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SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.52

Licensing Sub-Committee	29 JUNE 2011
Applicant for Review	Surrey Police
In respect of	AM 2 PM 8 Woodthorpe Road, Ashford, TW15 2RY
Respondent	Mr Amar Roushan and Mr Swaran Singh

SUB-COMMITTEE DECISION WITH REASONS

REVOCATION

With effect from the end of the period given for appealing against the decision or, if the decision is appealed against, the date on which the appeal is disposed of.

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1. This Sub-Committee has before it an application by Surrey Police for the Review of the Premises Licence at AM2PM at 8 Woodthorpe Road, Ashford concerning the Licensing Objectives on prevention of crime and disorder, prevention of public nuisance and protection of children from harm.
 2. The Respondents are Mr Amar Roushan and Mr Swaran Singh who are the joint Premises License Holders at the premises. Mr Amar Roushan is also the Designated Premises Supervisor at the premises.

ATTENDANCE

3. A number of people have attended the Sub-Committee hearing this morning to make representations. They are:
 - a) Sgt I. Scott, Neighbourhood Safety Sergeant, Surrey Police - Applicant for the Review and a responsible authority under the Licensing Act 2003.
 - b) Miss Johnson - Surrey Police witness
 - c) The respondent, Mr A. Roushan - joint Premises Licence Holder. He was assisted by Mr Delawar, a part-time employee at the premises, who interpreted for him.
 - d) The respondent ,Mr S. Singh - joint Premises Licence Holder attended the hearing, at the request of the Sub-Committee, following an adjournment, and Mr Singh was assisted by Mr Delawar who interpreted for him.
 - e) Ms Gemma Dean, Spelthorne Borough Council's Licensing Enforcement Officer,

EVIDENCE

4. The Sub-Committee has considered all of the relevant evidence made available to it this morning, and in doing so has taken into account the regulations and national guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.

Applicant for Review

5. Sgt Scott outlined the application for review by Surrey Police. Their initial concern related to an incident of an alleged underage sale on 4 March 2011, but in attempting to obtain CCTV images relating to this incident the police were further concerned that no-one at the premises had been able to operate the system or download images, which was in breach of the conditions on the licence. As a result of this, the relevant footage had been lost and the police were not able to secure the necessary evidence to further investigate the alleged incident of underage sale.
6. Sgt Scott related the six occasions on which the police visited the premises in order to secure CCTV footage covering the alleged underage sale on 4 March 2011. On each visit there was no-one present who could operate the CCTV system or download it. This was a breach of the premises licensing condition which states:

“CCTV to be maintained/ installed and in operation at all times and to be to the satisfaction of the police and local authority. If the CCTV is inoperative the police and local authority to be informed as soon as possible and immediate steps taken to put the equipment back into action. A member of staff shall be available at all times the shop is open to the public that has been fully trained on the use of the CCTV system including the ability to download images on request.”

7. Sgt Scott detailed the visit to the premises with the Council's Licensing Manager on 21 March 2011. Both Mr Amar Roushan, the DPS and Mr Swaran Singh, the manager and joint premises licence holder were present. Again neither of the premises licence holders was able to operate the CCTV system. During this visit the Licensing Manager rehearsed the conditions of the licence with Mr Roushan and made the following observations:
 - Challenge 21 signs were displayed on the premises however Mr Roushan was unable to explain what action he should take to enforce the "Challenge 21" scheme.
 - The refusals log was up to date.
 - Mr Roushan was unable to confirm what the training records related to.
 - Mr Roushan produced a copy of the licence but was not aware of the condition that there should always be a member of staff available who was trained to use the CCTV system and download images on request.
8. This visit was followed up by a letter from the Licensing Manager dated 24 March 2011 detailing the visit and stressing to the joint licence holders that they must ensure the licence conditions are complied with. She advised them to arrange training in use of the CCTV as a matter of urgency as they remained in breach of the condition until this had been done.
9. Mr Swaran Singh sent a letter in response on 28 March 2011, stating that a CCTV engineer was booked to visit the premises on 4 April 2011 and to give training to the staff. He gave his assurance that this type of incident wouldn't happen again.
10. Sgt Scott explained that on a subsequent visit on 6 April 2011, Mr Singh informed the police that he had received training to operate the CCTV system a few days previously but on being asked to demonstrate his new skills he was unable to do so.
11. The police held a further meeting with the premises licence holders on 10 May 2011, during which they highlighted their concerns about their inability to promote the licensing objectives. The premises licence holders were unable to offer any explanation for their failings or any steps to prevent such incidents occurring again.
12. The police witness, a 14 year old schoolgirl, presented her statement to the Sub-Committee relating the incident which was alleged to have occurred on 4 March 2011.
13. She described how she went into the shop at 3.30pm on 4 March 2011 and asked the man at the counter for 2 small bottles of vodka. He asked her for ID which she was unable to produce but told him she was 18. He then handed her the bottles, for which she gave him cash. He did not provide a receipt.
14. She also stated that on another occasion in February 2011, whilst wearing school uniform she was able to buy alcohol from this premises and was not asked to produce ID. She confirmed that Mr Delawar had sold her the alcohol on

4 March 2011. She also stated that she had bought alcohol from these premises on three previous occasions and that both Mr Roushan and Mr Delawar had made these sales. The premises was well known by youngsters in the area as somewhere you could buy alcohol as a minor.

15. Sgt Scott summarised his application for review saying that both the premises licence holders, one of whom was the designated premises supervisor, had disregarded their responsibilities by continually breaching their licence conditions. The effect of this breach was that police were unable to substantiate the allegation of an underage sale.
16. He indicated that as a result of these concerns a revocation of this premises licence should be considered.

Premises Licence Holder

17. Mr Roushan, assisted with interpretation by Mr Delawar, said he was sorry for the mistake which led to a minor being sold alcohol and said it wouldn't happen again.
18. Mr Roushan was joint premises licence holder with Mr Singh and the DPS since October 2010. He worked in the premises every day, alternating a morning and evening shift with Mr Singh on a weekly basis.
19. Mr Singh owned the business and made the decisions. Mr Roushan was his brother-in-law and his employee. Mr Delawar was a part-time employee at the premises. This was Mr Singh's only premises, with a turnover of £2500 per week of which £300 was the income from sale of alcohol.
20. Both Mr Singh and Mr Roushan confirmed that they understood the conditions on the licence but when asked what they were, Mr Singh responded: not to sell to underage, knowing how to operate the CCTV and informing the Council of a change of address for his personal licence.
21. Neither of the premises licence holders were able to confirm the programme of training. Mr Delawar stated that he had been told to ask for ID from anyone who didn't look 18 and which products couldn't be sold to minors.
22. Mr Singh apologised for the sale of alcohol to a minor which happened whilst he was out of the country. When asked why the sale was not refused when ID couldn't be shown he replied that he was not there. He accepted however that it was his responsibility to ensure the conditions of the licence were complied with.
23. Neither Mr Roushan nor Mr Singh were able to comment on the allegation that the premises was well known for being the place for minors to obtain alcohol. They were only able to reiterate that the sale to the 14 year old girl was a mistake.
24. Mr Singh said that next time the police attend his premises they would not have further problems with obtaining the CCTV.

FINDINGS

25. The Sub-Committee has considered the representations made by the Applicant for the review, Surrey Police and its witness and the Respondents, Mr Roushan and Mr Singh. The Sub-Committee finds as follows:
26. On 6 separate occasions Surrey Police had attempted to recover CCTV images of the incident on 4 March 2011 alleging a sale of alcohol made to an underage person, but neither of the Premises Licence Holders was able to operate the system.
27. Despite Mr Singh's assurances in a letter to the Council's Licensing Manager dated 28 March 2011, that the staff would be trained on 4 April 2011 to operate the CCTV, he was still unable to do so just two days after the training when visited by Surrey Police on 6 April 2011.
28. There is no dispute that alcohol was sold to Miss Johnson on 4 March. Mr Delawar said that he sold it. Mr Roushan was not on the premises. Mr Singh was in India. Both Mr Roushan and Mr Singh apologised for this incident and said it was a mistake which would not be repeated. Although Mr Delawar asked Miss Johnson for ID, he took her claims that she was 18 at face value without insisting to see evidence.
29. Miss Johnson also states that she was sold alcohol 3 times before at this shop by Mr Roushan or Mr Delawar. This was not disputed by them and therefore the Sub-Committee finds that Miss Johnson was sold alcohol on four separate occasions at AM2PM. Mr Singh did not sell alcohol directly to Miss Johnson, but he accepted as the Premises Licence Holder that he was responsible and he apologised.
30. We find that Mr Singh and Mr Roushan had a poor understanding of the licensing conditions in March 2011. They said to us today that they were aware of the conditions but over a period of weeks following the intervention of the police and the local authority, they were not able to demonstrate this. In particular; the condition on CCTV was ignored. The Police could not investigate Miss Johnson's case properly because they were denied the evidence and when finally the equipment was made to work, such footage as may have existed was wiped clean.
31. The National Guidance emphasises that all parties including licence holders and the responsible authorities should work in partnership to promote the licensing objectives. The respondent has been slow to pay regard to this. Despite the authorities giving them advice, the premises licence holders have failed to comply with their conditions to protect children from harm.
32. The failure of Mr Roushan and Mr Singh to help the Police over six separate occasions speaks for itself. Mr Singh promised the Police that he would arrange an engineer to visit for training but then he was not able to work the equipment when the Police came on the 6 April 2011 to test his assurances. He could not demonstrate his ability to operate the equipment and download footage. He stated that he had received relevant training a few days previously but that he had forgotten how to operate the equipment.

33. The Council also required Mr Roushan and Mr Singh to train staff but we find there was no comprehensive programme of training only verbal instruction being given.
34. The Sub-Committee finds that staff left in charge of the premises were clearly not properly trained or qualified. This demonstrates to the Sub-Committee a lack of attention and concern for the Licensing Objectives on the part of the Premises Licence Holders about to the supervision of the premises and the sale of alcohol.
35. For all the reasons above, we find that Mr Roushan and Mr Singh have no proper regard for the conditions on their licence. We also find that they have no proper regard for the role of the police as a regulator under the Act to enforce the conditions on the licence.
36. Mr Singh and Mr Roushan did not give the Sub-Committee any confidence that they had real insight into their failings as Premises Licence Holders. It demonstrates to the Sub-Committee that Mr Singh and Mr Roushan know little about their responsibilities as a Premises Licence Holders.
37. It is the job of the Premises Licence Holder:
 - To set the systems of management within the store
 - To uphold the Licensing Objectives through staff recruitment, development, training and discipline
 - To ensure all legal obligations are properly discharged
 - To maintain good relations with the Responsible Authorities and the Licensing Authority
 - To act quickly to resolve problems and promote, at all times, the Licensing Objectives
 - To appoint and supervise an appropriately qualified and competent Designated Premises Supervisor

All of the above is evident from the Licensing Act 2003, the Guidance issued under s162 and Spelthorne Borough Council's own Statement of Licensing Policy. The Sub-Committee finds that Mr Singh and Mr Roushan have failed to appreciate these aspects of the business as has been demonstrated by the way in which the sale of alcohol has been made to persons under the age of 18 at this store.

38. The Sub-Committee finds that there is overwhelming evidence that the store is not being run in accordance with the requirements of the Licensing Act 2003 and that it is clear that the actions and response of Mr Singh and Mr Roushan are undermining the Licensing Objectives on prevention of crime and disorder, prevention of public nuisance and protection of children from harm. The Council therefore needs to consider what action needs to be taken to ensure that these licensing objectives are promoted.

CAUSES OF CONCERN

39. The Sub-Committee is advised by National Guidance paragraph 11.18, to identify the causes of concern established by the representations. Remedial action can then be directed to those causes. We have identified a risk that without further action under our statutory powers that:

- further sales of alcohol to minors are likely
- that the Premises Licence Holders will fail to have regard to their conditions on CCTV, Challenge 21 policy and training, and
- that the Premises Licence Holders will fail to show due regard to the position of the Police and Council in regulating the premises in order to promote the licensing objectives including the prevention of crime and disorder and the protection of children from harm

LEGAL POSITION

40. By virtue of the Licensing Act 2003 the Sub-Committee is entitled to consider on a review application whether it should:

- ⇒ Modify the conditions
- ⇒ Exclude a licensable activity
- ⇒ Remove the Designated Premises Supervisor
- ⇒ Suspend the licence for up to 3 months
- ⇒ Revoke the licence

Written Warnings

41. The Sub-Committee considered the advice set out in the national guidance at paragraph 11.16 that a Sub-Committee could consider written warnings to a premises licence holder. This was not considered sufficient to deal with the serious allegations outlined in this review and in any case the Premises Licence Holders had already been warned of their need to provide the police with CCTV footage on a number of occasions. The Council's Licensing Manager had also written to them regarding the breach of the CCTV condition in a letter dated 24 March 2011.

OPTIONS

42. The Sub-Committee has considered which of the remedies available to it would be most proportionate and reasonable to meet the Licensing Objectives on prevention of crime and disorder, prevention of public nuisance and protection of children from harm and address the concerns outlined above.

Modification of conditions

43. The Sub-Committee considered if the problems at this premises could be remedied by the imposition of conditions.

44. The Sub-Committee took the view that if the Premises Licence Holders were unable to meet their current conditions, and particularly with regard to the CCTV having given assurances that the breach would not recur, they were unlikely to meet further conditions to address the problems of underage sales.

Exclusion of Licensable activity

45. The Sub-Committee then went on to consider the removal of a licensable activity. As the sale of alcohol is the only licensable activity and therefore removal of this licensable activity would be akin to revoking the premises licence the Sub-Committee considered this option below.

Removal of DPS

46. The Sub-Committee considered the national guidance at paragraphs 11.20, “that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual” and 11.21 “that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented.”
47. Mr Roushan as DPS does bear some responsibility for the sale of alcohol to Miss Johnson made by Mr Delawar. Mr Delawar should only have been authorised to sell alcohol once he was properly trained. The Sub-Committee is not satisfied that there was sufficient training or that Mr Delawar was properly supervised.
48. However, the Sub-Committee considers the problems at these premises go beyond the actions of the DPS and that removal of that individual would not suitably address the licensing objectives. He is also a joint Premises Licence Holder and therefore still in a position of responsibility to ensure the licensing objectives are upheld. It was the responsibility of the Premises Licence Holders to ensure compliance with conditions on CCTV and the Sub-Committee has no confidence that the Premises Licence Holders will comply with this condition which is needed in order to promote the Licensing Objectives.

Temporary Suspension of License

49. The Sub-Committee deliberated as to whether a suspension of the premises licence was necessary or proportionate. It concluded that it would not bring about the change to the way in which this premises operated and would only offer a temporary solution with the premises returning to its previous failings once the suspension was lifted.

Revocation of License

50. The Sub-Committee has reviewed all the options available to us under the Act and in accordance with the guidance we have considered if a more suitable remedy exists so that we do not revoke as a first step. However having considered all of those options carefully we cannot see that they will suitably

address the concerns we have raised above and therefore they will not address the four licensing objectives.

51. The Sub-Committee has taken into account the extent, if any, of any detrimental financial impact that our decision might have, but we find that revocation of the licence is both a necessary and proportionate response in all the circumstances and would not deprive the Premises Licence Holders of their livelihood because the proportion of alcohol sales to general revenue is fairly low.

DECISION

52. The Sub-Committee has reached a decision about this matter and in doing so has taken into account the National Guidance on Reviews, paragraph 11.18, which encourages Sub-Committees to identify the problems at licensed premises and then to take a proportionate view to the remedies which are available and might be necessary to promote the licensing objectives.
53. For all the reasons set out above, the Sub-Committee has decided to REVOKE the licence.

Councillor R.W. Sider (Chairman)
Councillor R.B. Colison-Crawford
Councillor C.M. Frazer

Date of Decision: 29 June 2011
Date of Issue: 4 July 2011

RIGHT TO APPEAL

You have a right to appeal against this decision, which must be made to the Justices Chief Executive at the Magistrates court for the area in which the licensing authority is situated and within 21 days of receipt of this decision notice.