

# Crawley Borough Council

## Minutes of Licensing Sub Committee

29 November 2011 at 6.30pm

### Present:

Councillors P K Lamb, C Oxlade and D J Shreeves

### Officers Present:

Mike Lyons	Senior Licensing Officer
Mez Matthews	Democratic Services Officer
Astrid Williams	Legal Clerk - Solicitor

### Apology for Absence:

Councillor J L Millar-Smith

### Also in Attendance:

Applicant	Mr M Butt (Counsel for the Applicant – Spirit Group Limited)
	Mr J Sutton (Representative for the Applicant – Spirit Group Limited)
	Mr D Patel (Designated Premises Supervisor)
Responsible Authority	Mr Brian Cox (Senior Environmental Health Officer)
Interested Parties	Mrs Shirley Rashbrook (Interested Party)
	Mr Robert Rashbrook (Interested Party)
	Mr Robert Pridie (Interested Party, accompanied by his wife, Mrs Rose Pridie)
Observer	Councillor K Trussell (Attended in an observational capacity and did not take part in the discussion)

## 7. Appointment of Chair

### RESOLVED

That Councillor D J Shreeves be appointed Chair for the meeting.

## 8. Members' Disclosure of Interests

The following disclosures of interests were made by Members:-

Member	Minute Number	Subject	Nature of Disclosure
Councillor D J Shreeves	Minutes 9, 10, 11 and 12	Application to Vary the Premises Licence – 'Downsman', Wakehurst Drive, Southgate	Personal and Non- Prejudicial Interest in the item as he was a personal licence holder.

## 9. Application to Vary the Premises Licence – 'Downsman', Wakehurst Drive, Southgate

The Sub Committee considered an application to vary the premises licence held in respect of the 'Downsman', Wakehurst Drive, Southgate, Crawley.

Following the introduction of those present at the meeting, the Legal Clerk outlined the procedure for the meeting. The Legal Clerk informed all parties that the Sub Committee had requested a briefing meeting with the Legal Clerk prior to the commencement of the Sub Committee, to confirm the procedure which would be followed during the meeting, and to identify issues upon which it would seek clarification. At the request of the Sub Committee, the Legal Clerk asked the parties to provide clarification on the following matters:

- (1) That the Applicant explain how the premises was managed;
- (2) That the Senior Environmental Health Officer state where the Designated Smoking Area was on the premises;
- (3) That the Senior Licensing Officer explain the advertising requirements for such applications.

It was agreed that clarification would be provided on those matters when the relevant party addressed the Sub Committee.

Report PES/051 of the Council's Head of Planning and Environmental Services was presented by Mike Lyons, a Senior Licensing Officer, for Crawley Borough Council.

### **The Application**

Mr Lyons presented the report to the Sub Committee. On 11 October 2011, Spirit Pub Company (Leased) Limited, the Premises Licence Holder for the premises known as Downsman, Wakehurst Drive, Southgate, Crawley submitted an application to the Council for the variation of the existing licence in accordance with the provisions of the Licensing Act 2003. A copy of the application was set out in Appendix A to the report, which included information provided by the Applicant as to how the four licensing objectives would be promoted.

The application was for an extension to the hours for certain licensable activities, an extension to the opening hours, a change to the non-standard hours for licensable activities, a change to the opening hours, a change to the non-standard opening hours. The Applicant also sought the removal of condition 1 of the current licence. A copy of the existing premises licence and plans were set out in Appendix B to the report.

Mr Lyons clarified that the application had been advertised in accordance with legislation and as such an A4 blue notice in font size 16 had been placed on the premises and that a public notice had been placed in a local newspaper. The Sub Committee noted that three relevant representations had been submitted. The only relevant representation received from a responsible authority was made by Mr Brian Cox, Senior Environmental Health Officer, on behalf of Crawley Borough Council. In that representation, Mr Cox stated that in his view the application did not adequately address the statutory objective of prevention of public nuisance. Mr Cox's representation was set out in Appendix C to the report. Two other relevant representations were submitted by interested parties living in the vicinity of the premises. Copies of those representations were set out in Appendices D and E to the report.

The Senior Licensing Officer, reminded the Sub Committee of the options available to them in respect of the application, and reminded the Sub Committee that any decision must be based upon the promotion of the four licensing objectives. The options were to:

- (1) Modify the conditions of the licence; or
- (2) Reject the whole or part of the application.

### **The Applicant**

Mr Butt, Counsel for the Applicant, addressed the Sub Committee and stated the following:

- (1) He clarified that Spirit Pub Company (Leased) Limited held the licence for the premises, but that it was managed by Mr D Patel the leaseholder and Designated Premises Supervisor (DPS), and Mr M Patel as Manager. Mr D Patel had become DPS for the premises on 27 May 2009. The pub employed six staff members, and that one staff member, in addition to Mr D Patel, held a personal licence;
- (2) The DPS and Manager were conscientious and the premises were well run;
- (3) The only confirmed complaint received in relation to noise had been received in 2008, prior to 27 May 2009 i.e. before the current DPS took over;

- (4) A complaint was received in June 2010 in relation to noise created by people smoking to the rear of the premises. That complaint had been discussed with the present owner and as such people were now only permitted to smoke in the Designated Smoking Area to the front of the premises and that notices had been put up to that effect. Notices had also been put up requesting that patrons left the premises quietly, and the DPS supervised quiet dispersal. The majority of patrons using taxis utilised one taxi firm who notified customers of their arrival via text message. That complaint had been resolved;
- (5) No complaints had been received in 2011;
- (6) The majority of patrons were local and walked to the pub and did not use taxis;
- (7) A variation to the licence would allow flexibility at the weekends;
- (8) Confusion had arisen as Mr M Patel had not agreed to Mr Cox's suggested reduction in hours of operation and regulated entertainment as suggested in Appendix C;
- (9) The Senior Environmental Health Officer had suggested that he would be in agreement to a variation for a modest increase in hours for the supply of alcohol and no increase in hours for entertainment. The current application before the Sub Committee reflected those suggested variations;
- (10) The current application sought an additional hour for the supply of alcohol on Fridays and Saturdays; no increase in the hours for entertainment; and a reduction in hours for licensable activities, late night refreshments and opening hours on Thursdays;
- (11) The Applicant had sent a letter to the interested parties on 21 November 2011 which proposed to significantly amend the application by reducing the hours which had been originally applied for. That letter mirrored the variations agreed with the Police.

At this point in the meeting it became clear that the Sub Committee was unaware that the Applicant had modified its application to reduce the number of increased hours sought (as set out in the letter to the interested parties referred to by Mr Butt). The Sub Committee agreed to accept the letter as additional material as it detailed information which replaced the original application and was central to the hearing.

The Sub Committee informed those present that the Sub Committee would adjourn the hearing to consider the additional material which had been presented.

#### **RESOLVED**

That the hearing be adjourned to allow the Sub Committee time to consider the additional information presented.

#### **10. Application to Vary the Premises Licence – 'Downsman', Wakehurst Drive, Southgate**

The Chair declared the meeting re-open for consideration of business in public session. He confirmed that the Applicant now sought the following changes to the premises licence:

- (1) Regulated entertainment (live music, dancing etc):  
Sunday to Thursday: 11:00 to 23:30  
Friday to Saturday: 11:00 to 24:00
- (2) Late night refreshment (hot food and drink served after 23:00):  
Sunday to Thursday: 23:00 to 23:30  
Friday to Saturday: 23:00 to 00:30
- (3) Supply of alcohol:  
Sunday to Thursday: 11:00 to 23:30  
Friday to Saturday: 11:00 to 01:00
- (4) Opening Hours:  
Sunday to Thursday: 11:00 to 24:00  
Friday to Saturday: 11:00 to 01:30
- (5) Additional Hours:  
The standard permitted hours the premises are open to the public (including the sale of alcohol, late night refreshment and regulated entertainment) may be extended by up to one hour on up to 12 occasions each calendar year. The Licensing Authority and the Licensing Unit at Sussex Police must be notified 10 days in advance of each occasion on which such extension is proposed.

Following discussion with the DPS and the Applicant, Mr Butt confirmed that, except for New Year's Eve (which was subject to separate legislation), the Applicant agreed to proposal (5) replacing all the current seasonal variations for all licensable activities, and the current seasonal variations for the premises to be open to the public detailed in the current premises licence set out in Appendix B to the report, should the Sub Committee be minded to grant the application.

### **Responsible Authority**

Mr Cox, Senior Environmental Health Officer, on behalf of Crawley Borough Council's Environmental Services Department addressed the Sub Committee on behalf of the Council as a responsible authority and drew the Sub Committee's attention to Appendix C of the report which details the letter he had submitted in objection to the application. Mr Cox stated the following:

- (1) He clarified that the Designated Smoking Area was to the front of the premises. Following the complaint received in June 2010, a discussion taken place between himself, the DPS and the Manager where he had reiterated that smoking should take place to the front of the premises and not to the rear;
- (2) The complaint received in July 2008 related to noise and had been substantiated. Following discussion with the then DPS and Area Manager the matter had been resolved by requiring that all smokers smoke at the front of the premises;
- (3) Since 1 November 2011, the Licensing Team had received 2 representations from local residents (present at the Sub Committee) which related to public nuisance. Although no investigation had yet taken place Mr Cox had no reason to doubt the credibility of the complaints as the previous complaint submitted by them in July 2008 had been substantiated and he was therefore taking the complaints seriously. Mr Cox acknowledged that he had not yet had an opportunity to investigate the complaints.

- (4) Mr Cox had negotiated an amendment with Mr M Patel via email with regards to a reduction in hours of operation and regulated entertainment, but the Applicant had subsequently withdrawn that agreement following Police involvement;
- (5) An extension to the opening hours would result in any noise continuing for longer and the later in the night it went on the more obvious noise becomes;
- (6) Any extension of hours should be limited.

### **Interested Parties**

Mrs Rashbrook addressed the Sub Committee and stated the following:

- (1) Smoking was still taking place to the rear of the premises as well as within the Designated Smoking Area to the front of the premises.
- (2) Patrons smoked on the premises after closing time whilst waiting to be collected by taxi;
- (3) The car park was small and noise echoed, which exacerbated the noise level;
- (4) During October 2011 she was woken by brothers fighting outside the Downsman using abusive language;
- (5) On 30 October 2011 she was woken up at 01:30 by people sitting outside the premises. Loud music was also playing, although she was not sure whether the music came from the Downsman;
- (6) On 26 November 2011 her son was woken by the bass sound from music playing. The doors of the Downsman were closed and someone came out and asked people to be quiet;
- (7) If the patrons of the Downsman were local they would not require taxis;
- (8) The taxis were noisy when they collected people from the premises;
- (9) Noise could be heard from people smoking on the premises and only about 6 people needed to be smoking outside for it to be really noisy.

Mr Pridie addressed the Sub Committee and stated the following:

- (1) Reiterated the statement made by Mrs Rashbrook;
- (2) He did not understand why the Downsman needed to play loud music;
- (3) On 26 November 2011 music was playing with a loud bass until 23:40 and could be heard over the sound of the television on Mr Pridie's premises;
- (4) Cars race in the car park during the summer months;
- (5) Noise continues late into the night and abusive language is used.

### **Members' Questions to Interested Parties**

Following a question by the Sub Committee to the Interested Parties the following responses were given:

- (1) Smoking always took place to the rear of the premises as well as within the Designated Smoking Area to the front of the premises;
- (2) They had not contacted Environmental Health in relation to recent occurrences of noise.

### **Members' Questions to Applicant**

Following questions by the Sub Committee to the Applicant the following responses were given:

- (1) The premises operated in accordance with the premise licence. Most weekdays the Downsman closed at 23:00, and at 24:00 most Fridays and Saturdays;
- (2) The Police had stated that the hours proposed in the original application were too late, but had raised no objection to the hours stated in the amended application;
- (3) No smoking took place to the rear of the premises after 23:00;
- (4) Following the agreement of the Sub Committee Mr Butt showed the Sub Committee an aerial photograph of the premises and stated that the Designated Smoking Area was to the front of the premises beside the new disabled ramp. Mr Butt reminded the Sub Committee that if smoking took place other than in the Designated Smoking Area enforcement action could be taken if there was noise after 23:00 as it would be a breach of condition;
- (5) The plan attached to the licence could be subsequently amended by variation to include the Designated Smoking Area;
- (6) There were means for cigarette disposal to the front and rear of the premises. The cigarette bins to the rear were for the use of people entering the premises;
- (7) Mr D Patel had held a personal licence since 1990, and had been DPS for the premises since 27 May 2009;
- (8) As DPS, Mr D Patel managed the premises and the kitchen with his brother Mr M Patel. Every 10-15 minutes they walked around the premises. Notices were displayed on the premises asking patrons to leave quietly. Notices were also displayed which stated that smoking should only take place in the Designated Smoking Area. Both situations were policed by the DPS and Manager. The rear doors were kept closed;
- (9) In the last 12 months the premises had opened for the 1 additional hour permitted in the licence for seasonal variations on 7 occasions.

### **Members' Questions to the Responsible Authority**

Following a question by the Sub Committee to the Responsible Authority the following response was given:

- (1) Condition 19 of the current licence stated "the external drinking areas must be closed to patrons from 23:00 Monday to Sunday, except for a Designated Smoking Area, the size and location of which must be agreed with the Environmental Health Pollution Team". The Environmental Health Pollution Team had agreed that the Designated Smoking Area would be located to the front of the premises;
- (2) He had not objected to the application to extend the hours for the sale of alcohol, only to the extension to the hours of opening.

### **Closing Statements**

Mr Butt, as Counsel for the Applicant, addressed the Sub Committee and gave his closing statement as follows:

- (1) There had been no complaint made regarding noise since June 2010;
- (2) The complaint made in 2008 was substantiated and the complaint made in 2010 was neither substantiated, nor unsubstantiated;
- (3) Residents had agreed that they were not always sure that the noise was caused by the Downsman;
- (4) There was no substantiated evidence to suggest that smoking took place to the rear of the premises;
- (5) There was no reason, based on the evidence, not to grant the modest increase in hours sought in the amended variation application;
- (6) A review of the licence could be brought if there was evidence that conditions had been breached;
- (7) The proposed variation reduced the hours for licensable activities and opening hours by 30 minutes on a Thursday;
- (8) Condition 1 of the current licence could be removed as it was no longer necessary or relevant;
- (9) No reason to not agree the proposed variation.

Mr Lyons addressed the Sub Committee and suggested that it consider the removal of conditions (9), (13) and (18) of the current licence (Appendix B) as they duplicated other legislation.

### **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.

#### **11. Application to Vary the Premises Licence – ‘Downsman’, Wakehurst Drive, Southgate**

The Sub Committee gave further consideration to the application and to the matters raised in the hearing. The Sub Committee took into account how the Applicant proposed to promote the licensing objectives as set out in the application and the submissions made by its representative, the Designated Premises Supervisor, the Senior Environmental Officer and interested parties.



## RESOLVED

- (1) That the premises licence for the premises known as Downsman, Wakehurst Drive, Southgate, Crawley not be modified to extend the opening hours and hours for licensable activities;
- (2) To remove condition 1 of the licence, which read: *“Embedded restrictions under the Licensing Act 1974 pertaining to permitted Hours, Credit Sales and Children in Bars are removed from this licence”*.

## 12. 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 application by the Spirit Pub Company (Leased) Limited to vary the existing premises licence in respect of the Downsman, Wakehurst Drive, Southgate, Crawley.

In doing so the Legal Clerk first reported that she had provided legal advice to the Sub Committee which in summary was that there was case law which required decisions to be evidence-based, but that on certain matters members could use common sense and take into account their knowledge of the area. The Legal Clerk then said that the Sub Committee had considered the relevant representations which were made, considered all the material before it and took into account the guidance issued by the Secretary of State under the Licensing Act 2003 and the Council's own Licensing Policy for Liquor, Late Night Refreshment and Regulated Entertainment Licences 2008-2011.

The Legal Clerk informed the meeting of the Sub Committee's determination of the application (as set out in minute 11 above). She then set out the Sub Committee's reasons (relating to the decision not to modify the hours on the licence) as follows:

- (1) The Sub Committee gave considerable weight to the relevant representation made by the Senior Environmental Health Officer, including his concerns expressed during the hearing where he noted that current complaints (contained in the relevant representations made by the interested parties) were by former complainants (whose complaints had been substantiated), and so was taking their complaints seriously;
- (2) That there had been substantiated complaints made to the Environmental Health Department in 2008;
- (3) That there had been a further complaint made in 2010 to the Environmental Health Department, which, although not substantiated, was not unsubstantiated;
- (4) Noise is more obvious the later in the night that it is made and so the longer the opening hours for the premises (being that it is a residential area), the more obvious the noise would be;
- (5) That in his view, extended hours was likely to cause more noise in the area.

In addition:

- (1) The Sub Committee also gave weight to the evidence given by residents during the hearing which consisted of complaints of noise from the premises in the past months.

- (2) The Sub Committee reminded itself that the premises are in a residential area, and that it must make decisions which promote the licensing objectives. In the Sub Committee's view, based on the evidence heard during the hearing as set out above, to extend the hours of opening and the hours for the sale of alcohol would not promote this objective.
- (3) The Sub Committee considered the statutory guidance and its own licensing policy and considered whether there were any conditions which it might impose which would sufficiently promote the objectives. However, given the evidence of the Senior EHO and residents heard during the hearing, the Sub Committee concluded there were no adequate conditions it could impose which would adequately promote the licensing objectives to allow it to grant the extension of hours sought.

### **13. Closure of Meeting**

With the business of the Sub Committee concluded, the Chair declared the meeting closed at 9.50pm.

D J SHREEVES  
**Chair**