

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

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+ Cllr Bill Chapman  
+ Cllr Paul Ilnicki

+ Cllr Bruce Mansell

+ Present  
- Apologies for absence presented

Substitutes: Cllr Pat Tedder

In Attendance: Cllr Dan Adams

Legal Advisor to Sub Committee

Mrs Laura James

Democratic and Electoral Services  
Manager

Mrs Jane Sherman

Surrey Heath Borough Council  
as Licensing Authority

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

Surrey Police

Mr Rab Carnie  
T/Inspector Jon Castell

JK Wines & Foods

Mr Ravel Singh Motizada – Designated Premises Supervisor  
Barneet Motizada  
Surbir Singh Motizada

Other Party

Mr M Schmitz

**22/LS Election of Chairman**

RESOLVED that Cllr Bill Chapman be elected as Chairman for this meeting.

**23/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. The Sub Committee Members advised that they would make their decision related only to the evidence provided at the hearing.

**24/LS Licensing Act 2003 - JK Wines & Foods**

The Sub-Committee considered an application for a review of a Premises Licence relating to Jaz and Kiran J K Wines & Foods, 5 High Street, Bagshot.

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 other relevant licensing legislation. 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...*'

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 J K Wines & Foods, 5 High Street, Bagshot.

The Licensing Officer also 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.

Mr Rab Carnie addressed the Committee and stated the following:

- On 9 September 2015 Mr Ravel Singh Motizada, the Designated Premises Supervisor, failed a test purchase when he sold alcohol to an under-eighteen year old girl. Mr Motizada admitted the offence and was given a fixed penalty notice.
- On 19 November 2015, Mr Ravel Singh Motizada, the Designated Premises Supervisor, failed a second test purchase when he sold alcohol to an under-eighteen year old girl. Mr Motizada admitted the offence;
- The customers on both occasions were asked if they were over 18 but no proof of ID was requested;
- Surrey Police felt that there should be a review of the licence because it was a poorly run business, which could have a negative impact on the community;
- It was requested that the licence be revoked or suspended, the Designated Premises Supervisor be removed and conditions updated as set out in the agenda papers.

Mr Motizada and his daughter addressed the Committee and stated the following:

- Mr Motizada explained that he had not intended any harm to children and admitted human error;
- Mr Motizada explained that he worked long hours and closed at 21.00. He had chosen not to open longer as he was worried about selling alcohol late into the night and the impact it would have on the area;
- The Sub Committee was advised that Mr Motizada had one member of staff who worked when he had to visit the cash and carry. Family members helped Mr Motizada at weekends and holidays;
- Mr Motizada advised Members that the member of staff had been fully trained.
- Mr Motizada advised that he was now more vigilant when selling alcohol on his premises;

- Members were advised that the sale of alcohol constituted 30-35% of total sales;
- It was confirmed that CCTV had been in operation;
- Members were advised that the last entry in the refusal book since the second offence had been 2 January 2016. It was started on 20 November 2015;
- Challenge 25 signs had been displayed on the premises prior to the first offence;
- The Sub Committee was advised that revocation or suspension of the licence would have a negative impact on the business. It would also be difficult to find a different person to be a Designated Premises Supervisor as a new application would have to be made;
- Mr Motizada agreed with the Police's recommended conditions;

Mr Schmitz, a resident, addressed the Sub Committee. He stated that he had known Mr Motizada since he took ownership of the shop and it had always been run reliably and responsibly. Mr Motizada had a good rapport with the community and if the licence was revoked the business would be in serious trouble which would be a loss to the community.

The Sub-Committee adjourned from 15.05 until 16.00 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(3) of the Licensing Act 2003 and the Secretary of State's Guidance under section 182 of the Act and Bassettlaw case.
- 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 Motizada (and those representing him) and Mr Scmitz.

Members recognised that the recommended sanctions by Surrey Police were put forward in the interests of the wider community as deterrence at least. They were also satisfied with the conditions as sought by Surrey Police as being appropriate for the promotion of the licensing objectives in issue.

The Sub-Committee had concluded that the premises licence should be suspended for two consecutive Mondays during licensable hours after the 21 day deadline for appeal rights. Conditions would be modified as follows:

- An additional condition requiring training in respect of the CCTV to be added to the conditions of the licence;

Regarding the following conditions sought by the Police:

- Condition 2 – remove 'appropriate'
- Condition 4 to be amended to state 'retain for 25 days';
- Delete condition 6;
- The refusals book shall be bound;

- Refuse conditions sought on public safety and public nuisance but retain condition 3 regarding protection of children from harm;
- The sub-committee will provide wording regarding Challenge 25 policy conditions it decided to modify

**RESOLVED, that the Premises Licence for J K Wines & Foods, 5 High Street, Bagshot be suspended for two consecutive Mondays during licensing hours after the 21 day deadline for appeal rights, subject to the amended conditions in the operating schedule attached in the Decision Notice at Annex A.**

#### a DECISION NOTICE

##### Application by Surrey Police for Review of Premises Licence- J K Wines & Foods , 5 High Street, Bagshot, 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 Jaz and Kiran Wines Ltd of 5 High Street Bagshot and relating to JK Wines and Foods which is a small off licence 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 (Senior Licensing Officer)  
Mrs P. Barnshaw (Licensing Administration Officer)

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

Mr Ravel Singh Motizada- Designated Premises Supervisor  
Ms B Singh Motizada- daughter  
Mr S Singh Motizada (nephew)

Mr M Schmitz (other persons)

Mrs L. James- legal advisor to Sub Committee  
Mrs J Sherman- Democratic and Electoral Services Manager

Sub- committee members: Cllrs, B Chapman (Chair) P Ilnicki, B Mansell (P. Tedder substitute)

Our legal advisor told those present that there had been some comment on social media and in an email to members 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, Mr R S Motizada was working at the premises and had failed to request age identification on both occasions. The test purchasers were females and under eighteen. Mr R S Motizada accepted a fixed penalty for the offence of selling alcohol to an under -age person for the first failed test purchase and was ineligible to receive a second such penalty and instead was reported for the offence.

Mr Carnie asked that the sub-committee took steps including either the suspension or revocation of the premises licence and the removal of the DPS. He regarded the situation as particularly serious because it was the DPS who carried out the sales on both occasions. Mr Carnie also confirmed that there was CCTV at the premises and provided 25 days of coverage which was adequate. He said it was operational on the second test purchase incident, with twelve cameras and is very clear.

#### Evidence of the Designated premises Supervisor

Mr R S Motizada said he was a family man and would not harm children. He said his failure was to be a trusting person and he very much liked the community, where his business is located and was well known with regular customers. He has committed thousands of pounds to the business and to keep it running he is in debt. He is trying to sell the business as a going concern. He believes most customers will buy confectionary or snacks and tobacco products at the same time as alcohol. He thinks 20- 30% of his custom is tobacco related and alcohol 30-35%.

He stated that he had introduced a refusals book on 20 November 2015 the day after the second incident and the last log was for 2 January 2016. He had also installed 'Challenge 25 policy' signage before the failed test purchase in September.

He also confirmed he had no one to run the business for him if his licence was suspended or revoked or if he was removed as the DPS. He said customers tend to buy food with alcohol and feared that customers would not buy those items if they could not buy alcohol. There was also the risk he would lose his trade to his competitors, he explained.

The premises are usually open 10am to 9pm and Mr Motizada told us he works long hours. Fridays and Saturdays are busier so he is open longer. He has someone cover for him who works in a local restaurant. She does not hold a personal licence. His adult children help him in holidays and weekends but they now have full time jobs and college places. He lives in Hayes.

Mr Motizada says he would now carry out double identity checks and accepts it was his error in not requesting age identification. His licence already has a condition relating to CCTV being operational and a Challenge 25 policy in place and advertised. He told us he reads the training pack for the policy regularly.

Mr Motizada's daughter spoke for her father as well and confirmed that he had no means of obtaining other staff. She said her father worked hard all of his life and wanted to make the business a success.

Other persons- Mr Schmitz spoke in support of Mr Motizada. He confirmed there was never any trouble at the premises and he had been a regular customer since day one. He said the premises are valued by the community and recognised the hard work put into the business being undermined by being too trusting. He amplified his written representation in saying Mr Motizada would not harm children.

#### **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 underage sales are 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 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.

Although there was no penalty notice regarding the second incident, we are satisfied on the evidence we have seen and heard that there were two failed test purchases and that both were the responsibility of Mr Motizada. We also take into account that Mr Motizada already had a Challenge 25 policy in place as a licence condition. We also heard that the Police needed assistance from a family member to extract CCTV data relating to the test purchase in November.

We accept Mr Motizada's evidence that he was naïve, that he did fully appreciate the consequences and that he now makes very careful identity/proof of age checks.

We considered all our options under section 52 of the Licensing Act 2003. We did not think it was an appropriate or proportionate step to promote the licensing objectives in issue 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 being committed by the same person, that is the DPS, that there should be two days' suspension of the licence which should take place on two consecutive Mondays over the duration of the licensable hours for that day, the first 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 have agreed to some of the Police's suggested conditions as we consider that these will promote the licensing objectives going forward.

### **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. The conditions put forward by the police in their application under the heading 'General' be applied with the wording 'to the satisfaction of the Police'.
2. Under 'Crime and Disorder' (the prevention of), number 1 is omitted save in so far as the mandatory condition relating to personal licence holders applies. There is no requirement for a personal licence holder to be present for the avoidance of doubt.
3. Delete 'appropriate' to condition 2.
4. In condition 4 the period of retention is 25 days.
5. All staff shall be trained to the satisfaction of the Police in the operation of CCTV including the retrieval of images.

6. Under 'the protection of children from harm', heading condition 3 should remain; numbers 1 and 2 are replicated elsewhere (under 'General' heading).
7. condition 6 is removed as it replicates the mandatory condition.
8. The condition relating to a refusals book is number 8 and it shall be in the form of a bound document, as an addition to the suggested condition put forward by the Police at '1'.
9. The requested conditions under the heading 'public safety' in the application are not granted, nor the condition under the heading of public nuisance.

We ask the Licensing Officer to draw up these conditions, incorporating the above.

#### 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