

Crawley Borough Council

Minutes of Licensing Sub Committee

Monday 27 April 2009 at 4.30pm

Present:

Councillors B M Brockwell, R J Hull and L A Seekings

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Jackie Guest	Senior Technical Support Officer – Licensing
Mike Lyons	Senior Licensing Officer
Sharon Rana	Trainee Solicitor (Observing)
Astrid Williams	Legal Clerk
Lucy Wilmot	Technical Support Officer – Licensing
Chris Pedlow	Committee Clerk

Also in Attendance:

Applicant	Jean Irvine - Force Licensing and Public Safety Manager – Sussex Police
	Chief Inspector Steve Curry – Crawley District Commander – Sussex Police
	Sgt. Jim Collen – Neighbourhood Policing Sergeant – Sussex Police
	Peter Savill – Barrister for Sussex Police
Others	John Dale Crawley Borough Council's Community Liaison Officer (Observing)

7. Appointment of Chair

RESOLVED

That Councillor B M Brockwell be appointed Chair for the meeting.

8. Members' Disclosure of Interests

No disclosures of interests were made.

9. Lobbying Declarations

The following lobbying declarations were made by Members:-

Each Member of the Sub Committee confirmed that they had been lobbied regarding the application, but that they had disregarded the information expressed as it was not a relevant representation.

10. Review of a Premises Licence for Total Convenience Store, Pelham Place, Broadfield

The Sub Committee considered the review of a Premise Licence for Total Convenience Store, Pelham Place Broadfield ('the Premises') which is held by Total UK Limited ('the Licence Holder').

The Legal Clerk advised the meeting that she had met with the Members of the Sub Committee prior to the hearing and that she had given them general advice about the procedure for the hearing, advised them that a written application to adjourn had been received and that the details of the application would be presented to them during the course of the meeting. It was noted that she had also advised the Sub Committee that the email they had each received from another Member about the hearing was something which would need to be disclosed as a lobbying interest but which did not meet the criteria for relevant representation.

The Legal Clerk asked for applications for representation. Peter Savill asked the Sub Committee for their agreement to him representing the Applicant (Sussex Police), which the Sub Committee agreed to.

The Legal Clerk informed the Sub Committee that there was an application by the Licence Holder for an adjournment, and passed to the Members a copy of the Licence Holder's letter requesting the adjournment, which they then read. It was noted that Sussex Police had received a copy of the adjournment request in advance of the meeting. The Legal Clerk then proceeded to summarise the application made by Mr. Simon Jones of Cobbetts LLP on behalf of the Licence Holder. The Sub Committee noted that it was the intention of the Licence Holder to argue that the Police's request for a six week suspension of the Premises Licence and the imposition of four additional conditions should not be granted. It was also their intention to provide the Sub Committee with detailed information on the procedures adopted and used by Total UK Limited, by having the Licensing Manager for Total UK, Miss Nerys Mai-Jones, in attendance to explain the procedures and systems in place at Total Convenience Stores with regard to the sales of age restricted products, and the training given to all members of staff. It was noted that both Mr Jones and Miss Mai-Jones were unfortunately unable to attend the hearing on 27 April, with Mr Jones stating in the letter that he was due to attend two other Review Hearings on the same day in the North of England. With that in mind the Licence Holder requested an adjournment of the Review.

The Sub Committee then invited Sussex Police to respond to the adjournment request. Mr Savill informed the Sub Committee that Sussex Police had objected to the request. He commented that the Licence Holder had on two separate occasions failed

test purchases, once in November 2008 and again in January 2009. He noted that in the vicinity of the Premises there was an acute problem of under aged drinking and anti-social behaviour fuelled by alcohol. Mr Savill said that the application for review of the Premises Licence should be determined as a priority, as the case was about failure by the Licence Holder to adhere to the statutory objectives of *preventing crime and disorder* and the *protection of children from harm*. He submitted to the Members that their powers on a review were preventative and remedial but not punitive; and that the Sub Committee's role was to consider the simple test of what was required to promote the licensing objectives.

Mr Savill reminded the Sub Committee of what the Guidance stated with regard to review as set out in Section 11 – Reviews. The Sub Committee was reminded that the Notice of the Hearing was dated on 7 April 2009 and therefore all parties had known about the meeting for approximately 3 weeks. Mr Savill questioned why did the Licence Holder, via its representatives, only responded on 20 April stating that they could not attend. He commented that he considered that within a firm the size of Total UK Limited they must have had at least one other representative from the company available, and similarly with their Solicitors, Cobbetts LLP, they must have at least one other fee earner available. Alternatively, he queried why the Licence Holder did not think about hiring a barrister or, at the very least, had not asked the DPS to attend the hearing.

In conclusion Mr Savill commented that the Sub Committee's power to adjourn was set out in regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005 which clearly stated that a hearing may be adjourned where it was considered 'necessary'; the test was not what the Sub Committee considered 'desirable' for all parties. He said that the Sub Committee therefore must consider whether it was 'necessary' to adjourn the hearing and he submitted that, in the absence of any proper explanation as to why alternative persons could not represent the Licence Holder, the Sub Committee could not be satisfied that it was 'necessary'.

For clarity purposes the Senior Licensing Officer confirmed that on 7 April 2009 he delivered the Notice of the Hearing to the Premises and to Sussex Police. He also advised the Sub Committee that he had posted by first class post, a copy of the Notice of Hearing to the Head Office of Total UK Limited; and a further copy to Cobbetts LLP (the Licence Holder's Legal Representatives).

The Sub Committee decided to retire to close session to consider the adjournment application.

RESOLVED

That 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.

11. Request for an Adjournment to the Review of a Premises Licence for Total Convenience Store, Pelham Place, Broadfield

The Sub Committee considered Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005 and the representations made by both parties. In making its decision the Sub Committee recognised that the Licence Holder had not made any representations within the prescribed period.

RESOLVED

That the request for an adjournment be refused, as it was not necessary to adjourn to consider any representations or notice made by any party.

The Sub Committee asked that it be recorded that the Licence Holder had not made any representations within the prescribed period, which would limit accordingly what it would be able to add constructively to the meeting.

12. Re-admission of the Public

The Chair declared the meeting re-opened for consideration of business in public session and announced the Sub Committee's decision with regard to the Licence Holder's application for an adjournment.

13. Review of a Premises Licence for Total Convenience Store, Pelham Place, Broadfield

The Chair invited the Council's Senior Licensing Officer to present the application.

The Application

Report ES/211 of the Council's Head of Environmental Services was presented to the Sub Committee by Mike Lyons, the Senior Licensing Officer for Crawley Borough Council. The Sub Committee was informed that on the 10 March 2009, Sussex Police as a 'responsible authority' submitted an application to the Crawley Borough Council for a review of the Premises Licence for Total Convenience Store, Pelham Place, Broadfield. The review was requested on the grounds that the Licence Holder was not promoting the statutory objectives of *preventing crime and disorder* and the *protection of children from harm*. It was noted that the Premises Licence was granted to Total UK Limited and that the 'Designated Premises Supervisor' (DPS) was Mr. Iyampillai Sriranyanathan. Sussex Police on the 8 April 2009 had provided further papers comprising of witness statements and other documents in support of the review application.

The Sub Committee was informed that the Council, as the relevant Licensing Authority, advertised the application for review in accordance with legislation, by posting notices in and immediately outside of the Premises on 11 March 2009, as well as on the Council's website and on the notice board outside of the Town Hall. The notices were displayed for the required 28 consecutive days. Members were informed that no representations were received for or against the application within the 28 day period.

The Licensing Officer then provided the Sub Committee with background information to an application for the review of a Premises Licence, especially with regards to section 51 of the Licensing 2003 Act. It was noted that once an application for the review of a Premises Licence had been received by a Licensing Authority, they must hold a hearing to consider it.

The Sub Committee was reminded that in determining the application for review, following consideration of the application and any relevant representations, the Members must take any of the steps set out in section 52 of the Act which it considers

necessary for the promotion of the licensing objectives, if any. It was noted that the steps set out in section 52 were (i) *modify the conditions of the premises licence (alter or omit any existing conditions or to add any new conditions)*, (ii) *exclude a licensable activity from the scope of the premises licence (permanently or for a temporary period not exceeding 3 months)*, (iii) *remove the designated premises supervisor from the premises licence*, (iv) *suspend the premises licence (for a period not exceeding 3 months and* (v) *revoke the premises licence.*

The Sub Committee was informed that its decision could be appealed by the Applicant for the review, the Licence Holder or any other person who made a relevant representation in relation to the application (of which there was none). It was also informed that it was important that the Sub Committee should provide comprehensive reasons for its decisions and that failure to provide adequate reasons could itself give rise to grounds for an appeal. It was also advised that it was particularly important that reasons should also address the extent to which the decision had been made with regard to the licensing authority's statement of policy and the Secretary of State's Guidance issued under section 182 of the Act.

The Sub Committee was informed that in deciding the applications for review it was expected that licensing authorities should, as far as possible, seek to establish the cause or causes of the concerns which the application identified. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

Members were reminded that they should consider the Guidance under section 182 of the Licensing Act, in particular Section 11 – Reviews. However, the guidance could not anticipate every possible scenario or set of circumstances that might arise and as long as Sub Committee had properly understood the Guidance, they could depart from it if they had reason to do so as long as they were able to provide full reasons.

It was noted that in determining the application with a view to promoting the licensing objectives in the overall interests of the Local Community, the Licensing Authority must give appropriate weight to: (i) the steps that were necessary to promote the licensing objectives; (ii) the representations (if any), (including supporting information) presented by all the parties; (iii) Section 182 Guidance; and (iv) The Council's own statement of licensing policy.

The Sub Committee were then reminded of the recommendations which were that having had regard to the application and any relevant representations, that it must take any one or more of the section 52 steps which it considered necessary for the promotion of the licensing objectives, such steps being: (i) *modify the conditions of the premises licence (alter or omit any existing conditions or to add any new conditions)*, (ii) *exclude a licensable activity from the scope of the premises licence (permanently or for a temporary period not exceeding 3 months)*, (iii) *remove the designated premises supervisor from the premises licence*, (iv) *suspend the premises licence (for a period not exceeding 3 months) and/ or* (v) *revoke the premises licence.* Alternatively, if the Sub Committee did not consider that any of these steps were necessary for the promotion of the licensing objectives, then the Sub Committee should take no action.

In response to a question from the Sub Committee, Mr Lyons informed the Members that Total Convenience Store had changed their 'Designated Premises Supervisor' (DPS) to Mr. Iyampillai Sriranyanathan, as shown in their copy of the Premises Licence, on page 10 of the bundle. It was noted that the previous DPS had been Mr Darren Paul Wood, as identified within the Police's evidence, pages 21 and 22 of the bundle.

The Applicant – Sussex Police

Mr. Savill addressed the Sub Committee, as the representative of the Applicant, Sussex Police, he firstly commented that he intended to only provide a summary of the key issues of Sussex Police's reasons for the review, as the detailed papers provided by Sussex Police's clearly document the evidence for the application for review. Mr Savill conveyed Sussex Police's concern that the Licence Holder was neither present at the hearing of the review application nor had it provided any written representations. He felt that was a reflection of how the Licence Holder operated, as they had had plenty of opportunities to contact Sussex Police (since the first failed test purchase), to seek advice or to work with Sussex Police. However the Licence Holder had not made contact with Sussex Police and that was a concerning feature of the situation not only because the legislation required the Licence Holder and the Police to work in partnership.

Mr Savill detailed to the Members the request by Sussex Police for four additional conditions to be attached to the Premises Licence and the rational behind it. First proposed condition was that *a Personal Licence Holder to be on site at all times that alcohol was on sale*, with the purpose to oversee the sales of alcohol to prevent further offence. Second proposed condition, *a refusals register be kept in which details of all refused sales if alcohol be entered. This register is to be checked by the DPS once a month and feedback given to Staff on the details in the register. The register is to be made available upon request to the Police employees and Trading Standards.* The third proposed condition was *full staff training for all staff (in consultation with Trading Standards) on the prevention of sales to underage children and refusing sales to intoxicated persons. Further refresher staff training delivered by management every 2 months. All training to be recorded and documented in full, and all training documentation and records to be made available to Sussex Police and Trading Standards on request.* The Fourth proposed condition was that *'Challenge 25' policy to be implemented in the venue with sufficient and suitable posters advertising that policy to be on display at prominent locations within the premises.'*

A final request was that a suspension be applied to the Premises Licence for a period of 6 weeks. Mr Savill emphasised that the purpose of the 6 weeks suspensions was twofold: firstly to break the link between the Premises and the ability of under aged youths being able to buy alcohol, which fuelled youth offending, and secondly to act as a deterrent to the Licence Holder from permitting these sales to occur and to allow the Licence Holder time to re-evaluate its procedures. Mr Savill commented that it was Sussex Police's belief that the proposals were both necessary and proportionate to ensure that the licensing objectives were achieved.

Following a request from Mr Savill, the Chair of the Sub Committee agreed that Chief Inspector Steve Curry, Crawley's District Commander, could address them to provide further evidence on how Sussex Police were trying to tackle the issue of underage drinking in Broadfield.

CI Curry thanked Members and informed them that under aged drinking and the resulting anti-social behaviour of alcohol-fuelled youths was one, if not the greatest, problem within Crawley as a whole. Within Broadfield and Bewbush especially, on a Friday and Saturday from 4pm, youths started to drink illegally and then from 8pm the community paid the price of the related drunken behaviour. CI Curry said that one of the main ways to stop that from occurring was to ensure that licensed premises were not selling alcohol to youths, thus Sussex Police's request for a review of this Premises Licence. It was noted that Sussex Police had introduced Operation Athlete, to help deal with the problem of underage drinking and its related anti-social behaviour. CI Curry reemphasised that stopping youths from acquiring alcohol

protected them from harm as being under the influence made them more vulnerable. Through stopping children from purchasing alcohol CI Curry said it broke the circle of the crime and disorder caused by intoxicated youths, whilst protecting them from harm at the same time.

Members' Questions

The Sub Committee asked Sussex Police what its aim was in proposing the condition of the refusal register given that the Premises Licence already had a similar condition, being condition 4 in Annex 2 to the licence. In response Mr Savill said that the rationale behind the proposed amendment to the condition was that it was all very well to have a refusal book, but it was a different matter that it be used. He said the proposal sought to seek to ensure that the register was kept in constant use and that it be regularly checked by the DPS.

The Sub Committee then questioned the robustness of the use of a refusal register as a tool in tackling sales of alcohol to youths and queried how hard was it for sales staff to judge the age of customers. The Sub Committee noted that it was proven, through Home Office research, that it could be very difficult to judge ages of those between 16 and 25, within approximately 5 years. In response the Sub Committee was advised that this was why the Police requested a condition that a 'Challenge 25' policy be operated at the Premises and that police made the use of a refusal register more effective as the staff were required to challenge customers' ages more regularly. It was also noted that it could be extremely uncomfortable for younger members of staff to challenge their peers, and potentially people older than they, for ID. However the proposed conditions should help with that by putting more responsibility on the DPS, as it was proposed by Sussex Police that a DPS would be on site at all time alcohol was being sold. Therefore, the DPS would be able to support staff when they challenged those that look under 25.

In response to a further question which asked whether the Licence Holder was involved in Broadfield's Local Area Action Team, the Members were informed that the Premises had not chosen to be involved.

RESOLVED

That 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.

14. Review of a Premises Licence for Total Convenience Store, Pelham Place, Broadfield

The Sub Committee gave further consideration to the application and to the matters raised. In formulating a decision the Sub Committee took into account the 'steps' that were available to them, and considered what was necessary whilst not being punitive to ensure that the licensing objectives were achieved.

RESOLVED

(1) That the licensing activity of the Sale of Alcohol be excluded from the Premises Licence for a period of one calendar month.

(2) That a new condition be added to the Premises Licence:

Full staff training for all staff (in consultation with the Licensing Authority) on the prevention of sales to underage children. Further refresher staff training delivered by management every 2 months. All training to be recorded and documented in full, and all training documentation and records to be made available to Sussex Police and the Licensing Authority on request.

(3) That the following modifications to the existing conditions contained within in Annex 2 to the Premises Licence be amended accordingly:-

(i) Condition numbered 4 be amended to read:

A refusals register be kept in which details of all refused sales of alcohol are entered. This register is to be checked by the DPS once a month and feedback given to staff on the details in the register. The register is to be made available upon request to police and employees of the licensing authority.

(ii) Condition numbered 5 be amended to read:

A 'Challenge 25' policy to be operated on the premises with posters advertising that policy to be prominently on display at or near the points of sale and prominently at the front entrance.

(The Sub-Committee reasons for this determination were provided in the public session, as detailed in Minute 15, Re-admission of the Public, below).

15. Re-admission of the Public

The Chair declared the meeting re-open for consideration of business in public session. The Chair asked that the Legal Clerk announce the Sub Committee's determination and its reasons with regard to Sussex Police's application for the review of the Premises Licence for the Total Convenience Store.

The Legal Clerk announced the following to the meeting:

- The Sub Committee took into account the application made by Sussex Police and the evidence provided by the Police both in writing and in answer to the members' questions during the hearing. The Sub Committee also took into account the individual members' knowledge of the area.
- The Sub Committee agreed that there is a concern about anti-social behaviour and sale of alcohol to children in relation to Broadfield Barton.
- The Sub Committee felt it was unfortunate that Total UK Limited had not been involved in the Broadfield Barton Local Action Team and would encourage Total UK Limited to participate in future.
- In relation to the request by the Police for a suspension of the licence for 6 weeks for both training and to try to break the nexus between the store and the sale of alcohol to children, the sub-committee found:

- i) That the evidence from the Police did not sufficiently prove a link between the Premises and the concerns about crime and disorder generally in the area;
 - ii) that it would suspend another licensable activity (that of sale of late night refreshments) and that licensable activity did not form part of the application for review;
 - iii) in any event, the 6 weeks as suggested was too long such to be punitive and the Sub Committee wanted to make the observation that the Police should in future take the appropriate enforcement action if it believed that this was necessary.
- However, the current regime of training at the Total Convenience Store in Broadfield in relation to sale of alcohol to children was obviously not sufficiently robust and that was particularly evidenced by the sale of alcohol by the staff member on 23 January 2009 who admitted that they had been trained only that day.
 - The Sub Committee found that the following was necessary for the promotion of the licensing objectives:–
 - i) That there be a modification of condition 4 in Annex 2 to the licence as follows: *A refusals register be kept in which details of all refused sale of alcohol are entered. This register is to be checked by the DPS once a month and feedback given to staff on the details in the register. The register is to be made available upon request to police and employees of the licensing authority*
 - ii) That there be a modification of condition 5 in Annex 2 to the licence as follows: *A 'Challenge 25' policy to be operated on the premises with posters advertising that policy to be prominently on display at or near the points of sale and prominently at the front entrance.*
 - iii) That a new condition be added to the licence as follows: *Full staff training for all staff (in consultation with the licensing authority) on the prevention of sales to underage children. Further refresher staff training delivered by management every 2 months. All training to be recorded and documented in full, and all training documentation and records to be made available to Sussex Police and the licensing authority on request; and*
 - iv) That the Sub-Committee decided that the licensing activity of the sale of alcohol be excluded from the licence for a period of 1 calendar month to allow the Licence Holder sufficient time to implement the new and amended conditions, in particular the condition relating to training.

16. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 7.23 p.m.

B M Brockwell
Chair