Crawley Borough Council



Minutes of Licensing Sub Committee 18 May 2015 at 11.00am

Present:

Councillors B J Burgess, M G Jones and R Sharma

Officers Present:

Brian Cox Principal Environmental Health Officer

Kirstie Leighton Legal Clerk

Mike Lyons Senior Licensing Officer
Mez Matthews Democratic Services Officer

Also in Attendance:

Applicant Michael Balmer (Sussex Police – Licensing Sgt)

Pauline Giddings (Sussex Police – Licensing Officer)

Oliver Robinson (Sussex Police – Licensing Officer)

Peter Savill (Barrister for Sussex Police)

Premises Geoffrey Cooper (Associate of the Licence Holder)

Jothi Muthuraman (Designated Premises Supervisor and

Licence Holder)

Annamalai Muthuraman (Husband of Jothi Muthuraman)

Jay Patel (Licensing Consultant)

Gunapaul Rengadoss (Friend of Jothi Muthuraman and

Annamalai Muthuraman)

Responsible Authority Davina Springer (Representative of the Directorate of

Public Health, West Sussex County Council)

7. Appointment of Chair

RESOLVED

That Councillor M G Jones be appointed Chair for the meeting.

8. Members' Disclosure of Interests

No disclosures of interests were made by Members.

9. Application to Review the Premises Licence: 'The Boulevard Newsagents', 62 The Boulevard, Northgate, Crawley

The Sub Committee considered an application to review the premises licence held in respect of 'The Boulevard Newsagents', 62 The Boulevard, Northgate, Crawley.

Following the introduction of those present at the meeting, the Chair 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 and the Democratic Services Officer 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. No applications were made.

Report PES/189 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 25 March 2015 Sussex Police 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 Boulevard Newsagents', 62 The Boulevard, Northgate, 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 it was contended that on 11 February 2015 The Boulevard Newsagents had sold alcohol to a child during a test purchase operation in the Crawley District following intelligence pertaining to young people purchasing and consuming alcohol and creating anti-social behaviour. It was also contended that on the same date (11 February 2015) whilst officers were on the premises they also witnessed a sale of alcohol to an intoxicated person. On 22 April 2015 Sussex Police had submitted an evidential bundle with supporting documents (Appendix B to the report).

Mr Lyons stated that Mrs Jothi Muthuraman was the premises licence holder and was also named as the designated premises supervisor. A copy of the premise's licence was attached as Appendix C to the report.

Mr Lyons confirmed that the application for the review had been advertised in accordance with legislation and as a result of the consultation Dr Kate Bailey (Public Health and Wellbeing Directorate) had responded stating that the Directorate was disappointed to learn about the underage sale(s) of alcohol and the sale of alcohol to someone who was visibly intoxicated at the premises (Appendix D to the report). Dr Bailey's representation also stated that the sale of alcohol to children was of extreme concern, particularly in light of the strong evidence demonstrating the harm caused by

alcohol amongst children. For those reasons the Directorate endorsed the proposal recommended by Sussex Police.

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 Sub Committee confirmed that it did not have any questions in relation to the report.

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). Mr Savill stated that the evidential bundle (Appendix B to the report) was irrefutable in demonstrating the repeated criminality which had taken place on the premises.

Mr Savill informed the Sub Committee that, although the application for review stated that Mr and Mrs Muthuraman were due to appear before Lewes Crown Court on 23 March 2015 in relation to their arrest and charge regarding the handling of stolen goods, the case had not yet been heard by the Court. Mr Savill went on to say that, even though the case was still pending, Guidance stated that the Sub Committee could consider Sussex Police's application pending the Court's decision. He stated that the Sub Committee could consider the probability that the crime had taken place and, based on the evidence before them, whether the licensing objectives were being met by the licence holder.

Mr Savill reminded the Sub Committee that the Secretary of State took a dim view of the sale of alcohol to children and that revocation could be considered even when a premises had failed only one test purchase. Mr Savill also reminded the Sub Committee that, whilst officers were on the premises in relation to the failed test purchase, they also witnessed the sale of alcohol to a drunk person.

Mr Savill informed the Sub Committee that the application for review provided evidence that there had been a continued breach of the conditions of the premises licence. Mr Savill informed the Sub Committee that it could choose to remove the designated premises supervisor, but reminded the Sub Committee that Mrs Muthuraman was named as both the designated premises supervisor and the licence holder. Mr Savill stated that modifying the conditions of the licence would be worthless as the premises was failing to comply with its current conditions and that suspension of the licence would only be useful if the premises had a realistic prospect of improvement. Mr Savill stressed the extent of the failures of the premises as well as the continued breach of conditions and therefore he advised the Sub Committee that Sussex Police sought revocation of the licence.

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 (respondent in brackets)
Warren James' witness statement stated that on 26 February 2015 Sussex Police took photographic evidence that the premises was selling alcohol above 6% ABV. The same statement showed that on 3 May 2015 Sussex Police had issued Mrs Muthuraman with a caution relating to the breach of licensing conditions (including the sale of alcohol above 6% ABV). Had Sussex Police not brought the issue relating to the sale of alcohol above 6% ABV to Mrs Muthuraman before 3 May 2015?	Sussex Police only became aware that the premises was selling alcohol above 6% ABV on 26 February 2015, and officers took photographs showing the strength of the lager at that time. It had been an oversight that Mrs Muthuraman had not been informed of the breach until 3 May 2015. (Michael Balmer)
On 26 February 2015 Sussex Police had requested the CCTV recordings from all the cameras on the premises for the times of 1750hrs to 1830hrs on 11 February 2015. Had Mrs Muthuraman been informed of the significance of the CCTV recordings at that time?	Yes the significance had been explained. Sussex Police had afforded Mrs Muthuraman more time to download the CCTV. (Michael Balmer)
Warren James' witness statement did not state that Mrs Muthuraman had been informed of the significance of the CCTV?	There was a clear connection between the incidents on 11 February 2015 and Sussex Police's request for the CCTV recordings. (Peter Savill) Sussex Police were investigating the failed test purchase/sale to a drunk person and required the CCTV recordings as evidence. The premises licence included conditions relating to CCTV. A Police officer's statement would suffice in a Court as evidence, but for the breach of a licensing condition CCTV recordings were required as evidence. (Michael Balmer) Conditions 6 and 7 of the premises licence (Appendix C to the report) related to the use of CCTV on the premises. (Mike Lyons)
What 'intelligence' did Sussex Police have that the anti-social behaviour in the area originated from the parade?	Sussex Police was not able to disclose the resources they used for its intelligence. (Peter Savill) Some of the intelligence would have come from Police Community Support

Questions by the Sub Committee	Response (respondent in brackets)
	Officers. (Michael Balmer) Test purchase operations were intelligence led and were directly related to problems in an area. (Pauline Giddings)
Had the Court proceedings relating to the charge of Mr and Mrs Muthuraman of handling stolen goods been concluded?	No. (Peter Savill)

Premises

Mr Jay Patel, representative for the premises, addressed the Sub Committee and drew its attention to the additional supporting evidence (proposed actions and conditions) which had been submitted by Mr Patel on 14 May 2015. Mr Patel informed the Sub Committee that he had been approached by the premises three days prior to the Sub Committee hearing and that the intention of the additional evidence was to resolve the issue. Mr Patel stated that Mrs Muthuraman apologised for her previous non-compliance with the conditions of her licence. The failed test purchase and sale of alcohol to a drunk person was the first mistake of that type which had occurred on the premises whilst she had been the premise licence holder. He confirmed that Mrs Muthuraman had owned the business for three years. He advised the Sub Committee that it was very difficult for a small shop with limited management experience to understand the conditions of their licence. He stated that the proposed conditions included in the supporting evidence would help Mrs Muthuraman to comply with her licence. Mr Patel advised the Sub Committee that he felt no other additional conditions, other than those proposed in his supporting evidence, were required.

Mr Patel drew the Sub Committee's attention to condition 5 of the premises licence ("The premises will actively participate and adhere to the local Stopwatch scheme, and will not sell alcohol to target street drinkers identified through the scheme") and asked whether there was evidence that anyone had identified street drinkers to the shop owners. In response, Mike Lyons, stated that intelligence relating to the identity of street drinkers was fed back to Sussex Police and that the Licensing Authority was not in possession of that information. Mr Patel advised the Sub Committee that the premises had carried out a CCTV assessment, that the system now complied with conditions 6 and 7 of the premises licence and that the staff knew how to download images from the system.

Mr Patel stated that two people had been identified as potential replacements for the position of designated premises supervisors for the premises. Whilst both candidates held a personal licence only one had management experience, he was the preferred candidate. Mr Patel advised the Sub Committee that Mr and Mrs Muthuraman wanted to appoint someone who could manage the conditions of the premises licence. Mr and Mrs Muthuraman would be looking to appoint a new designated premises supervisor following the decision of the Sub Committee.

Mr Patel also advised the Sub Committee that a training schedule would be put in place over the next fortnight which would include training on the Challenge 25 policy

as well as Licensing Act 2003 awareness training. Mr Patel highlighted additional condition 2 within his supporting evidence related to continuous assessment of the premises over the next twelve month. Mr Patel was of the opinion that it would take 28 days to put the new systems in place and ensure they ran smoothly. Mr Patel informed the Sub Committee that a suspension of the licence would allow sufficient time for those systems to be introduced.

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 (respondent in brackets)
Was the premises proposing a strong training procedure with a manual?	The training procedure would be documented. Mr Patel was an accredited trainer. The new designated premises supervisor would take over future refresher training and assessment to ensure that staff knew the purpose of each training session. (Mr Patel)
Mr Patel had stated that no incidents had taken place prior to the failed test purchase and sale of alcohol to a drunk person. How did Mr Patel know that as the premises did not currently keep an incident log?	No incident log was currently kept, but a log would be introduced to promote the licensing objectives and accord with the premises licence. (Mr Patel)
Did the premises share information with other members of the Stopwatch scheme?	CCTV images showed individuals who caused regular problems on the premises and that information could be shared with other members of the scheme. (Mr Patel)
How would the premises cope with ensuring training was undertaken?	The new designated premises supervisor would take over future refresher training and assessment and ensure that staff knew the purpose of each training session. It was Mr Patel's objective to make the premises self-sufficient. (Mr Patel)
How did staff currently ascertain the age of an individual purchasing alcohol?	They used the Challenge 25 policy. (Mr Patel)
The current premises licence stipulated that no beer, lager or cider above 6% ABV would be sold on the premises.	Mr Patel had visited the premises on Saturday and any alcohol above 6% ABV had been removed from the shelves. Mr and Mrs Muthuraman now fully understood the conditions of the licence. (Mr Patel)
Who would manage the shop whilst staff undertook the necessary training?	Mr Patel could carry out training outside shop opening hours. Either the shop could be closed whilst training took place, or it could be arranged when the

Questions by the Sub Committee	Response (respondent in brackets)
	shop was closed. (Mr Patel)
It did not seem feasible for training to take place outside of shop opening hours. Could the premises not close early for training?	Mr and Mrs Muthuraman were happy to close the shop at 2pm for training. (Mr Patel)
Were the premises fully committed to receiving comprehensive training?	Yes. They were fully committed to Mr Patel's involvement. (Mr Patel)
Did the premises dispute any of the facts detailed in the witness statements submitted by Sussex Police?	No. (Mr Patel)
Had the licence holder only been in the premises for three years?	Yes. (Mr Patel)
Had the training manual not been in use over the past three years as there was only one entry made?	Mr Patel was unsure. (Mr Patel)
The Sub Committee expected a level of observation by the premises to identify a street drinker.	Mr Patel's training would teach staff how to identify a street drinker. (Mr Patel)
Why had the CCTV images not been available to Sussex Police when it was requested?	The engineer had set the system up to record 20 days, not 28 days. No previous incidents had taken place so the mistake had not been highlighted. (Mr Muthuraman)
Why had the premises sold alcohol which was above 6% ABV?	Mr and Mrs Muthuraman had not recognised that it was a condition of the licence. (Mr Patel)
	Only two bottle types above 6% ABV had been on the shelves. It had been a mistake. (Mr Muthuraman)
Condition 4 of the premises licence was very clear, How long had the premises been selling alcohol above 6% ABV?	Alcohol above 6% ABV had only been on sale for three months. It had been an accident. (Mr Muthuraman)

Mr Patel informed the Sub Committee that he had the compliance certificate in relation to the CCTV system and that the Sub Committee were welcome to see it. The Sub Committee advised Mr Patel that the certificate would be classed as new evidence and could only be submitted to the Sub Committee with the consent of all parties.

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

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

Questions by the Applicant	Response (respondent in brackets)
Mr Muthuraman had previously stated that 2 bottle types above 6% ABV had been on sale, however Warren Jones' witness statement identified three bottle types. Sussex Police had photographic evidence showing the sale of three types?	The premises had not sold Debowe beer. Some lesser value beer cases contained higher level alcohol, but those had not been placed on the shelf. (Following further questioning from Sussex Police Mr Muthuraman agreed that three types had been on sale). (Mr Muthuraman)
Had all alcohol above 6% ABV now been withdrawn from sale? (asked by the Sub Committee)	Yes. (Mr Muthuraman)
Mrs Muthuraman was the licence holder and designated premises supervisor. Why was she not addressing the Sub Committee?	Her English was not good. (Mrs Muthuraman)
Did Mrs Muthuraman understand what was being said at the meeting, did she require an interpretor? (asked by the Sub Committee)	Yes she understood. No she didn't require an interpretor. (Mr Muthuraman)
Condition 20 of the premises licence required that, when the premises was open, all staff must be able to communicate sufficiently to enable them to promote the licensing objectives. Did the premises accord with that? (asked by the Senior Licensing Officer)	The new designated premises supervisor would be able to communicate sufficiently and would make an effective challenge. Mrs Muthuraman would remain as the licence holder. (Mr Patel)
Had Mrs Muthuraman read the conditions of the licence and made sure she understood them?	Yes. (Mrs Muthuraman)
Had Mrs Muthuraman written in to propose the conditions contained with Annex 2 (conditions consistent with the Operating Schedule) of the premises licence?	Yes. (Mrs Muthuraman)
The conditions had been agreed with Sussex Police. Mrs Muthuraman stated that she had understood them. If she had agreed them how did she forget the conditions of the premises licence?	Sorry. (Mrs Muthuraman)
The premises had not been complying	It had been a mistake. (Mrs

Questions by the Applicant	Response (respondent in brackets)
with the Challenge 25 policy. Why weren't the signs up when Sussex	Muthuraman)
Police had visited? Had they ever been up?	They had never been up, but were up now. (Mr Muthuraman)
	Mr Lyons could confirm whether they were up by the end of the day. (Mr Lyons)
	All signage mentioned in Section B, bullet point 6 of Mr Patels' supporting evidence, had been on display in the premises since Saturday night. (Mr Patel)
Had Mrs Muthuraman called on her husband to help her as she was not confident in her English? (asked by the Sub Committee)	Yes. (Mrs Muthuraman)
Did Mr Muthuraman do a lot of the work in the shop even if he was not supposed to? (asked by the Sub Committee)	Mr Muthuraman was a support to her and helped in the shop. (Mrs Muthuraman)
Did Mr Muthuraman had a personal licence?	Yes. (Mr Muthuraman)

Closing Statement by the Applicant (Sussex Police)

Mr Savill, representative for Sussex Police, made the following points in his closing statement:

- Sussex Police had no confidence whatsoever going forward;
- Sussex Police was not questioning Mr Patel's' expertise and meant no disrespect, but was of the opinion that the problems would return once Mr Patel was no longer involved;
- There had been an ongoing breach of conditions on the premises since 2012 as no signage had been displayed in relation to the Challenge 25 policy;
- The case before the Sub Committee was serious as it did not relate to a temporary breach of conditions;
- It appeared to be a deep-seated and long-standing problem;
- The licence was the responsibility of the licence holder, not Sussex Police or the licence holder;
- The sale of alcohol to a child was serious;
- The High Court had quashed a decision taken by the Magistrates Court to allow an appeal against a decision taken by Carmarthenshire County Council to revoke a premises licence. The High Court quashed the appeal as it considered the Magistrates Court had failed to take the sale of alcohol to minors "particularly seriously" as stated in the Guidance and the effects of selling alcohol to under-age youths, such as the effect on other aspects of their life. The Magistrates Court had only considered important the absence of any link between the premises and the commission of a crime, as well as the fact that steps had been taken by the interested party to ensure no sales were

made in the future to underage youths. The reasons that the High Court had quashed the Magistrates Court's decision was relevant to the current case before the Sub Committee:

- The Sub Committee should ask itself how the licensing objectives were promoted today, not in six months' time;
- The appropriate solution would be to revoke the licence. A future application for a premises licence would invoke the confidence of Sussex Police.

Closing Statement by the Premises

Mr Patel, representative for the premises, made the following points in his closing statement:

- He did not feel the premises was in a shambolic condition;
- The premises had been mis-managed in the past;
- He was not sure whether the conditions had been understood by Mr and Mrs Muthuraman;
- It would not take long for the premises to put the necessary systems in place;
- The necessary procedures and systems could be put in place within 28 days;
- The premises would be fully operational within six months;
- It was not necessary to revoke the licence;
- Suspension (for a period of four weeks) would be acceptable as it would allow sufficient time for the necessary systems and procedures to be put in place;
- After a four week period the premises would be able to prove that the staff had the necessary skills in place'.

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.

10. Application to Review the Premises Licence: 'The Boulevard Newsagents', 62 The Boulevard, 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.

11. Re-admission of the Public

The Chair declared the meeting re-open for consideration of business in public session. Councillor Jones read out the Sub Committee's decision as detailed in **Appendix A** to these minutes. It was also announced that all parties would receive a copy of the decision notice within five days of the Hearing.

12. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 3.15pm.

COUNCILLOR M G JONES
Chair

Appendix A

NOTICE OF DECISION

LICENSING SUB COMMITTEE - 18 MAY 2015

LICENSING ACT 2003: REVIEW OF A PREMISES LICENCE

`THE BOULEVARD NEWSAGENTS', 62 THE BOULEVARD, NORTHGATE, CRAWLEY, WEST SUSSEX

DECISION

The Sub Committee's decision was to suspend the licence for a period of 3 months.

In addition to the suspension the Sub Committee also decided to remove Mrs Jothi Muthuraman as the Designated Premises Supervisor (DPS), as well as imposing the additional conditions detailed below.

It is clear that there has been a sale of alcohol to an underage person and to a person who was drunk at this establishment.

REASONS FOR THE DECISION

The Sub Committee has listened carefully to the information given by the Police and the licence holder and her representative, 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 imposes the suspension to deter further sales to underage people and to people who are drunk. The Sub Committee does not impose the suspension as a punishment, but felt that the length of the suspension would give The Boulevard Newsagents the opportunity to revisit, review and improve its training and management procedures at the shop.

The Sub Committee acknowledges that the licence holder has taken recent steps to address the situation by appointing Mr Patel as their representative, however it is disappointed that action had not occurred at an earlier date. The Sub Committee is also disappointed that the licence holder has not previously appeared to understand the importance of the premises' licensing conditions.

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

- 1. There has been a sale of alcohol to an individual aged under 18 and section 147(1) of the Licensing Act 2003 makes it clear that this is an offence.
- 2. On the same date and occasion there was a sale of alcohol to a person who was drunk and section 141(1) of the Licensing Act 2003 makes it clear that this is an offence if, on the relevant premises alcohol is sold to a person who is drunk.
- 3. To allow sufficient time for training to be undertaken which will 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.

- 4. To allow time to select an experienced replacement DPS who will receive further training to ensure that he or she fully understands how to manage the DPS role and responsibilities.
- 5. To facilitate the implementation of accurate record keeping and documentation in relation to the refusal of alcohol to both under age persons and to any persons who are drunk or appear to be drunk, regular CCTV systems check, staff training and the reporting of incidents and refusals within the premises.

The Sub Committee was further concerned that Mrs Jothi Muthuraman, in her capacity as the Designated Premises Supervisor, did not fully understand the role and responsibilities required with being a DPS.

The Sub Committee considered the proposed conditions put forward by Mr Patel in his supporting evidence distributed on the 14th May 2015 and agreed that these were appropriate to promote the licensing objectives. Therefore the Sub Committee resolved that the following conditions be added to the premises licence:

- 1. The Licence holder shall appoint a third party suitably qualified and agreeable to the licensing authority to train management, DPS and counter staff in all aspects related to the safe compliant operation of the premises.
- 2. The Licence holder shall agree to participate in an independent assessment before the end of June 2015 to ensure all operating schedule conditions on the premises licence are met by benchmarking the results to an approved standard. The assessment report shall be submitted to the relevant licensing authority officers of Crawley Borough Council. Thereafter the assessment will be carried out every 3 months for the next 12 months.
- 3. The premises shall prominently display the name of the manager or DPS or both with contact number. The will be viewable from outside of the premises.
- 4. The premises shall ensure that a comprehensive register for any incidents or complaints is maintained with the appropriate detail.

Today we are giving a strong message to the Boulevard Newsagents regarding the Council's commitment to upholding the Licensing Objectives.

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.

18.05.15