

Crawley Borough Council



Minutes of Licensing Sub Committee 29 April 2015 at 10.30am

Present:

Councillors B J Burgess, M G Jones and D J Shreeves

Officers Present:

Brian Cox	Principal Environmental Health Officer
Kirstie Leighton	Legal Clerk
Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer

Apology for Absence:

Councillor C J Mullins

Also in Attendance:

Applicant	Michael Balmer (Sussex Police – Licensing Sgt)
	Pauline Giddings (Sussex Police – Licensing Officer)
	Jean Irving (Sussex Police – Licensing Manager)
	Peter Savill (Barrister for Sussex Police)
Premises	Atul Dave (Current Owner, previous Premises Licence Holder and previous Designated Premises Supervisor)
	Krish Jechand (Friend of Mr Dave)
	Darshan Patel (Premises Licence Holder)
	Kamal Patel (Designated Premises Supervisor, Premises Licence Holder and proposed New Owner)

1. Appointment of Chair

RESOLVED

That Councillor D J Shreeves be appointed Chair for the meeting.

2. Members' Disclosure of Interests

The following disclosures of interests were made by Members:-

Member	Minute Number	Subject	Type and Nature of Disclosure
Councillor D J Shreeves	Minutes 3, 4 and 5	Application to Review the Premises Licence – 'West Sussex Wines', 198 Ifield Drive, Ifield, Crawley	Personal Interest in the Item as Councillor D J Shreeves held a personal licence.

3. Application to Review the Premises Licence – 'West Sussex Wines', 198 Ifield Drive, Ifield, Crawley

The Sub Committee considered an application to review the premises licence held in respect of 'West Sussex Wines', 198 Ifield Drive, Ifield, Crawley.

Following the introduction of those present at 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. 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. No applications were made.

The Applicant's representative, Mr Savill, addressed the Sub Committee and drew its attention to the additional evidence (a witness statement) which had been submitted by Sussex Police on 23 April 2015. The Legal Clerk confirmed that the additional evidence had been received by the Council and had been distributed to all parties prior to the hearing. The witness statement included an email from Mr Lyons, Senior Licensing Officer of Crawley Borough Council, to an Assistant Licensing Officer at Sussex Police. The email stated that on 21 April 2015 Mr Lyons had visited West Sussex Wines and identified himself as the Licensing Officer. When Mr Lyons asked to see the 'boss' Mr Dave appeared and during a short conversation confirmed that West Sussex Wines was still his business and that it could take a few months to complete the transfer.

Report PES/188 of the Council's Environmental Health Manager 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 12 March 2015 Sussex Police 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 'West Sussex Wines', 198 Ifield Drive, Ifield, Crawley. The application was detailed in

Appendix A to the report. The reasons for their request were on the grounds that the licence holder was not promoting the statutory licensing objectives of prevention of crime and disorder and the protection of children from harm as West Sussex Wines had failed two 'test purchase' operations conducted by Sussex Police on two separate occasions (13 November 2014 and 11 February 2015). On 14 April 2015 Sussex Police had submitted an evidential bundle with supporting documents (Appendix B to the report).

Mr Lyons stated that at the time of the failed 'test purchases', the premises licence was in the name of Mr Atul Raman Dave. On 13 April 2015 an application was submitted to the Licensing Authority for the transfer of the premises licence with immediate effect and also for the variation of the 'designated premises supervisor'. On 16 April 2015, Sussex Police indicated no objection to the application and consequently the premises licence was transferred with immediate effect in accordance with the provisions of the Licensing Act 2003 to Mr Kamal Patel and Mr Darshan Patel. The designated premises supervisor (DPS) was varied to include Mr Kamal Patel. A copy of the Police transfer in relation to the transfer of the premises licence and the variation to the DPS was attached to the report as Appendix C. The premises licence was for the licensable activities and times so mentioned in the revised premises licence (attached as Appendix D to the report), including the sale by retail of alcohol for consumption off the premises.

Mr Lyons confirmed that the application for the review had been advertised in accordance with legislation and as a result of the consultation Dr Peter Hayward (Public Health and Wellbeing Directorate, West Sussex County Council) had responded stating that the sale of alcohol to children was of extreme concern and he fully supported the representations made by Sussex Police (Appendix E to the report).

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 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.

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 appropriate 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
- (v) Revoke the licence.

The Applicant (Sussex Police)

The Applicant's representative, Mr Savill, addressed the Sub Committee and drew its attention to the detailed application for review which was included within the report (Appendix A to the report). Mr Savill stated that both Ms Irving and Ms Giddings were present at the meeting, would be able to answer any questions the Sub Committee had with regards to the evidence before the Sub Committee. Mr Savill stressed the severity of the case before the Sub Committee as it involved two sales of alcohol to children within a period of three months which seriously undermined the statutory licensing objectives. Mr Savill highlighted that the second test purchase had taken place after Police intervention and advice following the first failed test purchase.

Mr Savill drew the Sub Committee's attention to Sergeant Michael Balmer's witness statement which was included within Appendix B to the report. Sergeant Balmer detailed the circumstances relating to the two failed test purchases, immigration offences and the charge of the Designated Premises Supervisor with being drunk in charge of a motor vehicle. Sergeant Balmer referred to Section 182 of the Licensing Act 2003 regarding the sale of alcohol to children and concluded that the management of the premises had fallen far below the standards he would expect from a licenced premises. Sergeant Balmer was of the opinion that the (previous) Designated Premises Supervisor and (previous) Premises Licence Holder had shown poor levels of judgement and responsibility in relation to the sale and personal use of alcohol.

Mr Savill then continued to make the following submissions:

- Appendix C to the report detailed an email dated 16 April 2015 from the Licensing Officer of Sussex Police confirming that Sussex Police had no objections to the transfer of the premises licence to Kamal Patel and Darshan Patel and the change of the DPS to Kamal Patel. The email stated that the fact that the Police had raised no objection did not affect the application for review of the premises licence previously submitted by Sussex Police.
- Ordinarily the sale of a business would be an arm's length transaction with no connection between the old and the new owners.
- It would be a different circumstance if the transaction relating to the sale of the business had been completed.
- The additional evidence (witness statement dated 21 April 2015) showed that even after the transfer of the Premises Licence to Mr K Patel and Mr D Patel, and the transfer of the DPS Licence to Mr K Patel, Mr Dave had been identified as the 'boss'.
- Sussex Police had three main concerns:
 1. That the sale of the business was not an arm's length transaction as Mr Dave (the person in charge of the licence at the time of the two failed test purchases) was still identified as the 'boss' on 21 April 2015.
 2. Even if the transaction was arm's length, it raised the question as to why the new Premises Licence Holders and the new DPS would allow Mr Dave to remain involved.
 3. Whether the application to transfer the Premises Licence and the DPS was a tactic to get around the review hearing.

Mr Savill confirmed that Mr Dave's court case relating to his arrest for being drunk in charge of a motor vehicle had been heard by Horsham Magistrates Court on 16 March 2015 and that Mr Dave had been convicted of the offence

Premises

Mr Dave, current business owner, previous Premises Licence Holder and previous Designated Premises Supervisor, addressed the Sub Committee.

Mr Dave stated that mistakes had happened in the past and he was sorry for that. Mr Dave explained that he was selling the business for good and now had nothing to do with the business at all.

Questions Asked by the Sub Committee of the Premises

The Sub Committee then asked the following questions of the Premises:

Questions by the Sub Committee	Response <i>(respondent in brackets)</i>
How far had the sale of the business progressed?	The contractual documentation was with the Solicitor and would be signed that day. Mr Dave had signed and dated the contract four days ago but had not heard from his Solicitor since that time. <i>(Mr Dave)</i>
What was delaying the completion of the contractual documentation?	Mr Dave just wanted to sell the business. He had spoken to his Solicitor last Thursday. Mr Dave did not have any evidence of the paperwork with him as it was with the Solicitor <i>(Mr Dave)</i> * Mr Lyons (Senior Licensing Officer, Crawley Borough Council) stated that, for the purposes of clarification, he had been contacted by Mr Windsor (Dorset Licensing, Mr Dave's Solicitor) on 27 April 2015. Mr Windsor had stated that contractual documents had been produced relating to the sale of the business. Mr Windsor had passed a copy of the contractual documents to Mr Lyons but the contract had not been signed nor dated by the parties and were therefore just proposals at that stage. <i>(Mr Lyons)</i>
Did Mr Dave realise the seriousness of the situation?	The person who was serving at the time of the failed test purchase was not a staff member. The person had come in to visit Mr Dave. Mr Dave was unable to serve at the time as he was busy making a payment to a supplier and so Mr Dave had asked his friend to serve customers whilst he was busy. <i>(Mr Dave)</i>
Why was Mr Dave on the premises on 21 April 2015 when he was no longer the Premises Licence Holder nor the Designated Premises Supervisor?	Mr Dave did not have any connection to the business at the moment. <i>(Mr Dave)</i>
Had any money exchanged hands in relation to the sale of the business?	Not yet. <i>(Mr Dave)</i>
Were Mr K Patel and Mr D Patel in agreement that the business would be sold?	Mr K Patel would sign the contract in relation to the sale of the business at the conclusion of the hearing. Mr K Patel and Mr D Patel wanted to make sure

Questions by the Sub Committee	Response <i>(respondent in brackets)</i>
	that the Premises Licence was still in place (at the conclusion of the hearing) before finalising the purchase of the business. <i>(Mr K Patel)</i>
Who owned the business at the moment?	The contractual documents had not been signed by Mr K Patel and Mr D Patel yet. Mr Dave had signed the contract. Mr K Patel had an appointment booked with the Solicitor at 1.30pm that day to sign the contract, following the Sub Committee hearing. <i>(Mr K Patel)</i>
Whose name would the company be in once the contract for the sale of the business had been signed?	The premises would continue to be called West Sussex Wines, and the business would be in the name of Mr Darshan Patel. <i>(Mr D Patel and Mr K Patel)</i>
Conditions within the original Premises Licence required that the 'Challenge 25' age verification policy be in place. Mr Dave's letter to PC King (dated 2 December 2014, and included within Appendix B of the report) stated that he would now advertise and operate the 'Challenge 25' Policy which suggested that Mr Dave had not been operating the sale of alcohol in accordance within the conditions of the licence. Had staff been trained, and did the business maintain a refusals register?	Staff had been trained to challenge people buying alcohol who appeared to be under the age of 25 and ask for identification in those circumstances. The business did maintain a refusals register. Staff asked for identification all the time. Staff had signed paperwork to say that they had received training. Mr Dave had stayed and trained them. <i>(Mr Dave)</i>
Was Mr Dave delaying the transfer of the business and withholding information pending the outcome of the Sub Committee hearing?	The contractual documents were with the Solicitor who was based in Crawley Town Centre. <i>(Mr Dave)</i>

The Sub Committee considered adjourning the meeting to allow Mr Dave, Mr K Patel and Mr D Patel time to meet with the Solicitor and sign the contract for the sale of the business. Mr Savill, the representative for Sussex Police, stated that he had received a copy of the contract on 27 April 2015, but that it had been unsigned and undated by all parties. Mr Lyons, Senior Licensing Officer for Crawley Borough Council, confirmed that he had received a copy of the same document.

The Sub Committee continued to question the Premises as follows:

Questions by the Sub Committee	Response (<i>respondent in brackets</i>)
Had Mr Dave asked his Solicitor to delay the signing of the contract depending on the outcome of the Sub Committee hearing?	No. Mr Dave had asked his Solicitor to complete the sale as soon as possible. (<i>Mr Dave</i>)
What was the purpose of Mr K Patel's appointment with the Solicitor that afternoon?	To transfer the business. (<i>Mr K Patel</i>)
Had any money exchanged hands in relation to the sale of the business?	No. Money would be paid dependent on the outcome of the Sub Committee hearing. (<i>Mr K Patel</i>)

The Sub Committee acknowledged that the proposed contractual documents claimed by Mr Dave, Mr K Patel and Mr D Patel carried no weight as they had not been signed nor dated and were therefore not legally binding.

Mr Lyons, Senior Licensing Officer for Crawley Borough Council, reminded the Sub Committee that there was a difference between the transfer of the Premises Licence and that of the business. Mr Lyons advised the Sub Committee that Mr K Patel and Mr D Patel were the Premises Licence Holders but that they did not currently own the business. Mr Lyons explained that although Mr Dave had stated that he had signed the contract relating to the sale of the business on 23 April 2015, the documents Mr Lyons had received from Mr Dave's Solicitor on 27 April 2015 had been unsigned and undated.

Questions Asked by the Sub Committee of the Applicant (Sussex Police)

The Sub Committee then asked the following questions of the Applicant:

Questions by the Sub Committee	Response (<i>respondent in brackets</i>)
In the experience of Sussex Police, was it usual for a premises to fail two test purchases in three months?	It happened on occasion, but was rare. After the first failed test purchase the Police held a meeting with the Licence Holder to explain the Licence Holder's responsibilities. At that meeting the Licence Holder was told that a second test purchase would take place. There was a 10% failure rate on a second test purchase. In Ms Irving's 14 years as Licensing Manager, this was the first time that a sale had been made by an individual who was not permitted to work in the country. (<i>Ms Irving</i>)
In relation to the response given above, the Sub Committee asked the Premises what checks they had been made with regards to the illegal immigrant who had sold alcohol on the premises.	The person who made the sale was a friend of Mr Dave's and did not work for him. The friend had just helped Mr Dave for 10-15 minutes whilst Mr Dave was busy. (<i>Mr Dave</i>)

Questions Asked by the Applicant (Sussex Police) of the Premises

The Applicant's representative, Mr Savill, asked the following questions of the Premises:

Questions by the Applicant (Sussex Police)	Response (respondent in brackets)
Sussex Police had submitted its application for review nearly seven weeks ago. With that being the case, why were the proposed contractual documents relating to the sale of the business only sent to Sussex Police and Crawley Borough Council on 27 April 2015? Why was there a delay in drawing up the documents?	Mr Dave had requested that his Solicitor draw up the contractual documents as soon as possible. Mr Dave's Solicitor was taking his time. <i>(Mr Dave)</i>
Was it true that Mr Dave had only instructed his Solicitor with regards to the transfer of the sale the previous week?	Yes. <i>(Mr Dave)</i>
Did you received advice from a friend that you would receive 'a slap on the wrist' as a result of this Sub Committee but would not lose your licence?	Yes. <i>(Mr Dave)</i>
If the Premises Licence was to be revoked by the Sub Committee at this hearing would the sale of the business be off?	Yes. <i>(Mr Dave)</i>
Was Mr Patel's interest in the purchase of the business conditional on the outcome of the Sub Committee?	Yes. <i>(Mr K Patel)</i>
Who had been running the licensable activities on the premises recently?	Mr Dave had not been on the premises since 23 April 2015. Mr Dave had been running the business between the 16 April 2015 and 23 April 2015. <i>(Mr Dave)</i>
What had been Mr Dave's involvement in the business since the transfer of the Premises Licence and Designated Premises Supervisor?	Mr D Patel had been running the business since Mr Dave had told Mr D Patel that the contractual documentation had been signed by Mr Dave (23 April 2015). <i>(Mr D Patel)</i>

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.

4. Application to Review the Premises Licence – ‘West Sussex Wines’, 198 Ifield Drive, Ifield, 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 action as detailed in **Appendix A** to these minutes, because it was considered appropriate to promote the licensing objectives.

5. Re-admission of the Public

The Chair declared the meeting re-open for consideration of business in public session. Councillor Shreeves read out the Sub Committee's decision as detailed in **Appendix A** to these minutes.

6. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 2.30pm.

COUNCILLOR D J SHREEVES
Chair

Appendix A

NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 29th APRIL 2015

LICENSING ACT 2003: REVIEW OF A PREMISES LICENCE

'WEST SUSSEX WINES', 198 IFIELD DRIVE, IFIELD, CRAWLEY, WEST SUSSEX

DECISION

The Sub Committee's decision was to revoke the premises licence.

REASONS FOR THE DECISION

The Sub-Committee listened carefully to the information given by the Police, business proprietor and premises licence holder both in writing and in answer to the members' questions during the hearing.

In making its decision, the Sub-Committee also had regard to the Guidance under Section 182 of the Licensing Act 2003 and the Crawley Borough Council Licensing Policy.

The Sub-Committee acknowledged that the licence had been transferred and the designated premises supervisor had already been varied, however it remained concerned that to date the sale of the ongoing business was uncompleted.

The Sub-Committee decided that the premises licence should be revoked for the following reasons :

1. There had been two under age sales under section 147A of the Licensing Act 2003 which were classed as persistently selling alcohol to children.
2. The two under age sales took place in a short space of time between each incident, namely on 13th November 2014 and 11th February 2015.
3. The Sub-Committee was not convinced that there would be a genuine sale of the business as at the date of the hearing no money had changed hands in respect of a transfer of the business.
4. The Sub-Committee was also not convinced with regard to the transfer, as the contractual documentation remained unsigned and undated by all relevant parties.
5. The Sub-Committee was concerned that there was no factual and compelling evidence to show that Mr Dave would have no further involvement with the premises and therefore felt that the previous actions of Mr Dave were material to the consideration of the application before it.
6. The Sub-Committee did not consider that Mr Dave had due regard for the seriousness of his actions, that of his staff, the potential consequences of selling alcohol to children and the importance of the hearing.
7. The Sub-Committee attached a high degree of concern when Mr Darshan Patel stated that, although he had taken control of the premises licence along with Mr Kamal Patel on 16th April 2015, he had nothing to do with alcohol sales until 23rd April 2015. This again demonstrated lack of control and regard of the licensable activities.
8. The Sub-Committee did not consider that Mr Dave was a credible witness and had no faith whatsoever about the implementation of staff training, both previously and in the future.
9. The Sub-Committee considered that Mr Dave did not have sufficient regard, and seemed unaware that he had to adhere to "Challenge 25" age verification policy.

10. The Sub-Committee was concerned as to the conviction against Mr Dave for being drunk in charge of a motor vehicle in relation to the statutory licensing objective relating to Prevention of Crime and Disorder.
11. The Sub-Committee was further concerned that Mr Dave, in his previous capacity as the Designated Premises Supervisor, did not take matters seriously with regards to ensuring that individuals making sales of alcohol on the premises were adequately trained and were aware of the conditions of the licence.

RIGHT OF APPEAL

Any party to the decision or anyone who has made relevant representations (including a responsible authority or interested party) in relation to the application may appeal to the Magistrates' Court within 21 days of notification of the decision.

29.04.15