

**Minutes of a Meeting of the Licensing
Sub Committee held at Council
Chamber, Surrey Heath House on 5
January 2016**

+ Cllr Bill Chapman
+ Cllr Pat Tedder

+ Cllr Ian Sams

+ Present

- Apologies for absence presented

Substitutes: Cllr Ruth Hutchinson

In Attendance: Cllr Dan Adams

Legal Advisor to Sub Committee

Mrs Laura James

Democratic and Electoral
Services Officer

Mrs Lee Brewin

Surrey Heath Borough Council

Mr Derek Seekings (Senior Licensing
Officer)

as Licensing Authority

Mrs Paula Barnshaw (Licensing
Administration Officer)

Surrey Police

Mr Rab Carnie
T/Inspector Jon Castell

Everest Cash and Carry

Mr R Shrestha – Designated Premises
Supervisor

19/LS Election of Chairman

Resolved that Cllr Ian Sams be elected Chairman of this meeting.

20/LS Declarations of Interest

It was noted for the record that Members of the Sub Committee had received emails relating to social media messages regarding the review application from another Member of the Council. The Sub Committee Members advised that they would make their decision related only to the evidence provided at the hearing.

21/LS Licensing Act 2003 - Everest Cash and Carry

The Sub-Committee considered an application for a review of a Premises Licence relating to Everest Cash and Carry, 449 London Road, Camberley GU15 3JA.

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 relevant licensing legislation.

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 Everest Cash and Carry, 449 London Road, Camberley GU15 3JA.

The Licensing Officer reported that Surrey Police contended that the carrying on of licensable activities at the premises could seriously undermine the following licensing objectives:

- (i) The prevention of crime and disorder;
- (ii) Protection of children from harm.

It was noted that the fourth paragraph of section 3 of the Licensing Officer's report should read:

'the Sub Committee must take such of the following steps as it considers appropriate if any, for the promotion of the Licensing objectives...'

The Sub Committee was advised that following discussions between Surrey Police and Mr Shrestha, both parties had agreed a resolution for the Sub Committee to consider, namely to agree the imposition of the suggested conditions and no further steps.

Mr Carnie addressed the Committee and stated the following:

- Two test purchases were carried out on 9 September 2015 and 19 November 2015;
- Two 16 year old girls purchased some alcohol and were not asked for any ID;
- Fixed penalty notices were issued to a member of staff on each occasion;
- A review hearing had been called and it was requested that the licence be revoked or suspended for a specific period, to remove the current designated premises supervisor and replace all conditions on the licence as set out in the application;
- Following discussions prior to the hearing, it was proposed that the recommendations proposed by Surrey Police be amended to remove the revocation or suspension of the licence;
- Mr Shrestha had been provided with a Trading Standards approved staff training package by Surrey Police which also included a refusal book.

Concerns were raised by the Sub Committee about whether the training material supplied to Mr Shrestha prior to the first offence, had been put into practise. In addition the Sub Committee was advised that staff were not trained in operating the CCTV.

Mr Shrestha addressed the Committee and stated the following:

- Mr Shrestha requested that his licence not be revoked as the business was his livelihood; alcohol sales constituted 50% of total sales ;

- Mr Shrestha admitted that there was a language and cultural barrier with regard to his staff members;
- Staffing was adequate particularly as Mr Shrestha was in attendance on the premises most of the time during trading hours;

The Sub-Committee adjourned from 12.10 p.m. until 13.10 a.m. for deliberation.

Following deliberations on the application, Mrs James reported on the advice she had given to the Sub-Committee and that Members had taken into account:

- Section 52 of the Licensing Act 2003 and the Secretary of State's Guidance under section 182 of the Act;
- Relevant case law;
- 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, Surrey Police and Mr Shrestha.

The Sub-Committee had noted that two breaches within 3 months was a serious issue and the responsibility for this rested with Mr Shrestha. It was also noted that the training pack had been provided to Mr Shrestha prior to the test purchases.

The Sub Committee concluded that the premises licence should be suspended for one day during licensing hours on the first Monday after the 21 day deadline for appeal rights. Members recognised that they were acting in the interests of the wider community. They were satisfied it was appropriate to modify the existing conditions of the licence for the promotion of the licensing objectives in issue. The agreement between the two parties was noted.

The public safety conditions and the Police recommendation in their application to revoke the licence and suspend the current designated premises should be rejected and condition 1 under Crime and Disorder was to be reworded as follows:

A personal licence holder will always be present at the premises during the hours that the premises are licensed to sell alcohol subject to:

- i) upon the cessation of a person engaged as a member of staff holding a personal licence and working at the premises:
- ii) the Designated Premises Supervisor shall notify the police of that person's departure within 48 hours of that event and;
- iii) 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;
- iv) 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.

RESOLVED, that the Premises Licence for Everest Cash and Carry, 449 London Road, Camberley GU15 3JA, be suspended for the licensing hours on the first Monday 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 convened at 10.00. The Designated Premises Supervisor, Mr Shrestha had not arrived in time for the meeting. He was contacted and he subsequently arrived at 11.00. His late arrival was due to a misunderstanding regarding the start time of the meeting. He confirmed at the hearing he was happy for the hearing to go ahead at that time.

Prior to the hearing, Mr Carnie and T/Inspector Castell met with Mr Shrestha to discuss the review. Mrs James also spoke with Mr Carnie and T/Inspector Castell with the consent of Mr Shrestha and the sub-committee.

a DECISION NOTICE

Application by Surrey Police for Review of Premises Licence-Everest Cash and Carry, 449 London Road, Camberley, Surrey

This is an application by Surrey Police under section 51 of the Licensing Act 2003 for a review of the premises licence held by Ocata Limited of 9/10 Hippodrome House, Aldershot and relating to Everest Cash and Carry which is a small general store. No 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 (Senior Licensing Officer)
Mrs P. Barnshaw (Licensing Administration Officer)

Mr R. Carnie (Police Licensing Officer)
Temporary Inspector Jon Castell

Mr R Shrestha- Designated Premises Supervisor

Mrs L. James- legal advisor to Sub Committee
Mrs L. Brewin- Democratic and Electoral Services Officer

Sub- committee members: Cllrs, P Tedder, B Chapman and I Sams (Chair) (R Hutchinson-substitute)

The Sub Committee delayed the start of the hearing to allow time to consider whether Mr Shrestha intended to attend the hearing. The hearing commenced at 11.00 am after Mr Shrestha arrived.

Our legal advisor told those present that there had been some comment on social media regarding the hearing and that the committee was aware that no such representations were to be taken into account in the decision- making process before us.

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

The parties were then invited to present their cases:

Police Evidence before the Sub-Committee and representations

For Surrey Police, Mr Carnie advised there had been two test purchase exercises over a period of less than three months. On both occasions, different members of staff working at the premises had failed to request age identification. The test purchasers were aged sixteen. Both staff members accepted a fixed penalty for the offence of selling alcohol to under age persons.

Mr Carnie explained that he had had an opportunity to speak to Mr Shrestha before the hearing, along with Acting Inspector Jon Castell and it had been agreed that the Police would no longer pursue the request in their application that the sub committee took steps including the suspension or revocation of the premises licence. Whilst they still regarded the situation as very serious, Mr Shrestha had agreed that the additional conditions set out in their application, should be added to the licence. The officers felt that the conditions would assist Mr Shrestha and his staff to conduct the business in a manner which promoted the licensing objectives that were set out in the applications for a review hearing. Mr Carnie also confirmed that a staff training package had been provided to Mr Shrestha and his staff. He felt it was appropriate for there to be refresher training in addition.

Members asked questions of Mr Carnie regarding CCTV and established that it was operational at the time of the incidents. He said it was a good system but staff did not know how to work it properly, which was not an uncommon problem in his experience. He and looked at the footage with Mr Shrestha one day after the second failed test purchase. Members noted there was no condition currently on the licence for the operation of CCTV. Mr Carnie said he sought conditions relevant to the appropriate use of CCTV at the premises.

Mr Carnie said that Mr Shrestha and had problems with staff turnover and with their understanding of English sufficiently. His staff were Nepalese. In response to member questions Mr Carnie said it was open to the sub committee to place a condition on the licence to ensure a personal licence holder was always on the premises during licensing hours.

Evidence of the Designated premises Supervisor

Mr Shrestha said that there were problems with his staff having sufficient command of English and that he felt due to cultural reasons; his staff felt customers were much older than they were. In questioning, he accepted that he had looked at the CCTV footage of a failed test purchase and the staff member had not looked up to see the face of the test purchase customer.

He stated that following the failed test purchase in September, he had introduced a refusals book.

Mr Shrestha said he would accept help from the licensing officer, book staff to go on training courses and would seek to improve the language problems. He also confirmed he had one full time trained personal licence holder working for him for more than one year and another two days a week who had been there about six months. He often worked at the premises alongside other staff and that staffing was adequate.

He accepted Mr Carnie's evidence he was given a staff training package which was Trading Standards' publication prior to the first failed test purchase and the shop was not busy when the test purchases took place.

Mr Shrestha confirmed that his business comprised 50% alcohol sales and the rest groceries. He felt the volume of his business was more at weekends but he was busy from 9am to 11 am, 2pm to 4pm and 6.30 to 8 pm. He said he did not open the premises for the duration of his permitted hours, but he opened the shop from 9am to 8pm each day.

Mr Shrestha said to revoke the premises licence would remove his livelihood because half of his sales were alcohol related.

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 on the written and oral evidence presented to us.

She advised 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. We acted in the interests of the wider community due to the criminality and considerations were at least of deterrence, in accordance with the Bassetlaw High Court decision (2008) and the statutory guidance.

We also received legal advice that our role at the Review was to consider the process as a key protection, to focus upon factual evidence, establish the causes of concern and have regard to action that was appropriate and proportionate for the promotion of the licensing objectives within section 52. We were reminded that in considering any conditions, we should take into account the statutory guidance that applies in all cases (for instance paragraphs 9.43 10.04 of the March 2015 guidance). Also, it is for us to give weight to the licensing objectives in the light of the steps available to us to take.

We 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 application 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. We also took into account any financial impact of measures on this particular business in respect of the alcohol sales as a proportion of this business.

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 Police officer's view regarding the history and seriousness of the offences within a short period and inadequate training despite assistance being given to the DPS, that there should be one 24 hour suspension of the licence which should take place on a Monday over the duration of the licensable hours for that day, 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.

Conditions

We are satisfied it is appropriate and proportionate for the promotion of the licensing objectives to modify conditions, rewording those put forward by the Police 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) 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 15 February 2016.

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 working on the premises shall receive training within seven days of commencing work on the premises in accordance with training materials provided by Trading Standards including refresher training every six months for all existing staff relating to the 'Challenge 25' policy which shall be in place at the premises.

APPEAL RIGHTS

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.

Chairman