standards officers and Police had presented; it could not be denied. He said that his client accepted that the relevant authorities had been more than generous in giving him an opportunity to change his ways but unfortunately this had not been done. Mr Bahal said that this was down to poor management on the premises and that he was not always on the premises. He said that there was no excuse open to his client that he had not been given an ample opportunity.

Members were then informed by Mr Bahal that Mr Dhawan took the responsibility for purchasing all stock for the premises, mainly from Cash and Carries (C&Cs), but he had been foolish in purchasing products from out the back of ‘white vans’ especially without any form of receipts. Mr Bahal said however ‘*everything wasn’t as bad as it seems*’ as in June last year Trading Standards carried out a test purchase with a young person trying to purchase cigarettes and they had been refused. (Trading standards was unable to confirm this at the hearing).

He said that he had discussed the situation with his client and the partners of the business and said it may be best that the licence and DPS is changed to someone who is on hand at the store and can take responsibility. Instead it would be proposed that he replaced in both cases by one of his business partners. With those key changes to the management and along with the other proposals made, his client hoped that the Sub Committee would be satisfied that no further problems would happen at the premises.

Members then asked a number of questions of Mr Dhawan, which included:

<u>Questions</u>	<u>Answers by Mr Bahal and Mr Dhawan</u>
Who were your business partners and were they aware of you buying from ‘white vans’?	Mr Surbr Singh Dhawan and Mr Mohan Singh (his brother and cousin). As Mr Dhawan (DPS) was the elder, he was responsible for buying the stock for the premises and the others were unaware how that occurred.

<u>Questions</u>	<u>Answers by Mr Bahal and Mr Dhawan</u>
<p>Why did the 'white vans' come to him and offer stock and why did he then buy from them?</p>	<p>A number of times different people pull up in 'white vans' and come to the store and offer different goods.</p> <p>On this occasion I was foolish like many other traders by being 'greedy' saw an opportunity to be by making profit to buy cheaper stock that was VAT free, and took it. No, invoice, receipts or paperwork.</p>
<p>C&Cs were mentioned, which ones does the premises buy stock from and would Mr Dhawan be happy to change proposed condition 2 to list the specific C&Cs and wholesalers where stock could only be purchased from?</p>	<p>The majority of C&Cs and wholesalers used were in Ruislip, Middlesex and that region, or through 'Best-One' with the stock being ordered online.</p> <p>No they would not be willing to limit themselves to a set list of C&Cs as they would always look for the best value stock and thus other stocks might be cheaper at others wholesales. If they then bought from those they would be in breach of their licence.</p>
<p>With the premises being a franchise of 'Best One' does the parent company know about the hearing and what was their view?</p>	<p>They had not being made aware of the hearing.</p>
<p>Were alcohol and cigarettes the main products sold at the premises?</p>	<p>Weekly sales were £7,000-8000, and of that £2,000-3000 was cigarettes and similarly £2,000-3000 was alcohol. Alcohol-wise it was mainly beers not spirits.</p>
<p>How did you train your staff and was there a refusal register?</p>	<p>Staff Members were taught to check for anyone that looked under 21 and there was a refusal register. Also staff members were only allowed to sell to 'street drinkers' individual cans of beer not multi-packs or spirits.</p>

Further Clarification and Cross Examination

The Sub Committee then allowed all parties to cross examine. Mr Sergeant said he would like to ask the Licence Holder some questions for clarification purposes and then comment on the proposed conditions. Mr Sergeant stated that he had a different viewpoint on who purchased the stock for the premises, as through the criminal case, it had been stated under PACE interview under caution that Mr Mohan Singh had purchased the counterfeit cigarettes. Mr Dhawan, responded that was true that Mr Singh had been involved in acquiring the cigarettes, but stated the cigarettes had not been bought but had been given to Mr Singh as a free sample.

The Sub Committee then asked the Licence Holder the exact role of Mr Mohan Singh and Mr Surbr Singh Dhawan within the business. It was confirmed that Mr M Singh and Mr S Singh Dhawan were his cousin and brother as mentioned previously and they were the owners/Directors of Wimhurst Ltd, the trading company that owned the business. Mr Preet Singh Dhawan, the premises licence holder of the 'Best One' confirmed that he worked for and was employed by Wimhurst Ltd. With that information the Sub Committee sought clarification from Trading Standards over whom they had been dealing with in terms of receiving signed responses to their documentation. Mr Sergeant commented that he did not have all the documentation present but certainly the signed acknowledgement for the 1st incident (18 January 2011) was Mr S Dhawan Singh. Mr M Singh was 'owner' referenced within our written evidence of '*admitting in writing that the Jacobs Creek was purchased from an unmarked white van*'.

The Chair then invited Mr Sergeant to continue, and he then addressed the additional information and proposed conditions. He said that within the information from the licence holder it said that Trading Standards had only requested that the licence be revoked, he commented that in the application, Trading Standards had in fact asked the Sub-Committee to consider at the very least suspending the licence for 3 months. Mr Sergeant addressed a number of the proposed conditions:

Proposal 1 – He said he had grave concerns about how changing the DPS and premises licence owner to other partners in the business would make a significant difference in how the premises would be run. He said this was especially in light of the discussions that the two other partners, had already been involved in, or had knowledge of the counterfeit goods being sold on the premises.

Proposal 2 – He said that he was struggling to specify what the phrase 'bona fide wholesalers' meant. He went on to say that if that meant larger C&Cs as implied by the DPS, then why would he not accept the Sub Committee offer of naming the specific stockists.

Proposal 3 – He said that he wanted to know what a paper audit trail of purchases meant. He questioned whether, as worded, this would mean if a man from the white van provided a hand written piece of paper receipt for counterfeit goods, would be acceptable. He said that the condition did not make sense and if accepted should be reworded to something like an audit trail of purchases including receipts and VAT from the named stockists, as linked to proposal 2.

Sgt Jarred addressed a number of proposals on behalf of Sussex Police saying Proposals 9, 10 and 11 were already conditions on the current licence and that CCTV was already in place. Proposal 6 – Challenge 25 policy was also a current condition however it has been stated during the Hearing by the Licence Holder that he had told his staff to only challenge those that looked under 21 not 25. Sgt Jarred also commented that he supported the concerns expressed by Trading Standards on Proposal 1.

The Senior Licensing Officer then addressed the Sub Committee to provide a point of clarification. He stated that a part of one of the Licence Holder's proposed conditions, the removal of the premises licence holder, was not within the jurisdiction of the Sub Committee and thus could not be included a condition on to the licence. He went on to say that the removal of the DPS element was a step open to the committee.

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.

25. Application to Review the Premises Licence applicable to 'Best One, 4 The Broadway, Crawley West Sussex

The Sub Committee gave further consideration to the application, 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 and the relevant representations in detail, resolved to take the action as detailed in **Appendix A** to these minutes, because it was considered that necessary to promote the licensing objectives.

26. Re-Admission of the Public

The Chair declared the meeting re-open for consideration of business in public session and commented that the Sub Committee's decision and reasoning would be announced by the Legal Clerk on their behalf. The Chair then addressed the Trading Standards Officers directly and commented that should they wish to request any similar reviews in the future they should consider including as part of their submission copies of any evidence referred to within their application such as witness statements and any correspondence.

Prior to reading out the decision, the Legal Clerk informed those present of the advice she provided during the closed session which including reminding the Sub Committee that their responsibility within the licensing act, and also that although the loss of income would often be the result of a decision to suspend or revoke a licence (and consequently that is one of the reasons why decisions by sub-committees had to be proportionate), the potential loss of a premises licence holder's income was not in itself a relevant consideration in relation to the determination of the application to review the licence.

The Legal Clerk read out the Sub Committee's decision as detailed in **Appendix A** to the minutes. It was also announced to all parties present that they would receive a copy of the decision notice within five days of the Hearing.

27. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 8.40pm.

B McCrow
Chair

Appendix A

Decision of the Licensing Sub Committee

Decision of the Licensing Sub Committee sitting at Crawley Borough Council in relation to the application by Trading Standards, a Responsible Authority, to review the licence held by Mr Preet Singh Dhawan in respect of the premises known as 'Best One' at 4 The Broadway, Crawley, West Sussex

1. In this application, Trading Standards cited 3 occasions in 2011 when officers of that authority attended the premises at 4 The Broadway. The application, and the evidence given by Mr Sergeant, alleged as follows in relation to those 3 visits:
 - (1) On 18 January 2011 3 bottles of 'Napoleon' brandy were taken as samples and subsequently, upon analysis, were found not to be genuine brandy; and further also during that visit officers found 4 bottles of 'Granton' vodka which was not properly labelled in accordance with relevant legislation – and that this was in contravention of legislation which Trading Standards enforces.
 - (2) On 24 June 2011 during an inspection following a complaint, various packets of cigarettes were found which were not labelled in accordance with appropriate legislation and this also amounted to various criminal offences.
 - (3) On 13 September 2011 during another inspection, 57 bottles of wine labelled 'Jacobs Creek' was seized on suspicion of being counterfeit and it was found, after samples of the bottles were analysed, that the products were counterfeit – and that this was again in contravention of legislation which Trading Standards enforces.
2. The Sub Committee were mindful of the s.182 guidance and in particular at paragraph 11.23 where it reminds them that it was not their role to judge the criminality or otherwise of any issue as doing so was a matter for the courts.
3. The licence holder, via his agent, provided a written representations. In the representations it was stated that *“over the past year or so [the licence holder] has not managed his premises in a diligent way and as a result certain matters have come to light to the Trading Standards Officer ...”*. It was further stated that the licence holder *“profoundly regrets his misdemeanours”*.
4. Further, the Sub Committee noted that during the hearing the licence holder admitted the allegations made by Trading Standards (that on the 3 instances cited above Trading Standards had found counterfeit alcohol and cigarettes on the premises), and so was not in dispute.
5. Therefore, although the Sub Committee could not determine whether a particular crime had been committed and by whom in relation to these 3 instances, as the licence holder had admitted that counterfeit alcohol and cigarettes had been found on the premises, the Sub Committee concluded that it was likely that some criminality was involved in the presence of these goods for sale at the premises.

6. Further, the Sub Committee accepted the submissions made in the application by Trading Standards that the counterfeit goods could potentially be unfit for human consumption (and the Sub Committee reminded itself that this was common sense) and so the Sub Committee accepted that the admitted presence of these counterfeit goods on the premises was a clear failure by the licence holder to promote the licensing objective of promoting public safety.
7. During the hearing it became apparent that the business arrangements at the premises were far from clear as had originally been set out in the licence holder's representations. In his written submissions and presentation to the Sub Committee, Mr Dhawan claimed that he had 2 business partners, however, during the hearing the licence holder said that he was in fact employed by these 2 men (being his brother and cousin) and they were also involved in a company who in fact owned the business.
8. Despite this, the Sub Committee reminded itself that Mr Dhawan had been the licence holder since the beginning of this licence (since about 2010) and had therefore been the licence holder during all the relevant events involving the counterfeit goods; and further, he had become the Designated Premises Supervisor for the premises in August 2011 (as well as the licence holder) which was after the first 2 instances of counterfeit goods but before the third.
9. The Sub Committee found the presentation of the licence holder unsatisfactory, in particular when he said what had happened, at least in relation to 1 of the 3 instances, was because of greed and to save on VAT, and felt that this was a very serious concern.
10. The Sub Committee were also mindful that despite warnings to the business by Trading Standards, finding counterfeit goods on the premises continued to happen not just twice, but on a third occasion.
11. The Sub Committee carefully considered the proposed conditions put forward by the licence holder. The Sub Committee was mindful that although the removal of a Designated Premises Supervisor was a step available to them (should they find it necessary to promote the licensing objectives) and in and this had been suggested in the representations made on behalf of the licence holder, the representations had also suggested that Mr Dhawan be removed as the licence holder, and this of course was not a step available to the Sub Committee in relation to this application. The Sub Committee were concerned that of the 11 matters put forward only the first 3 really related to the allegations which gave rise to this application apart from number 7, which was too vague to be a condition.
12. The Sub Committee gave careful consideration to the submissions made by Trading Standards about the proposed condition number 3 being too vague and suggestions made to it being amended to allow for receipts to be kept for 6 months. However, even given the suggested amendments by Trading Standards, the Sub Committee was mindful that the proposed condition number 3 was insufficiently clear to be enforceable. Further, the Sub Committee felt that there was no other conditions which could be imposed which would satisfactorily promote the licensing objectives.
13. The Sub Committee heard the evidence by the licence holder in relation to the hardship which may be suffered were they to decide that the licence be revoked. The Sub Committee were mindful that, although hardship might be a consequence of revocation and therefore was a good reason why the legislation and guidance required their decision to be only what was necessary to promote the licensing objectives and also proportionate, it was not in itself a relevant consideration.

14. The Sub Committee considered whether it would be sufficient to promote the licensing objectives to remove the Designated Premises Supervisor. However, it was proposed by the licence holder that one of the 2 'current partners' would be the new Designated Premises Supervisor. Although the Sub Committee were aware that who might be the proposed new Designated Premises Supervisor in a future application may not in fact be these 2 partners, it was of concern to the committee that at least one of these 2 partners (who might be the proposed new Designated Premises Supervisor were Mr Dhawan to be removed), Mr Mohan Singh, had been, according to the evidence given by Mr Dhawan during the hearing, directly involved in the presence of the counterfeit cigarettes on the premises. The Sub Committee concluded that that deciding to remove Mr Dhawan as the Designated Premises Supervisor would be insufficient to promote the licensing objectives.
15. Having explored all these options and or all the reasons given, the Sub Committee decided that it was necessary to promote the licensing objectives that the licence be **revoked** – and that was the decision of the Sub Committee.