

Crawley Borough Council

Minutes of Licensing Sub Committee

2 September 2009 at 10.30 a.m.

Present:

Councillors B K Blake, L Gilroy and D J Shreeves

Officers Present:

Tony Baldock	Group Manager for Food, Licensing and Occupational Health
Julie Green	Committee Clerk
Mez Matthews	Democratic Services Officer (Observing)
Sharon Rana	Solicitor (Observing)
Astrid Williams	Legal Clerk

Also in Attendance:

Applicant	Jean Irving – Force Licensing Manager
	Sgt Andrew Bradford – Sussex Police
	Chief Inspector Steve Curry - Crawley District Commander, Sussex Police
	Mr Peter Savill – Barrister for Sussex Police
	Inspector Matt Webb – Sussex Police
Licence Holder's Representatives	Ms Clare Johnson – Solicitor
	Mr David Sharp – Enterprise Inns
Responsible Authority	Rob Burns – Environmental Protection Officer Crawley Borough Council
Interested Parties	Mr Sean Reynolds - Designated Premises Supervisor (DPS), accompanied by Mr Daniel Alton - Doorman
	Mr Ray Duggan – Customer accompanied by his guide, Mr Perry Mack.

25. Appointment of Chair

RESOLVED

That Councillor B K Blake be appointed Chair for the meeting.

26. Members' Disclosure of Interests

The following disclosures of interests were made by Members:-

Member	Minute Number	Subject	Nature of Disclosure
Councillor D J Shreeves	Minute 27 and 28	Review of the premises licence for the Rose and Crown, Ifield Road, West Green	Personal non-prejudicial – Personal licence holder and licensing trainer

27. Application for Review of the Premises Licence – Rose and Crown, 61 - 63, Ifield Road, West Green

The Sub-Committee considered an application by Sussex Police to review the premises licence held by Enterprise Inns plc ("the licence holder") in respect of the Rose and Crown, 61 – 63, Ifield Road, West Green, Crawley ("the premises").

Following the introduction of those present at the meeting, the Legal Clerk asked whether there were any applications for the introduction of new material. In response, Mr Reynolds referred the Sub-Committee to the sixth paragraph of page 4 of his letter where mention had been made of a letter from the mother of the child the subject of an incident. This letter had not been enclosed with his original document and, therefore, the permission of the Sub-Committee and the agreement of the parties was sought for this to be introduced as new material. No objection was raised to this proposal.

Mr Burns also indicated that, following discussions with Mr Reynolds and with the agreement of the licence holder, he was proposing new conditions to be attached to the licence (subject to any decision made by the Sub-Committee). The terms of the conditions were set out in e mail correspondence which, with the permission of the Sub-Committee and the other parties, he wished to introduce as new material. Once again, no objection was raised to the new material.

Report ES/219 of the Council's Head of Environmental Services was presented by Tony Baldock for Crawley Borough Council.

The Application

The Sub-Committee was advised that on 8 July 2009, Sussex Police as a 'responsible authority' had submitted an application for a review of the premises licence in respect of the premises known as the Rose and Crown, Ifield Road, West Green. A copy of the application was set out in Appendix A to report ES/219 of the Head of Environmental Services. 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 had been granted to Enterprise Inns plc and that Mr Sean Reynolds was the designated premises supervisor. Sussex Police had later provided further papers comprising of witness statements and other documents in support of the review application which were set out in Appendix B to the report.

The Sub-Committee also had before it a copy of the premises licence (Appendix C) which related to the sale by retail of alcohol for consumption on and off the premises together with certain regulated entertainment and the provision of late night refreshments. In addition, a copy of a file note from Mr Burns relating to the removal of public notices concerning the review of the licence from within the premises was submitted as Appendix D.

In addition, a copy of a representation received from Mr Rob Burns on behalf of the Council as the responsible authority as provided for in Section 13(e) of the Licensing Act 2003 on the grounds of prevention of public nuisance was attached to the report as Appendix E. However, this would now need to be considered in the light of the e mail submitted by Mr Burns as new material.

Representations received from Mr Reynolds were set out in Appendix F to the report and representations from other interested parties in support of the premises were attached as Appendices G – L. Certain information considered by the Council to be personal information had been redacted from these documents

The report set out matters which the Sub-Committee had to take into consideration when dealing with the application and details of the review process.

The Applicant

Mr Savill addressed the Sub-Committee as the representative of the applicant, Sussex Police, and started by saying that the Police felt that this was a very serious case, being one of the worst in the Crawley area. In these circumstances, the Sub-Committee was asked to give serious consideration to the revocation of the licence which was suggested was necessary and proportionate in promoting the licensing objectives.

The Sub-Committee was asked to consider this request in the context of the following matters. The licence holder had received a number of warnings, starting with the Closure Order under Section 161 of the Licensing Act 2003 served on the premises on 28 December 2006 following extreme disorder. It was pointed out that, whilst Mr Reynolds was not the designated premises supervisor at that time, Enterprise Inns was the licence holder. The Order had been extended to 30 December 2006 and ratified by Crawley Magistrates. The premises had remained closed until a hearing of the Sub-Committee on 19 January 2007. This, in the opinion of the Police should have put the licence holder on notice that the management of the pub needed to be improved. However, the new DPS had proved to be equally inadequate and problems relating to crime and disorder persisted.

The licence holder might also have concluded that there were problems at the pub when the Chairman of Crawley and Gatwick Business Watch wrote to Mr Reynolds on 10 July 2008. This letter suggested that there was evidence of persons on a Pubwatch exclusion scheme socialising in the Rose and Crown on occasions. Mr Savill said this would have been a potential breach of the condition on the premises licence which required the premises to 'actively participate in and support any local Pubwatch scheme'.

Then, due to a number of incidents either in the premises or in the vicinity of the Rose and Crown, an action plan was put in place by the DPS and Sussex Police with a view to reducing crime and disorder at the premises on 24 September 2008.

This had been followed by a failed test purchase on 20 February 2009, after which the DPS had been issued with a formal written warning with regard to the sale of alcohol to children. However, on 2 May, 2009, a further test purchase failure had occurred.

Mr Savill submitted to the Sub-Committee that applications for the review of a premises licence were only made in the most serious cases. He drew attention to paragraph 11.25 of the Guidance which indicated that the Secretary of State considered that certain criminal activity should be treated particularly seriously. Such activity included the use of licensed premises for the purchase and consumption of alcohol by minors. In the case of the Rose and Crown, this had occurred on two occasions. Mr Savill went on to quote paragraph 11.26 of the Guidance which suggested that local authorities should use the review procedures effectively to deter such activities and crime and that, where reviews arose and the licensing authority determined that the crime prevention objective was being undermined, it was expected that revocation of the licence – even in the first instance – should be seriously considered.

Mr Savill drew attention to the fact that the same member of staff had been involved in the case of both failed test purchases and that the person concerned was the subject of a current Habitual Drunk Order issued by the Magistrates. He questioned the fact that the DPS had seen fit to employ such a person behind the bar where he would be selling alcohol to the public and asked the Sub-Committee to consider what conclusions might be drawn from the fact that the test purchase failure had been repeated.

Mr Savill suggested that the premises had received too many warnings and were fundamentally poorly run. He referred to the issues raised by the local residents through the Police Community Support Officer and also other incidents on 10 March 2009, 20 March 2009 and 21 March 2009 (as described in the application form) when the Police had been called to deal with very drunk people either in the premises or in the vicinity. He also pointed out that the same people featured regularly in the disturbances but that they were still allowed to return to the premises and drink there.

Mr Savill invited the Sub-Committee, on the evidence before them, to consider revoking the premises licence for the Rose and Crown which he suggested was necessary and proportionate in the circumstances. However, he asked that, if the Sub-Committee were not minded to go down that route, they should consider the suspension of the licence for a period of three months and the removal of the DPS who, he said the Police contended, was incapable of running the business properly. It was felt that a three month suspension would enable new management to bed-in and for staff training to take place. In addition, the Police were of the view that this would break the link between the premises and the type of behaviour being displayed by clientele currently frequenting the premises.

The Licence Holder

Ms Johnson addressed the Sub-Committee as the representative of the licence holder, Enterprise Inns Plc, and suggested that there was a clear distinction between the licence holder and the designated premises supervisor (DPS), Mr Reynolds. Ms Johnson advised the Sub-Committee that The Rose and Crown was a tenanted public house, and that Enterprise Inns were the landlord. The pub was leased to Mr Reynolds as DPS, and as a result Enterprise Inns did not have any management responsibilities.

Ms Johnson stated that the Police had made a fundamental error, given the difference between the licence holder and the DPS. She stated that the Police contended that they had given the licence holder a number of warnings, which was incorrect. All of these warnings had been given to the DPS. The only warning that the licence holder had received was the Pubwatch letter which was now over a year old and that, following a meeting between Mr Sharp and Mr Reynolds, action had been taken. Ms Johnson suggested that it would be unreasonable to revoke the licence given that Enterprise Inns had not been made aware of the escalating situation.

Ms Johnson advised the Sub-Committee that Enterprise Inns had not been the licence holder in 2006 when the Closure Notice was served, that had been Mr Bond, and therefore could not be held responsible for the actions of the previous licence holder or DPS. Ms Johnson noted that following that review one of the conditions on the licence was that a new DPS was to be appointed who was subject to the Police's prior approval, and that Mr Reynolds was that DPS.

Ms Johnson maintained that Enterprise Inns had not been informed of the two test purchase failures nor had been provided with a copy of the Police's formal written warning, and that a representative from Enterprise Inns had not been invited to attend the meeting on 24 September 2008 to discuss the implementation of an action plan. Ms Johnson made the point that the member of bar staff responsible for both the failed test purchases had been employed by the DPS and not Enterprise Inns. Ms Johnson submitted that there was conflicting information within the evidence regarding the ages of the test purchasers. She submitted that nobody was condoning the sale of alcohol to underage persons but what had happened was the responsibility of the management and due to a clear lack of training.

Ms Johnson said that Enterprise Inns were aware that the DPS must be acceptable to the Police, and maintained that the Police had agreed to the appointment of Mr Reynolds. She said that Enterprise Inns had not been informed by the Police that Mr Reynolds was not acceptable to them.

Ms Johnson stated that Mr Reynolds had a substantial lease and should have taken transfer of the premises licence, but this had not happened. She said that he had failed to comply with the lease of the premises as he had not operated the pub in accordance with the licence. As a result, Enterprise Inns were taking appropriate action and had issued possession proceedings against Mr Reynolds and the first hearing was on 21 September 2009. Ms Johnson submitted that Enterprise Inns had therefore, in the circumstances, taken appropriate action.

Ms Johnson drew the Sub-Committee's attention to the fact that all the letters received from local residents regarding the review of the licence had made positive comments about the pub, and it was suggested that had local residents been of the opinion that the licence should be revoked, letters stating that opinion would have been received.

Ms Johnson maintained that Mr Reynolds, and not Enterprise Inns, was responsible for the problems associated with the Rose and Crown. Ms Johnson suggested that the current situation did not stem from the premises, but rather from the way in which the pub was run. The pub had been in existence for 75 years and problems had only arisen recently.

Ms Johnson informed the Sub-Committee that the proposal to increase the number of Door Supervisors would financially cripple the business and suggested that the condition be amended so that when entertainment took place on the premises Door Supervisors be employed at a ratio of 1:100 from 1900 hours until 30 minutes after closing time.

Ms Johnson drew the Sub-Committee's attention to the fact that four of the five reported incidents (identified within the Police's supporting statement) had occurred during the day and it was argued that the evidence did not suggest that it would be necessary to modify the premises hours to permit no licensable activity after 2300 hours, and no authorised supply of alcohol after 2230 hours on any day. Ms Johnson submitted that the number of incidents reported did not justify a revocation of the licence. Ms Johnson advised that Enterprise Inns had no objection to the other conditions proposed by the Police.

Ms Johnson noted that, on average, there were 2 ½ incidents per month in respect of this premises. She submitted that it was neither necessary nor proportionate to revoke the premises licence. As an alternative, Ms Johnson stated that Enterprise Inns had no objection to the licence being suspended for three months and had no problem with the removal of Mr Reynolds as DPS and the new conditions proposed by Mr Burns. Ms Johnson suggested that this course of action would provide Enterprise Inns with the opportunity to clear out the unsuitable clientele and create a positive shift in the situation.

The Designated Premises Supervisor

Firstly, Mr Reynolds (the DPS) contested the suggestion made on behalf of the licence holder that it had not been aware of the situation at the Rose and Crown. He indicated that he had had numerous meetings with Mr Sharp and had informed him of the failed test purchases and of the planned action.

Mr Reynolds also made reference to the meeting on 1 May 2009 between himself and DC Oliver of the Police Child Protection Unit regarding a 14 year old child who had allegedly been at the premises on a frequent basis against the wishes of her mother. Mr Reynolds advised the Sub-Committee that the young person was a friend of his daughter and that she had had her mother's permission to stay over at the premises and the letter he provided to the Sub-Committee from the young person's mother proved this (see above). He indicated that he had not been advised that she had been taken into care.

Mr Reynolds went on to advise the Sub-Committee that he had worked hard with the Police to make improvements by way of the action plan which was meant to be implemented over a three month period. However, the requirements of the action plan had all be complied with within one and a half months, and signed off early.

The DPS expressed his disappointment about the two failed test purchases which he indicated he had discussed with Sgt. Bradford.

Mr Reynolds then pointed out that the premises were opposite the Crawley Foyer and that the pub often got the blame when trouble was caused by its occupants. In addressing the comments made by a resident to the Police Community Support Officer about the area resembling 'downtown Baghdad', Mr Reynolds advised the Sub-Committee that Police vehicles were only present on the pub's premises when called or when dealing with an incident in the Foyer.

The DPS stressed that he had worked hard, in conjunction with the Police, to reduce problems associated with the premises. No drugs were allowed and the 'Challenge 25' policy had been introduced. This required staff to challenge any person who appeared to be 25 years old or younger to provide proof of identification and provided staff with a margin for error.

Mr Reynolds then referred to the allegation contained in the application that he had been involved in an altercation at a nearby licensed premises in October 2008. He advised the Sub-Committee that he had, in fact, been the subject of the attack and had not assaulted the other customer involved.

Mr Reynolds also referred to the letter from Crawley and Gatwick Business Watch suggesting that persons on a Pubwatch exclusion scheme had been socialising in the Rose and Crown. The person concerned had been employed to undertake building work at the pub and Mr Reynolds told the Sub-Committee that, having spoken with Pubwatch, it had been agreed to pilot these arrangements with a view to establishing whether the excluded person had changed his ways. Mr Reynolds reported that the Pubwatch exclusion had since been removed.

With regard to the member of staff who was the subject of a Habitual Drunk Order, Mr Reynolds advised the Sub-Committee that he had employed him with a view to helping him through a difficult time in his life. He had not been in any trouble with the Police and, in the case of the second test purchase, Mr Reynolds defended him by suggesting that the Police had failed to produce evidence at the time as to the age of the purchaser and that she did not appear to him to be underage and had refused to produce ID when it had been requested. Mr Reynolds indicated that he had spoken to Chris Boyle of Sussex Police when he had been issued with the warning letter and had asked him about staff training relating to age awareness. However, Mr Boyle had advised him that he was not permitted to speak to Mr Reynolds on this subject.

Mr Reynolds concluded by saying that no serious incidents had occurred at the premises and that there had been very little trouble there. He asked the Sub-Committee to look at the material which was before them in connection with the various incidents.

The Sub-Committee then questioned the DPS in connection with under age drinking. Mr Reynolds confirmed that he now tested his own systems for identifying under age drinkers.

In response to a further question from the Sub-Committee, Mr Reynolds indicated that other personal licence holders, including his wife, were available to cover for him whenever he was absent from the premises and that they had all received training. There were three personal licence holders and the Head Doorman also had extensive bar experience and oversaw the bar and ID checks on such occasions.

Mr Reynolds advised the Sub-Committee that a list was maintained behind the bar of who was able to sell alcohol. He also indicated that the Refusals Register (sales) was maintained on a laptop behind the bar and that a manual log was also kept of refusals of entry to the premises.

Mr Reynolds was asked about the Challenge 25 policy which had been introduced since the last failed test purchase and he advised the Sub-Committee that customers in this age range were asked for a driving licence, passport or other form of ID containing an official photograph and the date of birth.

Finally, Mr Reynolds made the point that running a pub was not easy, especially when it was losing money. It had not been his intention to fall foul of the licensing legislation. The first failed test purchase had been a genuine error and, in the second case, he repeated that the young lady had appeared to him to be 21 years plus and would have himself sold her alcohol, and that it could be very hard to determine a young person's age.

Interested Party

Mr Duggan had submitted a letter of support of the licensee and took the opportunity to address the Sub-Committee.

He informed the Sub-Committee that he had been a customer for between eighteen months and two years. Mr Duggan was registered as blind and so he told the Sub-Committee that he would not have used the Rose and Crown if he had felt threatened in any way. He did not feel in a position to argue against the references made to various incidents but he confirmed that he had always been treated well and that any arguments which had occurred had been dealt with properly.

Mr Duggan had concluded by saying that he would carry on using the pub if allowed to do so and that he would be happy to recommend it to others.

Responsible authorities

Mr Burns, Senior Environmental Protection Officer, addressed the Sub-Committee on behalf of the Council as a responsible authority (being an officer of the local authority by which statutory functions were exercisable in the Borough of Crawley in relation to minimising or preventing the risk of pollution of the environment or of harm to human health). He reported that agreement had been reached with the premises licence holder as to additional conditions to be attached to the licence, should it not be revoked. These conditions addressed the concerns raised in his letter of objection.

Questions

In response to a question from the Sub-Committee, Mr Reynolds confirmed that there was a separate entrance to the premises which meant that his daughter's friends did not need to walk through the bar.

Mr Reynolds was asked what he envisaged to be the way forward, given the seriousness of the situation. Mr Reynolds indicated that he had tried to work with the Police to make changes to the way that the pub was run. He had installed noise insulation, although more customers seemed to congregate outside than was previously the case due to the smoking ban. He had also introduced the 'Challenge 25' policy and did not allow any trouble in the pub.

Mr Reynolds was asked whether the Head Doorman was SIA (Security Industry Authority) registered and he confirmed that this was the case. He also pointed out that the financial implications of the condition requiring two doormen on Friday and Saturday had led to early closures (9.00p.m.) on occasions.

In response to a question from the Sub-Committee, Mr Reynolds advised that live music was played only once a month and that he had tried to work closely with neighbours with a view to alleviating any problems. However, there had been no response to the two letters he had sent local residents asking them to share any problems with him over a coffee session.

Mr Reynolds advised that there were three staff employed at the Rose and Crown plus one part-time employee and that, on a monthly basis, they sat down to discuss any problems they might have experienced.

Mr Savill was then given permission to cross-examine the licence holder.

Enterprise Inns were asked by Mr Savill when they had taken over the licence. In response, they indicated that this had been in about January, 2007 They indicated that, as leaseholder, they had been aware of the Closure Order and associated proceedings. However, this had been a licensing matter and at the time Mr Bond had been the licence holder. It had been an additional condition of the licence that the appointment of the new DPS should have the prior approval of Sussex Police and Mr Reynolds' appointment had received such approval.

Mr Savill asked the premises licence holder what steps had been taken to check on how the Rose and Crown was being run. He was advised that contact was made by Mr Sharp on a monthly basis. Mr Sharp was then asked whether problems had been discussed and was advised that the issues brought to light by Crawley and Gatwick Business Watch had been the subject of discussion as well as problems arising as a result of the location of the premises. Enterprise Inns indicated that they had first become aware of the two failed test purchases on receipt of the notice of the application for a review of the licence. Mr Sharp had, in the past, spoken to Mr Boyle of Sussex Police but not on issues relating to the failed test purchases

Mr Savill drew attention to the fact that Enterprise Inns representatives had stated that there was a hearing of the possession proceedings being brought by Enterprise Inns against Mr Reynolds on 21 September 2009 and asked whether they were being contested. Ms Johnson stated that she was unaware of whether the proceedings would be contested.

Mr Savill asked whether there had been an investigation by Enterprise Inns into any of the allegations and was advised that Mr Sharp had gone through every aspect with Mr Reynolds. They went on to say that, not having been present, Enterprise Inns had to take a neutral stance in respect of the allegations, although Mr Sharp did not have any reason to disbelieve a lot of what was alleged by the Police.

Mr Savill asked Enterprise Inns' representatives whether there was a formal arrangement whereby the DPS must notify the premises licence holder of problems. In response, Mrs Johnson stated that the DPS was only required to observe the terms of the lease, otherwise possession proceedings were likely to ensue, and that there was no onus on him to inform Enterprise Inns, other than as landlord. In effect, the tenant was operating his own business.

The Sub-Committee was informed that Enterprise Inns had, in fact, expected the premises licence to have been transferred to Mr Reynolds. However, as a result of an administrative error, this had not occurred and the licence therefore remained with them.

Mr Savill was then given permission to cross-examine Mr Reynolds.

Mr Savill asked Mr Reynolds about the Refusals Register which was held on a laptop. Mr Reynolds confirmed that this information was also entered in a day to day diary but that he did not have this information available at the meeting as he did not see it would be relevant. In answer to Mr Savill's question as to whether he had brought his training records with him to the hearing, Mr Reynolds said he had not brought these to the hearing either.

Mr Reynolds was asked when he had introduced changes to the way that the premises were run. He replied that, following the first failed test purchase, he had spoken to the member of staff concerned and stressed the importance of establishing that customers were old enough to purchase alcohol. After the second failed test purchase, the 'Challenge 25' policy had been introduced.

Mr Reynolds' attention was drawn to the record of the interview on page B30 of the report and was asked to explain why the staff member had indicated that the age of the test purchasers were entered as 'Over 18 – appeared to be over 21'. Mr Reynolds indicated that his interpretation of this answer was that, whilst the staff member had been of the view that the purchaser appeared to be over 21, he was making the point that, in his view, they were definitely over the legal age limit of 18.

Mr Savill raised the Habitual Drunk Order which had been imposed on the member of staff involved in the two failed test purchases. Mr Reynolds in reply said that the staff member was restricted by the terms of the order from purchasing or obtaining alcohol. He lived at the premises but did not drink there. He had obtained medical help and was now sober and no longer reliant on alcohol. There was nothing in the Order which prevented him from serving behind the bar. Mr Reynolds was asked if he did not see a problem with employing such a person and replied that he was only trying to earn a living and he did not see it as a problem.

In answer to Mr Savill's question as to when he had told Mr Sharp of the two failed test purchases, Mr Reynolds said that he had discussed the first incident at a meeting with Mr Sharp which had taken place in February/March. He admitted that he had not advised Mr Sharp of the second failed purchase.

Reference was then made by Mr Savill to the incident which had occurred on 20 March 2009 and to the female customer who had been assaulted on that occasion who had, on that day, completed a three month ban. Mr Reynolds indicated that the customer concerned was not particularly drunk, having only had one drink and went on to say that a Police Officer who was present at the time and had said that the situation had been well handled. It was pointed out that no statements had been taken from the doorstaff by the Police on that occasion. He added that the customer concerned had subsequently been banned from the Rose and Crown for life.

Mr Savill asked Mr Reynolds why, on 21 March 2009, the extremely drunk person was in the premises. Mr Reynolds replied that the person concerned had been walking past the premises when he had seen his partner's son, who had broken bail, in the pub. The Police had been called when a row had erupted and the customer had refused to leave when asked. He added that, on another occasion, when this particular person had been causing problems in Tilgate, the Police had brought him back to the premises and had asked Mr Reynolds to look after him.

Mr Savill then referred to page F3 of Mr Reynolds' representations and, in response to comments made in the first paragraph of that page, pointed out that police cadets were not, in fact, paid for making test purchases and that they were only provided with the cash to make the purchase. Mr Reynolds expressed the view that he felt it was very irresponsible of the Police to use cadets in this way. However, Mr Savill reminded him that there was specific provision in the Licensing Act which allowed for test purchases by young people.

Mr Savill asked Mr Reynolds if Enterprise Inns' possession proceedings against him would be contested to which Mr Reynolds replied that the proceedings related purely to financial matters and had nothing to do with the management of the premises. He indicated that he would be contesting the proceedings. He went on to comment on the stance being taken at the meeting by the premises licence holder. He said he felt that he had not been offered any help by Enterprise Inns even though he had invested his own money in double glazing the premises. He had also thought that the premises licence was in the process of being transferred to him and that he would receive a copy in due course.

Closing comments from the premises licence holder

Enterprise Inns clarified that a possession order was being sought against Mr Reynolds in response to his failure to comply with the conditions of the licence as well as financial issues.

The Sub-Committee was advised that Mr Sharp had been in Peacehaven and Brighton on 10 March 2009 and, therefore, he had not been involved in discussions relating to this issue on that date.

Ms Johnson confirmed that the premises licence holder had no knowledge of the failed test purchases and went on to say that she was concerned that the Police had failed to produce photographs of the test purchasers. There had also been inconsistencies in the Police evidence which, on occasion, had referred to them both as being fifteen years old (page B3) and in another case mentioned that one was fifteen and the other sixteen (page B1).

Ms Johnson indicated that the premises licence holder wished to see the licence preserved in a form that would be operable by a tenant and that the existing conditions would need to be reviewed.

Ms Johnson then referred the Sub-Committee to a recent case (Hall & Woodhouse Ltd v Poole Borough Council 2009) where the freeholder of the premises was the licence holder but the premises were being run by tenants who had breached the conditions of the licence. It was held that the landlords business was distinguishable from that of the tenant and that the landlord could not be held liable for the criminal acts of the tenant. Ms Johnson submitted that the principle established in that case also applied to the situation relating to the Rose and Crown.

The attention of the Sub-Committee was drawn to the Guidance which stressed that any action taken to ensure the promotion of the licensing objectives must not be punitive. If the Sub-Committee could be satisfied that the premises could be operated, with restrictions, then they were asked not to close down these premises which had been in existence for seventy five years.

Closing comments from the applicant

Mr Savill submitted that the Hall & Woodhouse Ltd v Poole Borough Council case had no bearing on the circumstances relating to the review of the premises licence of the Rose and Crown.

Mr Savill indicated that no investigations had been carried out by Enterprise Inns and that they appeared to accept the Police's case.

He suggested that the task before the Sub-Committee was to determine whether the licensing objectives were being promoted and, if the conclusion were to be reached that the objectives were being undermined, then to decide what a necessary and proportionate remedy might be. Reference was made to paragraph 11.23 of the Guidance in this respect.

In response to the request to amend the condition relating to door supervisors, Mr Savill suggested that, if the Sub-Committee was minded not to revoke the licence, then this was not the time to take a more lenient approach. It was always open to the licence holder to apply for a variation of the licence at some future date.

He responded to the issues raised by Ms Johnson relating to the unavailability of the photographs of the test purchasers by saying that this was the first time that the Police

had been asked for these documents and that a copy of the birth certificate was normally quite adequate at a review. In any event, the first fixed penalty notice had been accepted.

Mr Savill drew attention to the complaints about the premises which had been reported to the Police Community Support Officer. In doing so, he concluded by saying that there appeared to be a serious breakdown in the relationship between the premises licence holder and the DPS who were clearly in dispute. In all the circumstances, he therefore asked the Sub-Committee to consider revoking the licence.

Closing comments from the Designated Premises Supervisor

Mr Reynolds concluded by saying that he had been running the premises as lawfully as possible. He admitted that mistakes had been made but advised the Sub-Committee that these had been rectified to the best of his ability.

He mentioned once again the fact that he had attempted to resolve any problems that the local residents might have by means of an invitation to discuss any issues at a coffee session but with no response.

Mr Reynolds also addressed issues which had been raised about flytipping in the car park. He indicated that the materials concerned were ballast and shingle for re-sculpturing the garden.

He added that, if there was a problem with the pub, he would have expected letters to have been submitted on these lines by local residents but this had not been the case.

Finally, Mr Reynolds made the point that, whilst he and the licence holder appeared to be at loggerheads, the Rose and Crown was being operated in accordance with the law.

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.

In agreeing the above resolution, the Chairman announced that the meeting would not re-open for consideration of business in public session until 2.00p.m. or later.

28. Application for Review of the Premises Licence – Rose and Crown, 61 - 63, Ifield Road, West Green

The Sub Committee gave further consideration to the application and to the matters raised at the meeting. The Sub Committee determined the steps considered to be necessary and proportionate for the promotion of the licensing objectives, without taking into consideration punitive issues.

RESOLVED

1. That Mr Reynolds be removed as Designated Premises Supervisor from the licence.

2. That the premises licence be suspended for a period of 3 months.
3. That the following modifications be made to the licence conditions:-
 - (a) A new condition to be added 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”.
 - (b) That the 5 conditions set out in the email between Clare Johnson and Robert Burns dated 26 August 2009 as circulated be added as new conditions to the licence, as follows:
 - “Regulated entertainment shall not take place unless a noise limiting device is installed following which all performances of regulated entertainment shall be controlled by the noise limiting device. In the event that a noise limiting device is installed it shall be set and maintained at a level agreed by an authorised officer of the Licensing Authority. The operational panel of the noise limiting device shall be secured and the noise limiter settings shall not be altered without the prior agreement from an Authorised Officer from the Licensing Authority.”
 - “Performances of live music shall occur no more than once per calendar month.”
 - “Performances of recorded music, dance and anything of a similar description (including karaoke) shall occur no more than once in any 7 day period.”
 - “On at least two occasions during each performance of regulated entertainment the Premises Supervisor shall check the noise levels at the boundary of nearby noise sensitive premises to ensure that they are not unreasonable.”
 - “All external doors and windows shall be kept shut at all times that regulated entertainment is taking place except as required for access and escape in emergency. (N.B. emergency exits must not be locked)”.
 - (c) That condition marked C on page A6 of the report be added as a new condition to the licence as follows:
 - “The DPS or a Personal Licence Holder shall be present in the premises at all hours the bar is open, and shall be present in the public areas from 1800 hours to close daily”.
 - (d) That condition marked D on page A6 of the report be added as a new condition to the licence as follows:
 - “A refusals register to be maintained, in which details of all refused sales of alcohol are entered. This register to be checked and signed by the DPS weekly and feedback given to staff on the details in the register. This register is to be made available upon request to police employees and Trading Standards.”

- (e) That condition marked E on page A7 of the report be added as a new condition to the licence but modified as follows:
 - “Fully documented staff training must be carried out (in consultation with Trading Standards and/or Sussex Police) on the prevention of sales to underage children and refusing sales to intoxicated persons, and 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, Trading Standards and Crawley Borough Council licensing officers on request.”
- (f) That condition (2) of Annex 2 be omitted from the licence (as this is superseded by Condition marked E which has now been added to the licence).
- (g) That conditions (1), (2) and (7) of those conditions attached after the review hearing of the Licensing Sub-Committee dated 19 January 2007 be omitted from the licence as these are redundant.
- (h) The Sub-Committee confirms that conditions numbered (3), (4) and (5) of those conditions attached after the review hearing of the Licensing Sub-Committee dated 19 January 2007 continue to be conditions of this licence.
- (i) That condition numbered (6) of those conditions attached after the review hearing of the Licensing Sub-Committee dated 19 January 2007 be modified as follows:
 - “The digital CCTV system shall continue to be maintained and operated correctly to the satisfaction of Sussex Police Crime Prevention Officer. The CCTV cameras shall be placed in locations recommended by the Sussex Police Crime Prevention Officer. The CCTV system shall be subject to an annual service contract. Recording media shall be retained for at least 90 days and shall be readily available for inspection by the police or authorised persons. Signs advising customers that they are subject to recording by CCTV shall be placed in prominent positions.”

29. 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 the Rose and Crown at 61 – 63, Ifield Road, West Green and its reasons for the decision.

In doing so, the Legal Clerk reported that the Sub-Committee recognised that its task in determining this review was not to act punitively, but to decide what steps as set out in s.52(4) of the Licensing Act 2003 were necessary and proportionate to promote the licensing objectives.

The Sub-Committee had taken into account the application made by Sussex Police and the evidence provided by the Police. It had noted that some of the incidents relied

upon by the Police had been disputed by Mr Reynolds. However, the Sub-Committee had also noted that Mr Sharp of Enterprise Inns had not disputed the majority of the information put forward by the Police. The Sub-Committee had found the information and evidence presented by the Police as credible including that there had been two failed test purchases in the premises this year.

The Sub-Committee had listened to the submissions made on behalf of Enterprise Inns plc including that it had been an administrative error that the premises licence had not been transferred to Mr Reynolds. This appeared to have been supported by Mr Reynolds' assertion that, after entering into a lease with Enterprise Inns plc in about 2007, he had received a letter from them advising that the premises licence would soon be transferred into his name. Whilst the Sub-Committee had felt that some responsibility for the concerns properly raised by Sussex Police should fall with the licence holder, Enterprise Inns plc, it had recognised that Mr Reynolds had certainly been expecting to become the licence holder at some time.

The Sub-Committee had considered Mr Reynolds' written and oral submissions, and also those of Mr Duggan, an interested party who had attended the hearing. The Sub-Committee recognised that some of the clientele of the Rose and Crown were troublesome customers. However, the Sub-Committee had not been satisfied by the answers given at the hearing by Mr Reynolds as to some of his management practices, his expectation that Enterprise Inns plc ought to have assisted him, his lack of awareness of test purchasing as a mechanism for ensuring compliance with the Licensing Act 2003, and his inability to demonstrate to them at the hearing the detail of his training of staff and his registers.

It was the Sub-Committee's view that Mr Reynolds, as the DPS and expectant incoming licence holder, should have demonstrated a competent level of management skills in respect of running a licensed premises. It was the Sub-Committee's view that he had proved incapable of adequately managing a licensed premises and his inability to properly manage the premises had meant that disorder had continued to be of concern. It was for these reasons that the Sub-Committee had resolved that Mr Reynolds should be removed as DPS from the licence.

The Sub-Committee also believed that the decision to suspend the premises licence for a period of three months was necessary to allow a significant break between those who currently frequented the Rose and Crown who might cause trouble and also to allow a new DPS to be appointed and new management to be trained and put in place by the licence holder.

Finally, the Sub-Committee did not feel that it was necessary to reduce the hours of the licence as proposed by the Police as the evidence of the incidents relied upon by the Police did not support this recommendation. In respect of the Police's recommendation to impose a requirement for more doorstaff on the licence, the Sub-Committee had felt that this too was neither necessary or proportionate as it felt that the three month suspension and the change of management which would necessarily flow from the removal of Mr Reynolds as the DPS ought to be sufficient to be sufficient to reduce the incidents of disorder at the premises.

30. Closure of Meeting

With the business of the Sub-Committee concluded, the Chair declared the meeting closed at 3.40 p.m.

B K BLAKE
Chair

