

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE held
at Surrey Heath House, Camberley
on 21 July 2014**

+ Cllr Paul Ilnicki

+ Cllr Ian Sams

+ Cllr Valerie White

+ Present

Legal Adviser to the Sub-
Committee

Mrs Laura James (Legal Representative for
Surrey Heath Borough Council as Licensing
Authority)

Democratic Services Officer

Mr Andrew Crawford

Surrey Heath Borough
Council as Licensing
Authority

Mr Derek Seekings (Licensing Officer)
Mrs Paula Barnshaw (Licensing Administrative
Officer)

Applicant

Mrs Bhavna Patel – Applicant
Mr Jayesh Patel – Applicant
Mr Kevin Rance – Regional Representative of
the National Federation of Retail Newsagents

All Other Persons:

Mr Guv Sandhu (on behalf of Messrs Mike
Brinkley and Phil Bolton)

05/LS Election of Chairman

**RESOLVED, that Councillor Ian Sams be elected as Chairman for
the meeting.**

**PART I
(public)**

06/LS Hillview News, 2 Chertsey Road, Windlesham, Surrey.

The Sub-Committee considered an application for a new Premises Licence relating to Hillview News, 2 Chertsey Road, Windlesham.

The Licensing Officer presented his report to the Sub-Committee and notified representatives of the parties who had a right to speak at the meeting. He referred Members to the Licensing Objectives and noted that relevant objections had been submitted.

The Legal Advisor reminded Members that any material which had not been circulated in advance to all parties could only be considered at the meeting if all parties present agreed.

All relevant parties present introduced themselves and stated their reason for attending the Sub-Committee.

The Licensing Officer noted that the application was for the supply of alcohol for consumption off the premises only and therefore did not include reference to regulated entertainment or the provision of late night refreshment.

The Licensing Officer reported that nine representations had been submitted by other persons which contended that the carrying on of licensable activities at the premises could breach the following licensing objectives:

- (i) The prevention of crime and disorder;
- (ii) Protection of Public Safety;
- (iii) Prevention of Public Nuisance; and
- (iv) Protection of children from harm.

The Licensing Officer confirmed that he had received notification from Mr Mike Brinkley and Mr Phil Bolton that Mr Guv Sandhu had been asked to address the Sub-Committee on their behalf.

Representations had been submitted to the applicant by Surrey Police, proposing eight additional conditions. These had been agreed by the applicant and incorporated into the application. No other Responsible Authorities had submitted representations.

The Licensing Officer noted that an objection submitted by Mr Guv Sandhu and a petition initiated by the same, had been considered vexatious, as defined under Paragraph 9.5 of the Guidance and as such, did not meet requirements set out in Section 18 (7) (c) of the Licensing Act 2003, in that Mr Sandhu owned and operated an off-licence in the Village, which had not been declared in his submission. The petition had used the exact wording of his submission and a number of pages of the petition had no reference to or mention of the submission itself.

Mr Kevin Rance, from the National Federation of Retail Newsagents, reported that sales in newspapers and magazines had declined by 10%, year on year for a number of years. Retailers were seeking to diversify and many had sought licenses to sell alcohol. The applicants had struggled, in a tough economic environment, to make the family run business successful and hoped to use alcohol sales to boost footfall.

Mr Patel explained that he held a personal licence and operated the shop with his wife. His 22 year old daughter occasionally worked in the shop under supervision to assist them.

Mr Guv Sandhu, noting that he was representing two interested parties, indicated his disagreement with the decision to regard his submission and the petition as vexatious. He urged the Sub-Committee to give due weight to the petition and suggested that insufficient time had been allocated from the rejection of the petition till the deadline for petitioners to submit individual concerns.

Mrs Laura James, the Legal Advisor to the Sub-Committee, reported that petitions, in themselves, did not necessarily carry the same weight as an individual submission. Subsequent to the rejection of the submission and petition, the interested parties had had the opportunity to submit individual submissions and to attend the Sub-Committee or write to the Licensing Officer, expanding on their representations.

Mr Sandhu made a number of opening comments, but was informed that these did not relate to the submissions by Messrs Brinkley and Bolton or to the Licensing Objectives and promoted his own views, which had been rejected as a valid representation. On that basis, these could not be considered by the Sub Committee.

In respect of the Licensing Objectives, Mr Sandhu raised the following:

Prevention of Crime and Disorder – There were six public houses in Windlesham. Youths engaging in pub crawls already did damage to cars and street furniture. In response to a Member's query, he confirmed that there were issues in the Village throughout the year, following golf matches or pub crawls, when benches were damaged and signs stolen. This was particularly the case on Boxing Day each year.

Public Safety – Mr Sandhu contended that many drivers used Windlesham as a cut through between the M25 and M3. The newsagents shop was located at a junction of three roads with no roundabout.

Prevention of Public Nuisance – The Green opposite the Newspaper Shop was already used as a gathering point for young people.

Protection of Children from Harm – Mr Sandhu expressed concern that children, using the newspaper shop to purchase sweets would come into contact with alcohol.

The Sub-Committee adjourned from 3.00 p.m. until 3.35 p.m. for deliberation.

Following deliberations on the application, the Chairman reported on the advice given by the Legal Advisor and that the Sub-Committee had taken into account:

- Section 18 of the Licensing Act 2003 and the Secretary of State's Guidance under section 182 of the Act.
- The Council's Statement of Licensing Policy, particularly paragraphs 1-85 and 87-99; and
- The written and oral evidence presented at the hearing.

The Sub-Committee had heard evidence from the Applicants and a representative of two other persons.

Members recognised that the Licensing Act imposed a light touch approach and encouraged them to allow premises to trade unless there was a reason not to. The Sub-Committee could not adjudicate on needs and competition and the Act allowed for review if, at a later stage, it was suggested that any action had resulted in the Licensing Objectives not being met.

The Sub-Committee had concluded that the premises licence should be granted but that an additional condition be incorporated to the effect that a book record be kept of any age challenge and/or refusal, with the exact wording to be determined by the Licensing Officer. This was considered appropriate to protect both the public and the Licensee, in events such as the use of false identification papers.

RESOLVED, that the Premises Licence for Hillview News, be granted for the hours of 0600 to 2000 from Monday to Sunday and 0800 to 2400 on Fridays and Saturdays, subject to the conditions attached in the Decision Notice at Annex A.

Note: In accordance with the Surrey Heath Code of Conduct Councillor Valerie White declared a non-pecuniary interest in the above item as the interested person had contacted her and sought to discuss the application, but she had not engaged in any discussion.

CHAIRMAN

SURREY HEATH BOROUGH COUNCIL

LICENSING ACT 2003

Application for a new Premises Licence

Hillview News

Decision Record

The Application

This is an application by Mr and Mrs J Patel for a new premises licence at Hillview News, 2 Chertsey Road, Windlesham, Surrey. Representations have been received from “any other persons”, namely two local residents.

At the hearing of the application in attendance were:

Mr Derek Seekings (Licensing Officer)
Mr A Crawford (Sub- committee clerk)
Mrs L James (Legal Adviser)
Mr J Patel (Applicant)
Mrs B Patel (Applicant)
Mr K Rance (For Applicant)
Mr G Sandhu (for other persons)

The sub- committee:

Cllr I Sams (Chairman)
Cllr V White
Cllr P Ilnicki (Reserve Councillor in absence of Cllr G Carpenter)

Mr Seekings, the Licensing Officer, presented his report and confirmed that Mr Sandu was speaking on behalf of two members of the public who had made valid representations, Mr M Brinkley and Mr P Bolton. There were nine representations in total, none from the responsible authorities. Mr Seekings explained that Mr Sandhu had made a representation that was deemed to be vexatious and was therefore not a valid representation under section 18 of the Licensing Act 2003 and that he was not entitled to speak in relation to that representation. He advised that a petition had been circulated by Mr Sandhu and that had repeated his representation. However, there were only three pages that contained the basis of the representation and those persons might not have been aware that Mr Sandhu ran the off licence in Windlesham and therefore the petition was not regarded as valid.

Our legal adviser confirmed that the relevant statutory guidance was that version which was in force on 27 May 2014, when this application was received, which is the June 2013 guidance document.

Evidence before the Sub-Committee

Representations were made by Mr Rance on behalf of the applicants. He represented the National Federation of Newsagents and said that they were experiencing difficult economic times and felt the need to diversify by applying for a licence to sell alcohol in their shop, in common with similar shops that Mr Rance had assisted. Mr and Mrs Patel would be on the premises at all times and their daughter aged 22 years would help them out in her university holidays. Mr Patel held a personal licence. Members noted that additional conditions had been agreed between the police and the applicants.

Mr Sandhu informed the sub- committee that he disagreed that his representation was vexatious and with the ruling regarding the petition he promoted. He also stated that he had been given an incorrect deadline for those persons who had signed the petition to make their individual representations. In response, Mr Seekings denied that had been the case. Our legal advisor informed all present that the matter of the invalid representation was a matter for the Licensing Officer and there was a complaints process Mr Sandhu could follow. We were also advised that petitions do not generally carry the same weight as individual representations, in the same way as copied submissions and numbers cannot be taken into account as adding weight. In this case, there were a number of pages to a petition comprising names and addresses only, which meant there was no indication as to what those individuals were agreeing to in terms of representations

Mr Sandhu told the sub- committee that, by this application, Mr and Mrs Patel were not adhering to an agreement with other premises in the village not to sell goods that other premises sold. He confirmed he ran the off- licence shop in the village. He did say that the applicants had “stolen trade” from other businesses. He addressed the licensing objectives relating to crime and disorder, prevention of public nuisance and protection of children from harm by indicating that these would be compromised by the selling of alcohol in premises where children usually purchased their confectionery. He said children did not visit his shop as they know it is an off licence and somewhere they should not go. He also felt that youths would also try to purchase alcohol from the applicants having visited one of the public houses nearby. He said he had strict procedures for his premises to prevent that happening. He also considered the vandalism and congregations of youths would occur outside the premises.

In relation to public safety, Mr Sandhu referred to speeding traffic in Windlesham and increased congestion and danger near to the applicant’s premises. Our legal advisor told all present that the Act did not allow the sub-committee to take highway congestion and danger into account, as that fell within the remit of other statutory authorities.

Mr Sandhu did tell us that he had complained to a number of organisations and to an MP about this application. Members were advised in response that there were no such representations made and Mr Sandhu was not therefore in a position to submit that as evidence before Members. He urged Members to consider that there was no need in the village for another licensed premises to sell alcohol as off sales.

The Decision

We note the written concerns of Mr Brinkley and Mr Bolton about additional premises selling alcohol, as amplified by Mr Sadhu. Other written representations before us also referred to need. We accept the legal advice that it is not our function to adjudicate upon need here. The matter of highways and road safety is also a matter which we cannot consider in terms of the licensing objectives being promoted in this application. It was also not raised by Mr Bolton and Mr Brinkley in their written representation on whose behalf Mr Sandhu spoke, although one or two others who did not appear before us, had.

We were advised that we should not take into account matters of public nuisance that might occur but are not supported with evidence in relation to these premises. We noted none of the responsible authorities had made any representations and rejected that this application was likely to lead to crime and disorder and public nuisance that the written representations referred to and in particular “this opportunity for mayhem amongst our residents” that Mr Brinkley mentioned in his representation.

We also felt that Mr Sandhu had attempted to repeat his own representation, which had been deemed invalid, before us on the back of those he was representing. In particular, it was clear to us that Mr Sandhu was aggrieved that the applicants were proposing to be in direct competition with his off licence business and that this was causing upset amongst other village traders. We did not take such views into account.

We therefore weighed up the strength of the representations against the application and decided that the premises should be permitted to trade in accordance with the hours proposed by the applicants.

In explaining, in open session, the legal advice given to us when we considered our decision, we stated that we were reminded by our legal adviser that the Licensing Act encourages us to view our powers and responsibilities in the light of the community as a whole. The regime under the Act has a light touch approach to regulation and we carry out functions with a view to promoting the licensing objectives and having regard to the statutory guidance and to the statement of licensing policy. We had regard to paragraph 10.13 of the guidance and whether conditions were appropriate in accordance with the guidance and licensing policy.

We concluded, having regard to all the evidence before us today, that the premises licence should be granted. If nuisance, in particular, occurs, the Licence may be reviewed under the Licensing Act and there are separate environmental health powers to assist in dealing with complaints.

We are also mindful that any licence granted can be reviewed by us under the Act, on the application of persons such as residents.

Conditions:

We noted the conditions agreed by the applicant and in their operating schedule. We considered it is appropriate that the conditions agreed with the police and which we believe are readily enforceable, be imposed

We also considered paragraphs 41 to 43 of the Statement of Licensing Policy and felt it was appropriate to have every challenge recorded at the point of sale of alcohol, whether or not that resulted in a refusal, so that the applicants have documentary evidence in the event of an issue with false identification, for example, they had raised a challenge. We felt that this would assist the applicants in the event of a problem, as well as help to promote the licensing objectives, particularly the protection of children. We asked that the Licensing Officer should draft a suitable condition.