

Crawley Borough Council

Minutes of Licensing Sub Committee

Monday 27 April 2009 at 7.44pm

Present:

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

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Mike Lyons	Senior Licensing Officer
Sharon Rana	Trainee Solicitor (Observing)
Astrid Williams	Legal Clerk
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 – (Applicants' Representative)
License Holders	Eric Price Trading Standards and Licensing Manager for Somerfield Stores Limited
	Jon Wallsgrove Barrister – (License Holder's Representative)

17. Appointment of Chair

RESOLVED

That Councillor R J Hull be appointed Chair for the meeting.

18. Members' Disclosure of Interests

No disclosures of interests were made.

19. Lobbying Declarations

The following lobbying declarations were made:-

Each Member of the Sub Committee confirmed that they had received an email from another Member of the Council, lobbying them in regard to the application.

Upon being asked by the Representative for Somerfield whether the content of the communication would be disclosed, the Chair advised that as it was not a relevant representation the Sub Committee would not take the content of the email into account and so it would not be disclosed to the parties.

20. Review of a Premises Licence for Somerfield Store Limited, Broadfield Barton, Broadfield

The Sub Committee considered the review of a Premises Licence for Somerfield Store Limited, Broadfield Barton, Broadfield ('the Premises') which is held by Somerfield Stores Limited ('the Licence Holder').

The Legal Clerk advised the meeting that she had met with the Sub Committee prior to the hearing and she had given them general advice about the procedure for the hearing. She also advised the Sub Committee that the email they had each received from another Councillor 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 for him representing for the Applicant, Sussex Police, and Jon Wallsgrove then asked the Sub Committee for their agreement to him representing the Licence Holder, Somerfield Stores Limited, and to both of which the Sub Committee agreed..

Mr Wallsgrove, following agreement by the Chair, addressed the Sub Committee and thanked them for delaying the start of the meeting by a short period to allow his Client and Sussex Police to hold a short discussion which he felt would be of benefit to the rest of the meeting. Mr Wallsgrove informed the Sub Committee that the Somerfield Store, on the Broadfield Barton, in Broadfield would be sold to Morrisons Supermarkets on the 7 May 2009 and that the store would be closed from the 6 May 2009 for a period of three months whilst Morrisons refitted the store. Morrisons would be, in due course, seeking a transfer of the Premises Licence or potentially applying for a new Premises Licence. Mr Wallsgrove said that with that information in mind, the License Holder asked for the short discussion with the Sussex Police, to see whether it would be possible to hold some form of negotiation over Sussex Police's purposed conditions taking into account the new information in respect of Morrisons.

As a result of the discussions a new set of proposed conditions were agreed by both the Applicant and the Licence Holder. Mr Wallsgrove emphasised to the Sub Committee that his Client, Somerfield Stores Limited, accepted that there was sufficient evidence to prove the 2 alleged failed test purchases at the Somerfield Store

on the Broadfield Barton. The Sub Committee were informed of the new set of proposed conditions:

- i) That a Personal Licence Holder to be on site between 1600 hours and the store closure on both Fridays and Saturdays.
- ii) A refusals register be kept in which details of all refused sales of alcohol were entered. The register was to be checked by the Designated Premises Supervisor once a month and feedback given to staff on the details in the register. The register was to be made available upon request to police employees and Trading Standards.
- iii) 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.
- iv) A 'Challenge 25' policy to be implemented in the venue with sufficient and suitable posters advertising that policy to be on display at prominent locations with the premises.

Mr Wallsgrove told the Sub Committee that in these circumstances Sussex Police no longer sought a suspension of the Premises Licence for six weeks.

Mr Wallsgrove asked the Sub Committee, having considered the report and the representations from the Police, to indicate if they were agreeable to the new proposals, as it would affect the way in which he would be conducting the case. He said that should the Sub Committee find that the new proposals were not acceptable or that they might be contemplating adding further steps to his client's Premises Licence then he indicated he would then be seeking an adjournment and request that a new set of Members hear the review. He noted that License Holder felt that some of the information provided within the Police's evidence 'bundle' was not relevant to the case and was superficial and superfluous information, and as the Sub Committee had studied the report, the Licence Holder would be prejudiced should the hearing proceed.

The Chair of the Sub Committee invited Mr Savill to comment on what had been said Mr Wallsgrove. Mr Savill advised that the Applicant did support the net set of proposed conditions and he also thought it was logical that the Sub Committee should hear the information and if they so wished provide an initial view before the Licence Holder put across its case. He added a caveat that he would like the opportunity to respond, if necessary, to any questioning of the Sussex Police's evidence.

The Sub Committee considered these submissions and the Chair advised the meeting that the Sub Committee was not prepared to give an indication as to whether the new set of proposed conditions was acceptable to the Sub Committee until it heard from each party in full. It was noted that the Applicant would be given the opportunity to respond to any issues raised over the information provided to the Sub Committee.

The Application

Report ES/212 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 10th March 2009, Sussex Police as a 'responsible authority', submitted an application to the Crawley Borough Council

for a review of the Premises Licence, for Somerfield Store, Broadfield Barton, 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 Somerfield Store Limited and the 'Designated Premises Supervisor' (DPS) was Mr. Russell Atfield. Sussex Police on the 8th 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 11th 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 a 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, it 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 was 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.

The Applicant – Sussex Police

Mr Savill addressed the Sub Committee and firstly thanked them for allowing the additional time for Sussex Police and the Licence Holder to forge a proposed agreement. He reaffirmed that Sussex Police supported the new proposals, which the Members had previously heard, and that the newly proposed 'steps' seemed both necessary and proportionate, under the unique circumstance with regard to the change in ownership. It was noted that the ultimate decision on the review was with the Sub Committee and the new proposed conditions were not binding; however the Sussex Police did support the proposal.

Mr Savill informed the Sub Committee that he had nothing else to say at that time, but would like to reiterate that Sussex Police's view that the evidence it would present was adequately supporting the review, and that he would go into more detail, if required. Mr Savill then repeated his request to speak on any case for adjournment or queries over the information provided.

License Holder – Somerfield

The Sub Committee heard from Mr Wallsgrove on behalf of the License Holder, who again re-iterated that his client accepted that they had failed test purchases on two separate occasions. Commenting on the new proposals he noted that Somerfield had three members of staff each held a personal licence and they were happy to ensure, following the Sussex Police advice, that one of them would always be working from 1600 until closing on both Friday and Saturday evenings. Mr Wallsgrove said that one of the members of staff had indicated to the Police that they had not received training but this was not correct. He again noted that the Somerfield store in Broadfield would be closed on 6 May for three months and sold to Morrisons on 7 May. Mr Wallsgrove hoped that the Members would support the proposal tabled as agreed by Sussex Police but if not he would make a request for an adjournment.

Members' Consideration

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. The Sub Committee took into account what they felt was necessary to ensure that the licensing objectives were being addressed and noted the

support of both the Applicant and the Licence Holder for the amended conditions. The Sub Committee then came to a decision.

RESOLVED

1. That the Sub Committee considers that the following steps are necessary for the promotion of the licensing objectives (and which the Sub Committee acknowledged was also agreed between Sussex Police and the Licence Holder), and therefore that the Premises Licence would be modified to include the following conditions:
 - i) A Personal Licence Holder to be on site between 1600 hours and the store closure on both Fridays and Saturdays.
 - v) A refusals register be kept in which details of all refused sales of alcohol are entered. This register is to be checked by the Designated Premises Supervisor 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 employees and Trading Standards.
 - vi) 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.
 - vii) A 'Challenge 25' policy to be implemented in the venue with sufficient and suitable posters advertising that policy to be on display at prominent locations with the premises.
2. That the Council's Licensing Officers take the necessary steps to communicate the Sub Committee's decision to the parties, within five working days.

21. Closure of Meeting

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 8.20p.m.

R J Hull
Chair