

# Crawley Borough Council

## Minutes of Licensing Sub Committee

23 July 2009 at 5.00 p.m.

**Present:**

Councillors B J Burgess (Chair), A G Brown and S Kaur

**Officers Present:**

T. Baldock	Group Manager for Food, Licensing and Occupational Health
J Green	Committee Clerk
N Parnell	Corporate Policy Officer (Observing)
A Williams	Legal Clerk

**Also in Attendance:**

Applicant	Mr C Boyle Mr P Savill	Police Licensing Officer Barrister for Sussex Police
Licence Holder's Representatives	Mr G Atkinson Mr P Dearing Mr A Dorgan Mr E Ebrahim Ms M Hemmings Mr A Hill Ms S Stephens	Barrister for licence holder Regional Manger Store Manager - Maidenbower Store Manager – Tilgate Diligence Manager National Diligence Manager Loss Prevention Officer

**13. Minutes**

The minutes of the meeting of the Committee held on 15 July, 2009 were approved as a correct record and signed by the Chair.

**14. Members' Disclosures of Interest**

No disclosures of interest were made by Members.

**15. Application to Review a Premises Licence – Co-operative Group Ltd,  
8, Maidenbower Square, Maidenbower**

At its meeting on 15 July, 2009, the Sub-Committee had given consideration to an application for the review of the premises licence at 8, Maidenbower Square, Maidenbower.

However, in accordance with Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005, the Sub-Committee had decided to adjourn the meeting to enable further consideration to be given to the representations of the parties.

The Sub-Committee had before it report ES/217 of the Head of Environmental Services, together with a copy of the Memorandum of Agreement between the applicant and the Co-operative Group which had been circulated at the previous meeting.

Following the introduction of those present at the meeting, the Legal Clerk ascertained that there were no applications for the introduction of new material and then confirmed that no request had been made by Members of the Sub-Committee for clarification of any aspect of the application or the representations received from any party.

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. She had also reminded the Sub-Committee that the options open to them were those summarised in paragraph 7 of report ES/217.

The Legal Clerk then invited any queries relating to report ES/217 which had been presented to the Sub-Committee at its previous meeting by the Council's Licensing Officer and, in the absence of any such request, the Sub-Committee went on to consider the application

**The Application**

The application for the review of the premises licence at 8, Maidenbower Square, for the sale by retail of alcohol for consumption off the premises, had been submitted on 1 June 2009 by the Police as a 'responsible authority'. A copy of the application was set out in Appendix A to report ES/217 of the Head of Environmental Services and additional material comprising of witness statements and other documents in support of the review application was circulated as Appendix B. The review had been submitted on the grounds that the licence holder was not promoting the licensing objectives of preventing crime and disorder and the protection of children from harm. The application indicated that the store had failed two 'test purchase' operations during March and May, 2009, whereby alcohol had been sold to children.

The Sub-Committee also had before it a copy of the premises licence (Appendix C) and of documentation submitted on behalf of the premises licence holder by its representative (Appendix D). The information contained in this appendix was exempt from disclosure by virtue of paragraphs 1 (information relating to an individual) and 3 (information relating to business affairs) of Part 1 of Schedule 12A to the Local Government Act 1972 and had therefore been circulated separately to Members of the Sub-Committee and the applicant.

The report set out matters which the Sub-Committee had to take into consideration in dealing with the application and details of the review process. It pointed out that no representations had been received in response to the consultation process.

The Sub-Committee also had before it the documents relating to the Memorandum of Agreement which had been agreed by the Police and the licence holder which proposed a possible way forward involving the variation of the licence conditions together with a voluntary suspension of the sale of alcohol for a period of two weeks.

### **The Applicant – Sussex Police**

Mr Savill addressed the Sub-Committee as the representative of the applicant, Sussex Police, and reminded the Sub-Committee that the decision should not be made on a punitive basis.

He went on to say that it was his understanding that the Sub-Committee was seeking an explanation of the reasoning behind the Police's acceptance in the Memorandum of Agreement of a voluntary suspension of the premises licence for two weeks, when the Police had originally asked for a six week suspension of the licence in their review application. One of the factors which the Police had taken into consideration, had been that the measures could be implemented almost immediately under the Agreement whereas, under the review procedure, implementation could not take place until 21 days after the decision had been taken; or in the event of an appeal being lodged within that 21 day period, the measures would not be implemented, if at all, until that appeal had been disposed of which could take a number of months. The Police were, therefore, seeking an early remedy to address the situation.

It was also pointed out that the application for review had been drafted before a long and productive meeting which had taken place between representatives of the Police and the Co-op on 12 June 2009. At this meeting, the Police had been provided with detailed information about improvements and modifications which had been put in place by the Co-op to prevent a recurrence of underage sales. This was information which had not been available to the Police at the time of the application and Mr Savill indicated that, it was to the Co-op's credit, that they were prepared to meet the Police and to provide the information. The Police considered it significant that the Co-op were prepared voluntarily to suspend the sale of alcohol for two weeks and to enshrine various policies and procedures in conditions.

Mr Savill said that the Police were satisfied that the suspension for the two week period would act as a future deterrent for the staff and management of the premises and would break the link between the premises and the sale of alcohol to children. The Police felt that the steps proposed in the Memorandum of Agreement were necessary and proportionate to promote the licensing objectives of the prevention of crime and disorder and the protection of children from harm.

### **Members' questions to the applicant**

In response to a question about why test purchasing had been carried out at these premises, Mr Boyle advised the Sub-Committee that this was an on-going operation throughout the Force's area.

The Police were asked how they felt that the proposals set out in the Memorandum of Agreement would break the link. The Sub-Committee pointed out that a second test purchase failure had occurred at a time when policies were already in place and training had been undertaken and they wanted to know how things were likely be different this time. Mr Savill responded that that enforcement had to be proportionate and the Police had adopted a relatively informal approach after the first failure, outlining the steps to be taken and the consequences of further breaches. However, following the second failure, the Co-op had indicated that they were willing for additional conditions to be attached to the licence. If these conditions were not

adhered to, then any sale of alcohol would be unauthorised, which was a criminal offence. In these circumstances a level 5 fine or a prison sentence of up to 6 months could be imposed upon conviction and the Police would not hesitate to enforce any breach. In pointing this out, the Police acknowledged the commitment of the licence holder in showing a willingness to have additional conditions attached to the licence.

The Sub-Committee asked the Police why they found the new material acceptable when much of it was already part of the existing policy of the store. In response, the Police re-iterated that, whilst the policy would apply to Co-op stores nationwide, by enshrining it in conditions at this particular store, this would re-enforce its importance.

Members asked for an explanation as to how the register of refusals operated. They were informed that this was kept by the till and completed whenever a member of staff refused a sale. If the register highlighted that a member of staff was not proactive in challenging customers about their age, then this could indicate that further training might be required. Staff were also asked to provide a description of customers who had been challenged in the log with a view to trying to identify anyone who was being refused a sale on a regular basis.

The Police were questioned further about the proposed reduction of the period of suspension to two weeks and the Sub-Committee was advised that, on appeal, the appellant would sometimes argue that, with the passage of time, all the necessary steps had been taken and that suspension was no longer necessary. They were looking instead for a more immediate remedy to the breach by way of the voluntary suspension.

#### **Licence Holder – Co-operative Group Ltd and Members' questions**

Mr Atkinson addressed the Sub-Committee as the representative of the licence holder and, in doing so, indicated his support for the comments made by Mr Savill about the Memorandum of Agreement.

Firstly, Mr Atkinson briefly outlined the Co-op's systems and policies, referring the members of the Sub-Committee to various sections of the Co-op's submission (Appendix D to the report) as he spoke. In particular, he pointed out that all staff received training before they went on the shop floor and that they were all advised of correct operating practices. Specific information was provided to staff about age-related sales and the legal requirements related thereto. There were also regular reminders on this issue, examples of which were set out in Appendix D. In addition, a till prompt dialogue box required the salesperson to enter the estimated age of the customer before proceeding with the sale. Attention was drawn to the Refusals Register and the electronic age related sales report which provided managers with a breakdown of the challenges and information relating to the extent to which training was being put into practice. Mr Atkinson added that, the number of challenges sometimes depended on the demographics of the location of the shop (e.g. city centre or retirement resort).

Mr Atkinson then drew the attention of the Sub-Committee to the new 'Challenge 25' policy which had been introduced by the Co-op as nation-wide policy in June, following staff training in May. This required staff to challenge any customer who appeared to be 25 years old or younger to provide proof of identification if they were purchasing age-restricted products. In response to a question from the Sub-Committee, Mr Atkinson confirmed that a quarter of violent incidents in stores arose as a result of challenging people about their age. He said that it appeared that the short term effect of the introduction of the Challenge 25 policy had been an increase in abuse and violence. However, the hope and expectation was that, as the message spread this would reduce. The company did provide training to deal with these

confrontational situations and further assistance was always available on the premises. In the case of the Maidenbower shop, if the conditions before the Sub-Committee for consideration were to be adopted, then the premises licence holder would themselves be in attendance on Thursday, Friday and Saturday evenings as well. The Sub-Committee asked if there were any particular plans in place when the premises licence holder was not in attendance. Mr Atkinson replied that the arrangements in place were proportionate to the problem. It was confirmed that this was the only off licence in the area.

Members asked why it was felt that the till prompt had not worked on the occasion of the failed test purchase. Mr Atkinson replied that it could have been a matter of judgement or perhaps a lazy staff member. The Sub-Committee asked how these circumstances might be overcome. In response, it was suggested that additional training might be the answer and that also the manager would need to keep a careful eye on the situation.

It was noted that notices advertising the Challenge 25 policy were posted in the store and that the Co-op operated its own ID system on proof of age, the Citizen Card. The policy was for all alcohol products to be placed near the checkout so that it could be closely monitored.

Mr Atkinson then went on to provide the Sub-Committee with details about the employees who had made the underage sales. In the first case, there had been an investigation and the member of staff had been suspended pending a disciplinary hearing, but had subsequently resigned. In the second case, the staff member had received training and the Refusals Register showed that he had refused previous sales. However, an investigation had been carried out, followed by a disciplinary hearing and subsequently he had been dismissed.

Ms Hemmings was then invited by Mr Atkinson to explain to the Sub-Committee what had happened after the second sale in May. This had coincided with the introduction of Challenge 25 and the release of the new training DVD. Members were given the opportunity to view the DVD (which was not opposed by the Police) but felt that they would be satisfied to receive a summary of its contents. They were advised that the DVD contained information about the change in policy involved in the introduction of Challenge 25, processes at the till, staff experiences and consequences for the store if procedures were not followed. Proxy purchase scenarios were addressed, information was provided on how to deal with abusive customers and there were also questions for the staff to answer. New staff would view the DVD as part of induction and existing staff would also receive this training, with a refresher every six months. In response to a question from the Sub-Committee, it was confirmed that training in connection with the DVD would be provided to the Store Manager and then cascaded down through them to the staff.

The Sub-Committee asked if the staff would be made aware of the consequences of the underage sales. It was confirmed that this would be the case in the store itself and also at meetings in the region. The effect of alcohol on children would be discussed and the responsibilities of the store to the community would be highlighted.

Ms Hemmings produced an example of the badge which was worn by staff pointing out the requirement for them to challenge people who appeared to be 25 or younger and the Co-op Citizen Card. She confirmed that, whilst back up was always available from another member of staff, procedures were in place to address concerns of anyone who felt particularly vulnerable.

At this point the Co-op proposed the introduction of new material relating to training, to which the Police raised no objection and so was accepted by the Sub-Committee as

new documentation under Regulation 18. The material was circulated to the Sub-Committee who noted that it consisted of an Age Related Sales Refresher – Picture Cards Answer and Sign Off Sheet.

The Co-op confirmed that it would be splitting its current training package into six modules, dealing with one every two months by way of a refresher.

Mr Atkinson went on to describe a recent meeting between Co-op representatives and Police Community Support Officers (PCSO) in Maidenbower when proposals to co-operate with the officers in various ways were discussed and proposals for more sharing of information were agreed. The next meeting of Co-op representatives with the PCSO's was scheduled for 9 September and these meetings would be ongoing.

The attention of the Sub-Committee was drawn to the fact that the dates for the proposed suspension of the premises licence in the Memorandum of Agreement would need to be revised, should the proposal contained therein be accepted, due to the adjournment of the meeting. It was proposed that the period of suspension should commence as soon as possible after the hearing, if agreed.

The Sub-Committee asked whether, once the conditions were attached, the Police would continue to monitor the premises and were told that, whilst there had not been a further test purchase since May, compliance checks would be carried out. Test purchasing was carried out randomly across the area.

The Sub-Committee then

### **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.

#### **16. Application to Review a Premises Licence – Co-operative Group Ltd, 8, Maidenbower Square, Maidenbower**

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. The Sub Committee decided that the steps set out in the amended memorandum of agreement between the parties were those necessary for the promotion of the licensing objectives, without taking into consideration punitive issues.

### **RESOLVED**

- (1) That the conditions to the premises licence be modified as set out in the Memorandum of Agreement between the two parties, namely
  - (i) That the additional conditions set out in the Appendix to these Minutes be attached to the premises licence for 8, Maidenbower Square;
  - (ii) That annexe 2(1) of the licence be removed;
- (2) To acknowledge the licence holder's voluntary undertaking to suspend the sale of alcohol from the premises for a period of two weeks from 0600 hours

on 26 July 2009 to 2300 hours on 8 August 2009 (these dates having been amended from the original memorandum of agreement due to the adjournment of the hearing on 15 July 2009).

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

The Chair declared the meeting re-open for consideration of business in public session. The Chair asked the Legal Clerk to announce the Sub Committee's decision with regard to the Sussex Police's application for the review of the premises licence at 8, Maidenbower Square to the applicant and the premises licence holder and its reasons for the decision.

In doing so, the Legal Clerk announced that she had advised the Sub-Committee:-

- That any steps proposed should be both necessary and proportionate.
- That a lot of weight should be given to the views of the Police who were experts in the fields of crime and disorder and protecting children from harm, as provided in the Council's statement of policy and in the Secretary of State's guidance issued under Section 182 of the Act.
- That the Sub-Committee should consider whatever action it considered to be necessary for the promotion of the licensing objectives, as set out in paragraph 7 of the report.

This advice had formed the basis of the Sub-Committee's decision.

The Legal Clerk also reported that, in making a decision on the application, the Sub-Committee had placed their trust in the licence holder to implement the necessary changes as agreed by the Sub-Committee.

The Sub-Committee had listened carefully to the information provided by both parties and had acknowledged that the licence holder had taken steps actively to address the situation.

The Sub-Committee had also acknowledged that the licence holder was proposing to take extra steps in addition to the proposals contained in the Memorandum of Agreement, such as the co-operation with the Police Community Support Officers.

## **18. Closure of Meeting**

With the business of the Sub-Committee concluded, the Chair declared the meeting closed at 7.00 p.m.

B J BURGESS  
Chair

**APPENDIX**

**Additional conditions to be attached to the premises licence for 8, Maidenbower Square, Maidenbower**

- (a) A personal licence holder shall be on site at all times between 1600 hours and the closure of the premises on Thursdays, Fridays and Saturdays.
- (b) A refusals register to be kept in which details of all refused sales of alcohol are entered, including a written description of the attempted purchaser. 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 officers or other authorised staff of Sussex Police and trading standards officers.
- (c) Fully documented staff training must be carried out for all staff (in consultation with trading standards and/or Sussex Police) on the prevention of sales to children and refusing sales to intoxicated persons. This training must take place prior to staff serving alcohol. Refresher training must be delivered by management every 2 months. All training records and documentation must be made available to Sussex Police and trading standards upon request.
- (d) A "Challenge 25" policy shall be implemented in the venue with sufficient and suitable posters advertising that policy to be on display at prominent locations within the premises.
- (e) An internal and external CCTV system shall be installed, fully maintained and operated in accordance with police recommendations to a standard acceptable to Sussex Police. Images shall be retained for at least 28 days and except for mechanical breakdown beyond the control of the proprietor, shall be made available upon request to the police. Any breakdown or system failure will be notified to the Sussex Police North Downs Licensing Unit as soon as possible and remedied as soon as practicable.



