

Crawley Borough Council

Minutes of Licensing Sub Committee

23 July 2009 at 7.15 p.m.

Present:

Councillors B J Quinn (Chair), B M Brockwell and J A Singh

Officers Present:

T. Baldock	Group Manager for Food, Licensing and Occupational Health
J Green	Committee Clerk
M Lyons	Licensing Officer
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 E Ebrahim Ms M Hemmings Mr A Hill Ms S Stephens	Barrister for licence holder Regional Manger Store Manager Diligence Manager National Diligence Manager Loss Prevention Officer

19. Minutes

The minutes of the meeting of the Committee held on 14 July, 2009 were approved as a correct record, subject to the correction of the report number to ES/216 in the second paragraph of minute 3. The minutes were then signed by the Chair.

20. Members' Disclosures of Interest

No disclosures of interest were made by Members.

**21. Application to Review a Premises Licence – Co-operative Group Ltd,
1 – 2, Tilgate Parade, Tilgate**

At its meeting on 14 July, 2009, the Sub-Committee had given consideration to an application for the review of the premises licence at 1 -2, Tilgate Parade, Tilgate.

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/216 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 the report.

The Legal Clerk then invited any queries relating to report ES/216 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 deal with the application.

The Application

The application for the review of the premises licence at 1-2, Tilgate Parade 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/216 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 February 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 was reported that a letter in support of the licence holder had been received in response to the consultation process and this was set out in Appendix E to the report.

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 referred to the proposals contained in the Memorandum of Agreement which both parties were inviting the Sub-Committee to agree to. In doing so, Mr Savill indicated that it was necessary to make an amendment to paragraph 3 of the Memorandum as a result of the decision to adjourn the meeting held on 14 July. It was now being proposed by the two parties that the premises licence holder should voluntarily 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.

Mr Savill went on to summarise the action taken by the Police following the first failed test purchase in February. This involved a meeting at Horsham Police Station during which the Store Manager had been issued with a formal written warning and a list of actions to assist in preventing under-age sales. This informal approach had not, however, proved adequate as a second failure had occurred in May and the Police had then decided to act quickly to address the problem.

The application for review had therefore been submitted. However, it was pointed out that this had been drafted before the long and productive meeting which had taken place between representatives of the Police and the Co-op on 12 June 2009. As a result of these discussions, the Memorandum of Agreement had been agreed between the two parties (including the voluntary suspension of the licence for two weeks) and the Police were satisfied that the steps contained in the document were necessary and proportionate to address the problem and in line with their incremental approach to enforcement. Mr Savill went on to say that the fact that the licence holder had been prepared to adopt a partnership approach and by modifying and improving their systems had inspired confidence in the Police. The Sub-Committee were reminded that no measure should be imposed on a punitive basis

The Police considered it to be significant that various policies and procedures would, under the proposals, be enshrined in conditions. The legal consequences for a breach was that it gave rise to a criminal offence and exposed the licence holder to the imposition of a level 5 fine or a prison sentence of up to 6 months upon successful conviction. It was considered by the Police to be to the credit of the management of the Co-op that they were willing to agree to a voluntary suspension and to have the additional conditions attached to their licence and be open to prosecution if a further breach were to occur.

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 by sending a clear message about the serious consequences for the store as a whole of failure to challenge underage customers. A message would also be conveyed to the customers which would help to break the link between the premises and the sale of alcohol to children.

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

Mr Atkinson addressed the Sub-Committee as the representative of the licence holder. 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. He suggested that the systems in place throughout the Co-op were sufficient to prevent a reoccurrence of the problem. In particular, he pointed out that all staff received training before they went on the shop floor, including training on the legal responsibilities of staff in connection with age-related sales. In addition, staff were all advised of correct operating practices. There were also regular reminders on the issue of age-related sales, examples of which were set out in Appendix D. Mr Atkinson then advised the Sub-Committee that a till prompt dialogue box required the salesperson to enter the estimated age of the customer before proceeding with the sale. In response to a question by a Member of the Sub-Committee as to why these systems had failed when the test purchases had taken place, Mr Atkinson indicated that the staff members concerned had made individual errors of judgement.

Concern was expressed by the Sub-Committee about the reliability of staff members in judging the age of customers. Mr Atkinson then drew the attention of the Sub-Committee to the new 'Challenge 25' policy. 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 and provided staff with a margin for error. It was noted that notices advertising the Challenge 25 policy were posted in the store. This policy had been introduced by the Co-op in June, following staff training in May and had not been in place when the two test purchase failures had occurred. It was explained to the Sub-Committee that it was part of the training for the judgement of staff to be tested by showing them pictures and then asking them to estimate the age of the person pictured.

Mr Atkinson then went on to explain that, whenever a member of staff challenged a customer about their age, they were required to record the challenge in the Refusals Register which was kept by the till. In addition, the electronic age-related sales report provided managers with a breakdown of the number of customers served and challenges made by each member of staff. This was a powerful management tool in that the manager could observe the members of staff who were not challenging on a regular basis and initiate further training for those individuals, if necessary. The information provided helped the management to judge the effectiveness of the training. Mr Atkinson added that, the number of challenges sometimes depended on the customer base (with some locations having, on the whole, more mature customers).

In response to a question from the Sub-Committee, it was confirmed that the training took place locally and that there was also a four week probation period. The Sub-Committee was informed that fourteen staff in total worked at the store, that their ages ranged between 18 and 62 and that staff turnover was not high. However, the respective staff involved in the failed test purchases had not been employed by the store for very long.

Members of the Sub-Committee expressed concern about the extent of the training documentation which had been circulated to them and queried whether staff would be easily able to assimilate the contents of such bulky paperwork. However, they were advised that the representations (Appendix D) had been put together for the purposes of the hearing only and that the training documents provided for each employee were only part of that document and so much easier for them to digest.

The Sub-Committee asked the Police whether the test purchases had been undertaken in response to complaints from residents. Mr Savill indicated that the Police had no specific intelligence with regard to the Tilgate store. However, their operation had been launched in response to problems in the wider area. In reply to a further question, the Police confirmed that there were other licensed premises in the vicinity and no other failures had been recorded at any nearby premises. The Police

were not aware of any recent complaints having been received and would continue to monitor the situation.

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, it had been established that the employee had been trained and the Refusals Register confirmed that he had been putting his training into practice. He had been retrained and retested by the Store Manager and Training Officer 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. Discussions had taken place about the consequences of underage sales for the store and for individuals. The effect of alcohol on children had also been discussed together with the responsibilities of the store to the community. Members of the Sub-Committee were given the opportunity to view the DVD but, instead, received a summary of its contents. The DVD contained information about the change in policy involved in the introduction of Challenge 25 and the reasons for it, processes at the till and staff experiences. Proxy purchase scenarios were addressed and role play had been introduced as part of the training to increase the confidence of staff members in various scenarios. Information was provided on how to deal with abusive customers and there were also questions for the staff to answer before training was signed off. The Sub-Committee was informed that the Co-op operated its own ID system on proof of age, the Citizen Card.

At this point the Co-op proposed the introduction of new material under Regulation 18 of The Licensing Act 2003 (Hearings) Regulations 2005 relating to training, to which the Police raised no objection. The material was circulated to the Sub-Committee.

Mr Atkinson went on to describe a recent meeting with Police Community Support Officers (PCSO) in Tilgate when issues of concern were discussed (including the possibility of approaching the Council with a proposal for removing the wall outside of the premises where people tended to gather) and proposals to co-operate with the officers in various ways were agreed. The next meeting with the PCSO's was scheduled for 9 September and these would be ongoing.

In response to a question from the Sub-Committee, Mr Boyle (Police Licensing Officer) confirmed that the training material produced by the Co-op was amongst the best which the Police had seen.

The Sub-Committee expressed continued concern that the message about the seriousness of underage sales was not getting through and asked why a two week period was considered sufficient to break the link. In response, Mr Savill referred back to the review application, in which the Police had requested that the Sub-Committee consider suspending the licence for a period of six weeks. However, this period had been suggested with the possible scenario of the non-co-operation of the licence holder in mind. It was felt by the Police that the period of suspension should now be considered against the background of the number of baskets going through the tills and the steps already taken by the licence holder to address the problems. The problem at the store was not considered to be on-going.

Mr Savill pointed out to the Sub-Committee that, at their meeting in June, the Police had been provided with detailed information about the implementation of changes by

the Co-op to prevent a recurrence of underage sales. The Police considered it significant that the Co-op were prepared voluntarily to enshrine various policies and procedures in conditions so that the licence was tailored to the individual premises. The Police felt that the steps proposed in the Memorandum of Agreement, which included the voluntary suspension of the licence for two weeks, were necessary and proportionate to promote the licensing objectives of the prevention of crime and disorder and the protection of children from harm and that the proposals were in line with the Police's incremental approach to enforcement .

The Sub-Committee once again questioned the Police about what they felt would be different as a result of the meeting on 12 June. Mr Savill reiterated that, if the policies were enshrined in conditions as proposed, there would be serious legal consequences if the conditions were to be breached. However, only the local authority had the power to attach the additional conditions to the licence. He went on to say that the staff and the management were all aware that a breach of the conditions could constitute a criminal offence and Mr Atkinson confirmed that this was substantially more serious than a breach of policy.

Mr Atkinson went on to say that the Co-op had taken the two failed test purchases very seriously as had been demonstrated by way that they had dealt with the staff concerned and by offering for the additional conditions to be attached to their licence.

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. In the event of an appeal being lodged within that 21 day period, the measures would not be implemented until that appeal had been disposed of which could take a number of months. 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. The Police were, therefore, seeking an early remedy to address the situation in this case.

Mr Atkinson indicated that he understood the concerns of the Sub-Committee about getting the message across but asked them to make the distinction between their general concerns and the merits of this particular application which they were asked to consider in the light of the steps that had been taken in response to the issues.

The Police were asked by the Sub-Committee whether the proposed reduction of the voluntary suspension of the licence to two weeks reflected the fact that training was already on-going. In response, Mr Savill indicated that the voluntary suspension was not triggered by the need for training. Instead, it was suggested that the suspension would have a deterrent effect and would send a clear message to the management. The alcohol would be physically removed from the shelves and appropriate signs would be displayed in the store about the suspension of the licence for the safety of the staff. This was felt to be necessary because 25% of cases of staff abuse were as a result of customers being asked for ID.

Mr Atkinson suggested that the voluntary two week suspension would clearly break the link between the premises and the sale of alcohol to children. Mr Savill also felt that the suspension would, in future, assist the staff in that it would demonstrate that they were not just following 'jobsworth' tactics when asking for identification.

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.

22. Application to Review a Premises Licence – Co-operative Group Ltd, 1 – 2, Tilgate Parade, Tilgate

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. The Sub Committee determined the steps 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 1-2, Tilgate Parade, Tilgate;
 - (ii) That annexe 2(1) of the licence be removed;
- (2) That the proposal contained in the Memorandum of Agreement for the voluntary suspension of the premises licence for a period of two weeks be not agreed; and that, instead, the licence be suspended for a three week period.
- (3) The above are steps which are both necessary and proportionate to promote the licensing objectives.

23. 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 1 – 2, Tilgate Parade, Tilgate to the applicant and the premises licence holder

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

- That any steps proposed should be both necessary and proportionate, but not punitive.
- 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 felt that breaking the link between the premises and the sale of alcohol to children was critical. The Sub-Committee considered the purpose of breaking the link to be two-fold, namely to break the pattern of those underage persons who might seek to purchase alcohol from the store and also to reinforce in the minds of both the licence holder and the staff the need to make the break and to be a deterrent.

The Sub-Committee had listened carefully to the information provided by both parties and had given credit to the licence holder for the training put in place and for co-operating with the Police to address the situation. The Members had also applied their local knowledge of Tilgate Parade to their consideration of the application.

Whilst the Sub-Committee had agreed with the parties that the modification of the conditions as proposed in the Memorandum of Agreement was necessary to promote the licensing objectives, it had decided that the suspension of the licence for two weeks would be insufficient to break the link as described. Instead, the Sub-Committee had considered a three week suspension of the licence to be both proportionate and necessary.

24. Closure of Meeting

With the business of the Sub-Committee concluded, the Chair declared the meeting closed at 9.35 p.m.

B J QUINN
Chair

APPENDIX

**Additional conditions to be attached to the premises licence for 1-2, Tilgate Parade,
Tilgate**

- (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;

