

# Crawley Borough Council



## Minutes of Licensing Sub Committee

17 October 2012 at 10.00am

**Present:**

Councillors B J Burgess, C J Mullins and K J Trussell

**Officers Present:**

Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer
Astrid Williams	Legal Clerk - Solicitor

**Also in Attendance:**

Applicant	Mr Bharat Patel (Applicant)
	Mr Manan Contractor (Representative for the Applicant)
	Mr Chandrakant Patel (Representative for the Applicant)
Those who made relevant representations	Mr Glenn Fisher
	Mr Veenindar Majhail
	Mr Daniel Schaack

**15. Appointment of Chair**

**RESOLVED**

That Councillor C J Mullins be appointed Chair for the meeting.

**16. Members' Disclosure of Interests**

The following disclosure of interest was made by a Member:-

<b>Member</b>	<b>Minute Number</b>	<b>Subject</b>	<b>Type and Nature of Disclosure</b>
Councillor C J Mullins	Minutes 17 and 19	Application for the Grant of a New	Declared that two separate individuals

<b>Member</b>	<b>Minute Number</b>	<b>Subject</b>	<b>Type and Nature of Disclosure</b>
		Premises Licence - Northgate, 10 The Parade, Northgate, Crawley	had contact him by telephone to discuss the application. Councillor Mullins informed the Sub Committee that he had immediately refused to discuss the application at all with those individuals to ensure that he did not prejudice his position on the Sub Committee. He confirmed that no discussion had taken place.

**17. Application for the Grant of a New Premises Licence – Northgate Newsagents, 10 The Parade, Northgate, Crawley**

The Sub Committee considered an application to grant a new premises licence in respect of Northgate Newsagents, 10 The Parade, Northgate, Crawley.

Following the introduction of those present at the meeting, the Legal Clerk outlined the procedure for the meeting. 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 then asked all parties present, if they wished to make any relevant applications, for example applications for adjournment, additional information or to cross-examine any party. No applications were made.

Report PES/095 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 23 August 2012 Bharat Patel submitted an application to the Council as the Licensing Authority for the Borough of Crawley for the grant of a premises licence in respect of Northgate Newsagent, 10 The Parade, Northgate, Crawley. The application was detailed in Appendix A to the report and sought for the supply of alcohol off the premises. The Applicant had stated in the application that the premises intended to promote the four licensing objectives with the steps set out in the operating schedule.

It was confirmed by Mr Lyons that the application had been advertised in accordance with legislation and as a result of the consultation process, the Council had received a relevant representation from Mr VS Majhail (appendix C to the report). The Council had also received a petition signed by 152 people (although only 126 of those were

identifiable, and of those 6 notifications of the Hearing had been returned to the Council as “addressee/address unknown”) objecting to the grant of the licence (a copy of which was appended to the report at Appendix D). The Senior Licensing Officer informed the Sub Committee that the reference to this petition in paragraph 2.4 of the report contained two clerical errors and that the second row of the table relating to the petition shown should be amended to read as follows “Action petitioned for – We the undersigned, are concerned citizens who **urge** Crawley Borough Council to **not** allow the stated property to obtain a license to sell alcohol”.

The Sub Committee was 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 determining the application, including the relevant statutory provisions, sections of the Guidance issued by Government pursuant of Section 182 of the Licensing Act 2003, and the Council’s policy considerations.

The Senior Licensing Officer 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 appropriate for the promotion of the four licensing objectives. The options were to:

- (1) Grant the application subject to:
  - (i) conditions which are consistent with the operating schedule modified to such an extent as the authority considers appropriate for the promotion of the licensing objectives, and
  - (ii) any relevant mandatory conditions;
- (2) exclude from the scope of the licence any of the licensable activities to which the application relates;
- (3) refuse to specify a person in the licence as the Premises Supervisor;
- (4) reject the application.

### **The Applicant**

The Applicant’s representative, Mr Contractor, addressed the Sub Committee and stated that he wished to provide it with a paper copy of his presentation. The Legal Clerk informed Mr Contractor that Regulation 18 of the Licensing Act 2003 (Hearing) Regulations 2005 permitted the Sub Committee to take into account documentary or other information produced at the Hearing if all the other parties consented. The presentation was shown to the Legal Clerk, Senior Licensing Officer as well as all the Interested Parties. It was agreed that apart from one page of statistics, all of the other information was a re-statement of the information attached to the original application. All of the parties present gave their consent to the Sub Committee taking into account that one additional page of statistics.

Mr Contractor gave his submission and stated the following:

- (1) The intention of the application was to:
  - stop business decline;
  - sustain business;
  - survive a competitive market;
  - increase business revenue and make it financially viable.

- (2) The licensing objective relating to the prevention of crime and disorder would be met by:
- Accepting all the conditions laid by the Divisional Licensing Officer, Licensing Department and Horsham Police Station in totality;
  - Installing and using CCTV in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System;
  - Retaining CCTV images for 31 days except for mechanical breakdown;
  - Agreeing the location and numbers of cameras with the Licensing unit at Horsham Police Station;
  - Not selling beer, lager or cider above 6%;
  - Not selling alcohol to identified street drinkers;
  - Becoming a member of Crawley and Gatwick Business Watch if the licence application was approved;
  - Ensuring the premises would have a DPS at all times;
  - Encouraging customers to leave the premises as soon as possible.
- (3) The licensing objective relating to public safety would be met by:
- Continuing to maintain a safe environment for customers and staff as had been done over the last twelve years;
  - Displaying well defined and visible exit and escape routes;
  - Ensuring non-slippery, no trip hazards and even surfaces;
  - Ensuring unobstructed internal gangways at all times;
  - Ensuring an adequate and appropriate supply of first aid equipment and materials.
- (4) The licensing objective relating to the prevention of public nuisance would be met by:
- Not selling alcohol to any person who appeared drunk;
  - Maintaining a refusal book and incident log which would be reviewed by the DPS at regular intervals;
  - Making the refusal book and incident log available to the Police, Police Licensing Officers, Local Authority and Trading Standards upon request;
  - Controlling noise nuisance by ensuring that doors and windows were kept closed during early and late hours;
  - Placing signs at the exits encouraging customers to leave promptly with minimal disruption to those in the surrounding area;
  - Not playing music loud enough to cause any noise nuisance;
  - Ensuring no light pollution by not using high lumen lights;
  - Not selling alcohol products which had a noxious smell;
  - Clearing litter in line with Crawley Borough Council policy;
  - Only selling alcohol between the hours of 0800hrs and 2100hrs to ensure there was no additional nuisance as customers entered or left the premises.

The Legal Clerk asked Mr Contractor to confirm that the Applicant was in fact seeking to amend his application at the Hearing to reduce the proposed hours sought for the supply of alcohol from 23:00 Monday to Sunday to 21:00 Monday to Sunday. Mr Contractor confirmed that the Applicant was amending his application so that the hours he sought for the sale of alcohol were now Monday-Sunday 0800hrs to 2100hrs. The Legal Clerk informed the other parties present that as the application had been amended to include the reduced hours for the proposed sale of alcohol, it would be difficult to object to not being given notice of this (which would be different had he sought to amend his application to extend the hours) and that when they had an opportunity to speak, they could address this point if they wished. The other 3 parties present acknowledged this.

Mr Contractor continued his submission as follows:

- (5) The licensing objective relating to the protection of children from harm would be met by:
  - Not selling alcohol to children under any circumstances;
  - Taking steps to protect children from harm when they were on the premises;
  - Operating Challenge 25 with staff seeking photographic ID from any person who appeared to be under 25 years;
  - Accepting only accepting a passport, driving licence, citizen card or valid proof of age card bearing the PASS mark hologram as a form of identification;
  - Displaying the Challenge 25 policy in prominent locations on the premises;
  - Ensuring all staff receive full training with regard to licensing and refusal of sales to persons believed to be under the influence of alcohol or drugs;
  - The completion of induction training which would be fully documented;
  - Conducting refresher training at regular intervals not less than eight weeks;
  - Ensuring training records were made available to Sussex Police and the local Trading Standards service upon request
- (6) The local community would benefit from the following should the licence be granted:
  - Part/full time job opportunities based on business growth;
  - The availability of varied alcohol brands (the premises intend to sell brands not provided by other licensed premises within the vicinity);
  - Continued committed service which had been offered over a period of more than 12 years.
- (7) The Applicant had taken advice from the police and the Council's Licensing Department;
- (8) All conditions suggested by the Police had been agreed by the Applicant;
- (9) If policies or guidance changed, the Applicant would follow the most up-to-date guidance.

Mr Contractor explained that he had a petition with 160 signatories in support of the licensing application. The Legal Clerk then explained that Regulation 19 of the Licensing Act 2003 (Hearings) Regulations 2005 stated that the Licensing Authority shall disregard any information given by a party or any person to whom permission to appear at the Hearing was given by the authority which was not relevant to the application, representations or notice; or the promotion of the licensing objectives. The Legal Clerk asked, given that information, whether the Applicant still wished to ask to seek to rely on this document and in reply Mr Contractor confirmed that the Applicant wished to submit the petition as new information. The Legal Clerk reiterated that in that case, as it was documentation which had not been previously seen by all parties, it could only be submitted to the Sub Committee with the agreement of all parties pursuant to Regulation 18. The other parties present stated that they did not agree to the information being taken into account by the Sub Committee and so the Sub Committee refused the Applicant's request to submit the petition.

**Mr Veenindar Majhail (person who made a relevant representation)**

Mr Majhail addressed the Sub Committee and made the following submissions:

- He owned and ran an off-licence on the Parade;
- Street drinkers, alcohol and drug abuse were currently a problem on the parade;
- Any new licensed premises on the parade would increase crime and disorder;

- There was currently another off-licence on the Parade in addition to his own which was currently unoccupied;
- Mr Patel's lease did not allow him to sell alcohol, and Mr Patel had been reminded as such by his leaseholder (Crawley Borough Council) who had informed Mr Patel that it objected to a change in the lease.

The Senior Licensing Officer informed the Sub Committee that the Licensing Act 2003 stated that the Sub Committee could not take into account 'quantity control' and that each application would be considered on its own merits, and that the position of the lease agreement must not be taken into consideration when determining the application.

**Mr Glenn Fisher (person who made a relevant representation)**

Mr Fisher (Interested Party – Objector) addressed the Sub Committee and made the following submissions:

- He owned a music shop on the Parade;
- He agreed with the points made by Mr Majhail;
- The condition of the Parade needed to be improved;
- Since the Betting Shop had opened on the Parade, drug and alcohol abuse had become a problem which the Police had not been able to deal with;
- A new off-licence on the Parade would not improve the problems currently being experienced;
- It was necessary for the community to work together to improve the Parade and make it safer;
- The need to improve the Parade out-weighed the need to make a profit;
- 10 The Parade was currently a newsagents and should remain as such;
- Fights and other trouble were a frequent occurrence outside the pub on the Parade;
- The Police took a long time to respond to disturbances on the Parade;
- Another licensed premises was not necessary on the Parade and would be detrimental to the other off licences;
- The premises on the Parade should compliment each other and their services should not overlap.

The Chair said that he wished those present to be aware that the Sub Committee could only consider Licensing Act 2003 matters and could not take retail competition issues into account when making its decision.

**Mr Daniel Schaack (person who made a relevant representation)**

Mr Schaack addressed the Sub Committee and made the following submissions:

- He was a member of the public who had used the Parade for 12 years;
- It was not safe for children to have a sweet shop which sold alcohol;
- People often asked for money outside the Parade shops in order to buy alcohol;
- Other premises on the Parade sold alcohol;
- The Parade was near a school.

**Questions / Cross Examination**

The Sub Committee observed that the application stated that no alcohol above 6% would be sold on the premises and enquired whether other licensed premises on the Parade sold alcohol above 6%. Mr Majhail in reply confirmed that he did from his premises.

With the Sub Committee's permission, Mr Majhail asked the Applicant whether, if he was granted the licence, he would be happy for Mr Majhail to sell newspapers from his store. In reply Mr Patel said yes.

With the Sub Committee's permission, Mr Fisher then said that although the Applicant claimed to abide by the law and its restrictions, he had not done so in the past when he had sold hot food despite being told to stop by the Council. The Sub Committee then said that the sale of hot food before 11pm was not a licensing matter and that the licensing law was very strict and that if Mr Patel did not comply with a licence, if granted, the Council could take that very seriously.

Following a request from Mr Contractor, the Sub Committee agreed to allow him to address some of the concerns raised by the other parties as follows:

- The statistics identified in his presentation had been taken from West Sussex Police's website and showed that there was no correlation between the number of off-licences and crime and disorder;
- The Applicant would adhere to the policies of both the Police and the Council;
- The Sub Committee's decision must be evidence based.

The Legal Clerk asked Mr Contractor to explain where the postcode RH10 1XX was (the postcode referred to on the page of statistics relied upon by the Applicant). Mr Contractor clarified that the statistics showed crime and disorder within a one mile radius of The Boulevard (Post Office/Pizza Express).

## **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.

### **18. Application for the Grant of a New Premises Licence – Northgate Newsagents, 10 The Parade, Northgate, Crawley**

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 it and considered what was appropriate to ensure that the licensing objectives were promoted.

## **RESOLVED**

The Sub Committee, having considered the application and the relevant representations in detail, resolved to take the actions as detailed in **Appendix A** to these minutes, because it was considered appropriate to promote the licensing objectives.

### **19. Re-admission of the Public**

The Chair declared the meeting re-open for consideration of business in public session. The Legal Clerk informed those present of the advice she had provided during the closed session which including:

- Reminding the Sub Committee of the considerations it must take into account

when determining the application including the requirements of Section 18 of the Licensing Act, Section 182 Guidance, and the Council's Licensing Policy;

- That matters of competition and landlord consent were not relevant and should not be taken into account in their decision;
- She had referred to the case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court, which, although it involved very different facts, in the judgment of that case the Court had found that the fact that the Police had not opposed a particular part of the application was a factor which should have been given significant weight by that licensing authority. She said the fact that the Police had not objected to this application was likewise a relevant consideration for this Sub Committee in making its decision particularly in light of the fact the Council's Licensing Policy at paragraph 2.14 of stated that in relation to matters of crime and disorder Crawley Borough Council would look to the Police as the main source of advice on those matters.

The Chair read out the Sub Committee's decision as detailed in **Appendix A** to these minutes. The Senior Licensing Officer reminded those present that the decision of the Sub Committee did not overrule any other permission necessary for the sale of alcohol. It was also announced that all parties would receive a copy of the decision notice in due course.

## **20. Closure of Meeting**

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 12.45pm.

C J MULLINS  
Chair



## Appendix A

### **Decision of the Licensing Sub-Committee sitting at Crawley Borough Council in relation to the application for a premises licence by Mr Bharat Kumar Shanker Bhai Patel in respect of the premises at 10 The Parade, Northgate, Crawley**

1. The hearing in respect of Mr Patel's application for a premises licence for the premises at 10 The Parade, Northgate, Crawley, was heard by a Licensing Sub-Committee of Crawley Borough Council on 17 October 2012.
2. At the conclusion of the hearing the Licensing Sub-Committee notified those present of their decision. Set out below the decision and the reasons for it.
3. The Sub-Committee listened carefully to submissions made on behalf of the Applicant and on behalf of the 3 interested parties who attended the hearing, as well as noting the fact that a number of other people were interested parties but did not attend.
4. In coming to its determination, the sub-committee took into account:
  - 4.1 the representations made on behalf of the applicant and the interested parties both in writing and orally at the hearing;
  - 4.2 the requirements of the Licensing Act 2003;
  - 4.3 the Statutory Guidance;
  - 4.4 Crawley Borough Council Licensing Policy; and
  - 4.5 Relevant considerations under the Human Rights Act 1998.
5. The sub-committee was mindful that it must only take into account the relevant representations made in writing (and also what was said by the parties at the hearing today) only to the extent that it relates to the promotion of the licensing objectives. The sub-committee carefully noted that a number of irrelevant considerations were submitted both in writing and at the hearing. These were:
  - 5.1 From the applicant:
    - 5.1.1 His wish to build a sustainable business; and
    - 5.1.2 Benefits he perceives will accrue to the local community if the licence were to be granted.
  - 5.2 In relation to the petition, it referred to there being a sufficient off-licence on the parade and landlord permission.
  - 5.3 At the hearing matters were raised by 2 of the interested parties (Mr Majhail and Mr Fisher) as to:
    - 5.3.1 Matters of competition; and
    - 5.3.2 Issues relating to whether or not the applicant has permission from his landlord (who happens to be CBC) to sell alcohol under his lease.

The sub-committee reminded itself that all of these matters were not within the strictly prescribed criteria as to what could be considered by them when determining this application and were therefore irrelevant considerations. The sub-committee wished to make clear it did not, therefore, take these matters into account.
6. The sub-committee also reminded itself of the Council's policy at paragraph 2.77 where it clearly states that 'matters of "need" for an additional facility falls outside the policy', and also outside the statutory licensing regime.
7. The sub-committee considered the table headed "The Boulevard Crime Rate" which was presented at the hearing by the applicant's representative, with the interested parties' agreement. However, the sub-committee did not find this relevant because it was too vague and non-specific.

8. The sub-committee accepted anecdotal evidence given orally by the 3 interested parties that they had witnessed some anti-social behaviour at the parade, such as fighting and people begging for money to buy alcohol, although noted that the evidence given was very limited. The sub-committee appreciated that the interested parties fear that there might be an increase in crime and disorder and nuisance were the licence to be granted.
9. However, the sub-committee decided that they needed to consider these concerns in the context of the following:
  - 9.1 That their decision must be proportionate;
  - 9.2 That the Police had not made an objection and this was relevant because the Council's Licensing Policy states at 2.14 that the Council will look to the Police "as the main source of advice" in relation to matters relating to the prevention of crime and disorder;
  - 9.3 That the applicant had agreed to a number of conditions with Sussex Police which were designed to promote the 4 licensing objectives; and
  - 9.4 That the Licensing Act 2003 had in-built mechanisms to address concerns where a licensee is suspected of not promoting the licensing objectives (such as an application for review under section 51).
10. Having taken all relevant matters into consideration, the sub-committee concluded that the appropriate step for the promotion of the licensing objectives was to grant the amended application (that is, the original application as amended by Annex B to the report and as amended orally at the hearing by the applicant's representative where he confirmed that the proposed hours for the sale of alcohol were reduced to 9.00pm).