

**Minutes of a Meeting of the Licensing
Sub Committee held at Council
Chamber, Surrey Heath House on 2
March 2015**

- + Cllr Liane Gibson
- + Cllr Paul Ilnicki
- + Cllr Pat Tedder
- + Cllr Valerie White

+ Present

- Apologies for absence presented

Substitutes: Cllr Pat Tedder

In Attendance:

Legal Advisor to Sub Committee

Mrs Laura James

Democratic Services Officer

Mrs Lee Brewin

Surrey Heath Borough Council
as Licensing Authority

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

Surrey Police

Mr Rab Carnie
Special Constable Nicholas Pile
Miss C Hodge (Legal Representative for
Surrey Police).

Aryana Express

Mr Faraidoun Mohammadi (Premises
Licence Holder)
Mr Zakaria Nasib
Miss S Taite (Westgate Chambers – legal
representative for Aryana Express)

17/LS Election of Chairman

RESOLVED that Cllr Valerie White be elected as Chairman for this meeting.

18/LS Licensing Act 2003 - Aryana Express, Frimley High Street, Camberley

The Sub-Committee considered an application for a review of a Premises Licence relating to Aryana Express, 46 Frimley High Street, Camberley, Surrey GU16 7JF.

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.

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 review of the premises licence relating to Aryana Express, 46 High Street, Camberley, Surrey GU16 7JF.

The Licensing Officer reported that an additional document had been circulated to relevant parties which illustrated the refusals register and customer testimonials. CCTV footage of the test purchase was also shown.

The Licensing Officer also reported that Surrey Police 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 children from harm.

The Licensing Officer confirmed that Miss Hodge had been asked to address the Sub-Committee on behalf of Surrey Police and Miss Taite on behalf of Aryana Express. The Sub Committee was advised that both parties had had discussions and had agreed a resolution for the Sub Committee to consider.

Miss Hodge addressed the Committee and stated the following:

- Acting on intelligence, a test purchase was carried out on 17 December 2014;
- Two 15 year old girls purchased some alcohol and was not asked her age or for any ID;
- Mr Nasib admitted serving the alcohol and was given a fixed penalty notice;
- Surrey Police felt that there should be a proportionate approach because of previous non-compliance;
- A review hearing had been called because Mr Mohammadi had not agreed to speak to the Police to resolve issues;
- It was proposed that the licence be suspended for 48 hours;
- The licence conditions had also been updated to include that a premises licence holder would always be on site when alcohol was sold.

The Sub Committee considered the refusal register currently used by Aryana Express and asked the Police if they considered whether it was robust. Surrey Police confirmed that the refusal register and times were checked against CCTV.

Concerns were raised by the Sub Committee about the intelligence used (detailed on page 16 of the agenda), which was in dispute by Aryana Express. Miss Hodge confirmed that the intelligence was background information to the review application and should be given some weight when considering the review.

The Sub Committee was advised that the inclusion of the objective 'prevention of crime and disorder' in the review was to illustrate that selling alcohol to minors was in fact a criminal offence and could lead to crime and disorder.

Miss Taite addressed the Committee and stated the following:

- Mr Mohammadi took the review seriously as the business was his livelihood;
- Mr Mohammadi refutes that he wouldn't speak to the Police; he had requested that the Police visit him to discuss issues as it would be difficult to discuss on the telephone;
- The representation on page 44 of the agenda supported the premises licence holder and the various questionnaires held positive comments;
- That little weight should be given to the intelligence used as Mr Mohammadi stated that he did not sell alcohol to the girls;
- The upkeep of the refusal register demonstrated good practise;
- Further training would be provided for Mr Nasib and he would also be applying for a personal licence;
- It was requested that the 48 hour suspension not be a Friday or Saturday;
- A personal licence holder would always be at the premises when alcohol was sold and this would be in place by 27 April 2015. If there were unforeseen circumstances which would alter this, the Police would be contacted within 24 hours so no enforcement action would be taken;

Miss Hodge and Miss Taite left the Chamber at 12.05 to finalise wording of the draft operating schedule. They returned at 12.15.

The Sub Committee was advised that the schedule would include conditions related to public nuisance.

The Sub-Committee adjourned from 12.25 p.m. until 14.25 a.m. for deliberation.

Following deliberations on the application, the Mrs James reported on the advice she had given to the Sub-Committee and that Members 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; and
- The written and oral evidence presented at the hearing.

The Sub-Committee had heard evidence from the Licensing Officer and legal representatives from both parties.

Members recognised that the imposed sanctions would not be punitive but a deterrent in the interests of the wider community. They were satisfied to modify the existing conditions of the licence. The agreement between the two parties was noted.

The Sub Committee was mindful of the wider public interest. In addition the Sub Committee felt that the intelligence report could not be tested and therefore felt

that no weight could be put on this to say there was a wider issue with underage sales at these premises.

It was noted that Mrs James had spoken with the legal representatives for both parties during the Sub Committee's deliberations, only to ensure the wording for any agreed conditions was clear and enforceable.

The Sub-Committee had concluded that the premises licence should be suspended for a 48 hour period during hours of operation taken on a Monday and Tuesday after the 21 day deadline for appeal rights. It was noted that the 27 April date for condition 1 to be put in place may slip due to the appeals deadline. The public nuisance and safety conditions should be removed from the draft operating schedule as this review hearing was not an opportunity to tidy up conditions. This would have to be dealt with by variation.

RESOLVED, that the Premises Licence for Aryana Express, 46 Frimley High Street, Camberley, GU16 7JF be suspended for the hours of 0600 to 2300 on a Monday and Tuesday, to be identified after the appeals deadline, subject to the amended conditions in the operating schedule attached in the Decision Notice at Annex A.

Note: The Sub Committee hearing did not commence until 11.00am as the legal representatives for Surrey Police and Aryana Express had requested further time to undertake negotiations.

a DECISION NOTICE

Application by Surrey Police for Review of Premises Licence-Aryana Express, Frimley High Street, Camberley

This is an application by Surrey Police under section 51 of the Licensing Act 2003 for a review of the premises licence held by Reading Soft Ltd of 46 High Street, Frimley and relating to Aryana Express which is a small general store. Relevant representations were received from "any other persons", namely members of the public. No representations were made by any responsible authorities.

At the hearing of the application in attendance were:

Mr D. Seekings (Licensing Officer)
Mrs P. Barnshaw (Licensing Administration Officer)

Ms C. Hodge (legal representative for Applicant)
Mr R. Carnie (Police Licensing Officer)
Special Constable N. Pile

Ms S. Taite (legal representative for Premises Licence Holder)
Mr .F Mohammadi (Premises Licence Holder)
Mr Z. Nasib

Mrs L. James- legal advisor to Sub Committee

Mrs L. Brewin- Democratic Services Officer

Sub- committee members: Cllrs L. Gibson, P. Ilnicki and V. White (Chair) (P. Tedder-substitute)

The Sub Committee was requested by the parties to delay the start of the hearing to allow them time to consider whether they could reach any agreement regarding the application. The hearing commenced at 11.05 am.

Mr Seekings presented his Report and confirmed that under paragraph 3, Next Steps, the legislation now provided that the powers the licensing authority may exercise are those it considers to be appropriate for the promotion of the licensing objectives, rather than 'necessary'.

All present agreed that the Aryana Express CCTV footage of the test purchase operation of 17 December 2014 should be shown in which two underage girls approached the person on the shop till, Mr Nasib, who sold a bottle of wine.

We had been supplied with a bundle of documents submitted by the premises licence holder in response to the Review and this had been given to the Police in good time before the hearing. There were no objections to reliance upon this bundle.

The parties were then invited to present their cases:

Police Evidence before the Sub-Committee and representations

For Surrey Police, Ms Hodge advised that the police intelligence which led to the test purchase was disputed in so far as there was a practice of underage selling on the premises.

The sub- committee was referred to the statutory guidance concerning sales of alcohol to children and the previous history of some non-compliance of these premises. She confirmed that the Police did feel they could work with the Designated Premises Supervisor (DPS) although initially the review was sought due to Mr Mohammadi failing to engage with the Police over the failed test purchase. However, the Police now felt a suspension of the licence for 48 hours would send a strong message that underage sales would not be tolerated as being an appropriate sanction.

Ms Hodge also referred to some agreement at the hearing concerning conditions for CCTV monitoring on the premises, training and acknowledged that it was sometimes difficult for the premises to recruit staff. On that basis, the Police had agreed to withdraw their application for the revocation and removal of the DPS.

In answer to questions of Ms Hodge concerning the incident on 7 December 2014 she explained that there would not have been further express evidence in respect of information provided by the neighbourhood officer. She explained it stood as background information in the context of the subsequent test purchase and that the sub- committee was to give this weight as appropriate in the context of the subsequent failed test purchase whereby Mr Nasib admitted selling alcohol and was given a fixed penalty notice.

The Police Licensing Officer confirmed that the Refusals Log kept by Mr Mohammadi was of good quality compared to others he had seen and it was checked against any CCTV footage.

It was confirmed by Ms Hodge that the prevention of crime and disorder objective was engaged in so far as the underage sale was a criminal offence and that the use of alcohol by underage drinkers could lead to crime and disorder.

The Licence Holder evidence before the Sub-Committee and representations

For the premises licence holder and DPS Ms Taite advised that Mr Mohammadi took the matter of the review very seriously as it was his livelihood. She confirmed that she had had discussions with the Police with regard to proposals for a solution to the Review.

Mr Mohammadi refuted the suggestion that he didn't engage with the Police after the test purchase. She said he found telephone communications difficult and he wanted a solicitor present.

Ms Taite said that the Police intelligence was misleading: Mr Mohammadi was at the premises on the day in question and a member of the public had taken the trouble to write in with some knowledge of the event of 7 December, included as a relevant representation. She invited the sub-committee to give that matter little or no weight in its decision. She also said that Trading Standards had not made any representation in relation to the Review. Ms Taite invited the sub-committee to view the level of support from a significant number of customers who valued the shop as highly persuasive as to how the premises operated in reality. She said that it was four years ago that the premises last failed a test purchase and it was due to inexperienced staff, whose employment was not continued afterwards. There had been four test purchases that had been passed. She said Mr Nasib believed he had been distracted by the actions of the plain clothes officer, whom he thought was a shoplifter.

Ms Taite stated that Mr Mohammadi was doing his best to comply and his Refusals log showed this. He had also arranged further training and Mr Nasib was going to apply to become a personal licence holder. Further, whilst it was unfortunate there had been no mediation prior to the Review, she said she had managed to reach an agreement with the Police. This included a 48 hour suspension of the licence to mark the breach and she asked the sub-committee to consider not imposing this on a Friday or Saturday night as this would have a significant effect on trade.

In answer to questions about the process of applying for personal licences, Mr Carnie explained the process and that the Police would agree to a personal licence holder being on the premises all the time when sales took place. Whilst these measures were put in place and in case of unforeseen circumstances, the Police would agree not to take action.

It was also confirmed the Police were not seeking a reduction in the licensable hours.

The Decision

Our legal advisor informed the parties of the broad nature of the advice that had been given to us in the course of our deliberations, including the statutory guidance under section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and the written and oral evidence presented to us.

We were all given copies of the heads of agreement relating to conditions that the parties had agreed might be incorporated into the Operating Schedule for the premises. Our legal adviser spoke to both legal representatives with our consent over the clarity and purpose of the proposed conditions, with a view to advising us further upon these.

We also received legal advice that our role at the Review was to consider the process as a key protection, to focus upon the causes of concern and have regard to remedial action that was no more than would be appropriate and proportionate. We were reminded that in considering any conditions, we should take into account the statutory guidance that applies in all cases (for instance paragraph 10.10 of the October 2104 guidance).

We firstly considered that it was not for us to consider imposing conditions that the parties agreed which related to licensing objectives that were not in issue in this Review and in relation to which we had heard no evidence. We therefore declined to consider imposing any such conditions proposed relating to public safety (some of which replicated other relevant legislation) and the prevention of public nuisance. We do not consider it our role in a review to 'tidy up' operating schedules generally and that was not a precedent we wished to set.

We were also reminded by our legal adviser that we were not bound by any agreement between the parties and could impose other sanctions or conditions, or not take any steps if we did not think them appropriate in order to promote the licensing objectives. However we accepted that where a balanced and well thought out agreement was reached by the parties, we should proceed with care. We were also reminded and considerate of Article 1 ECHR protocol rights with regard to property rights having been granted in respect of the licence and that we also acted in the interests of the wider community, in taking into account direct remedial measures as being on an appropriate and proportional basis. We also took into account any financial impact of measures on this particular business.

In reaching our decision we were mindful of advice that our powers were not to be exercised in a punitive manner, but measures could be put forward to target concerns and act as a deterrent so as the problems might not arise in future.

We considered all our options under section 52 of the Licensing Act 2003. We did not think it was an appropriate step to promote the licensing objectives to revoke the licence or to remove the DPS. However we did endorse the parties' view and in the light of the history and seriousness of the offence that there should be a 48 hour suspension of the licence which should take place on a Monday and Tuesday over the duration of the licensable hours for those days, to commence on the first week after the 21 day period for the appeal process, as our decision is suspended until such time has passed. We felt the measure should act as a sufficient deterrent taking into account the financial impact on the business and that we acted to promote the licensing objectives for the benefit of the community.

We concluded on a balance of probabilities that the weight of the evidence regarding the incident of 7 December did not lead us to the view that there was a culture of non-compliance associated with these premises. We took into account the representation on page 44 and Mr Mohammadi's evidence that he was on the premises on that day.

We have taken into account the relevant representations and the 'testimonial' evidence supplied by Mr Mohammadi, although we did not accord the same weight to the latter. However the testimonial evidence supported what is said in the representations. This led us to the conclusion that this is a valued community business and the concerns related to a time when staff were new in post. This highlighted the need for more effective training.

Conditions

We are satisfied it is appropriate and proportionate to modify conditions on the licence to promote the licensing objectives as follows:

1. A personal licence holder will always be present at the premises during the hours that the premises are licensed to sell alcohol subject to :
 - a) this occurring by no later than 27 April 2015 and
 - b) upon the cessation of a person engaged as a member of staff holding a personal licence and working at the premises:
 - i) the Designated Premises Supervisor shall notify the police of that person's departure within 48 hours of that event and
 - ii) there shall be up to 8 weeks permitted to allow for the process of engaging a replacement member of staff as a qualified personal licence holder to take place and
 - iii) the police will grant an extension of time for the recruitment of such replacement member of staff as a personal licence holder where there is evidence that a delay in the application process has been caused by circumstances beyond the control of such applicant.
2. Digital CCTV equipment and a sufficient number of cameras as agreed by the Police to be satisfactory shall be installed and maintained at the premises to record colour images that are sufficiently clear to allow the police to use them to investigate any crimes which may be committed on the premises.
3. The CCTV cameras shall cover all areas within the premises which are open to the public.
4. A CCTV camera shall be positioned to obtain images of persons entering the premises by the main entrance.
5. No person other than the police, the licensing authority, the premises licence holder, the manager or any other authorised person shall have access to the CCTV recording equipment or to the recordings made from such equipment.
6. The CCTV equipment shall be in operation and recording whenever the premises are open to the public.
7. Recordings made on the CCTV system shall be retained for a period of at least 28 days. This system shall be in place by no later than 30 March 2015.

8. A minimum of two notices stating that CCTV is in operation shall be displayed throughout the premises where the public have access. The notices shall be of at least A4 size.

9. Any person who appears to look under the age of 25 years shall be challenged and asked for identification to prove that they are over the age of 18 in accordance with the 'Challenge 25' policy.

10. The 'Challenge 25' policy shall be brought to the attention of customers at the point of sale by the display of notices agreed by the police.

11. A Refusals book shall be kept on the premises and a record must be kept of all persons who are refused the sale of alcohol and this book shall be made available on request to the police.

12. All staff shall receive training in accordance with training materials provided by Trading Standards including refresher training relating to the 'Challenge 25' policy which shall be in place at the premises.

APPEAL

If the Applicant or any other person having made a relevant representation is dissatisfied with this decision he or she may appeal against the decision to Guildford Magistrates Court, Mary Road, Guildford, Surrey GU1 4PS within the period of 21 days beginning with the day on which he or she was notified by the licensing authority of the decision appealed against.

06 March 2015

Chairman