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Date: 1 April 2010

## **SPELTHORNE BOROUGH COUNCIL**

### **DECISION NOTICE**

**In accordance with the LICENSING ACT 2003 s.122**

<b>Licensing Sub-Committee</b>	<b>29 March 2010</b>
<b>Applicant for Review</b>	<b>Surrey Police</b>
<b>In respect of</b>	<b>Ashford Wines</b>
	<b>133 Convent Road, Ashford</b>
<b>Respondent</b>	<b>Mr Umesh Dixit</b>

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### **SUB-COMMITTEE DECISION WITH REASONS**

#### **Modification of conditions**

**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 for Review of the Premises Licence at Ashford Wines, 133 Convent Road, Ashford. The Review is brought by Surrey Police.

2. The Respondent is Mr Umesh Dixit who is the Premises License Holder at the premises.

## **ATTENDANCE**

3. A number of people have attended the Sub-Committee hearing this morning to make representations. They are:
  - a. Sgt Martin Jones, Surrey Police – Applicant for the Review, a responsible authority under the Licensing Act 2003.
  - b. Mr Joshua Simons – Licensing Agent from Accuprice, representing the Premises Licence Holder
  - c. Mr Umesh Dixit - the Premises License Holder.

## **EVIDENCE**

4. The Licensing Sub-Committee has considered all of the relevant evidence made available to it, 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 Jones outlined the application for review by Surrey Police. He related a catalogue of incidents at the premises. The incidents described were as follows:-
  - Early October 2008 – Police received information that premises was selling alcohol to underage persons, resulting in the issue of a penalty notice.
  - 8 October 2008 – premises underwent a change of ownership.
  - 18 June 2009 – theft of alcohol.
  - 27 August 2009 – underage sale. Another penalty notice issued by Police.
  - 25 September 2009 – licensing visit: -
    - Staff unable to produce Premises Licence
    - Unaware of refusals book & procedure
    - Followed up by letter from Dawn Morrison, Licensing Manager at SBC.
  - 12 January 2010 – licensing visit: -
    - Licence summary correctly displayed but certified copy of Licence not available. Staff member present did not know where it was.
    - Last entry in refusals log dated 27/9/09.
6. Sgt Jones stated to the Sub-Committee that the business had only recently been transferred to Mr Dixit. The hearing was adjourned and during that time Sgt Jones spoke with Mr Dixit about how they were proposing to run the business

and what measures they were going to put in place to promote the licensing objective on crime and disorder.

7. Sgt Jones advised that during the discussions a number of measures were agreed and due to this he would no longer seek the revocation of the licence, but would request the modification of conditions. Sgt Jones said that he was looking forward to working with Mr Dixit to ensure that the premises were properly run.

### **Premises Licence Holder**

8. Mr Simons stated at the hearing that Mr Dixit wanted to draw a line under the previous running of the premises and he had no connections with the previous premises licence holder.
9. Mr Dixit stated that he wanted to run the premises in a responsible way. The member of staff who had made the underage sales had now been dismissed. Mr Dixit advised that he was willing to put forward a number of conditions to ensure that this was the case. These were in line with what the police had requested but with a few amendments which the police were in agreement to.

### **FINDINGS**

10. The Sub-Committee has considered the representations made by the Applicant for the review, Surrey Police and the Respondent, Mr Dixit. The Sub-Committee finds as follows:
11. The new Premises licence holder is intending to run the premises in a responsible manner and is looking to put in place a number of measures to ensure the promotion of the licensing objective on crime and disorder.
12. There was a period between the transfer of the premises licence and the change of the DPS and the transfer of the business, where administrative breaches of the licence conditions have occurred, but the Sub-Committee are persuaded that this will be rectified.

### **CAUSES OF CONCERN**

13. 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. In this case the cause of concern may be summarised as follows:
  - (a) Previously the management of the premises had not been good, staff had been left unsupervised for long periods of time, training had not been given to staff in the conditions of the licence and how to prevent underage sales and administrative breaches of the licence had taken place. The Sub-Committee's concern is that although the premises licence has been transferred to Mr Dixit that the problems will not be rectified. The Sub-Committee hold this concern as the Police and the Licensing Authority have

detailed problems following the transfer of the premises licence and the change of the Designated Premises Licence.

## **LEGAL POSITION**

14. 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**

15. 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 necessary.

## **OPTIONS**

16. The Sub-Committee has considered which of the remedies available to it would be most proportionate and reasonable to meet the Licensing Objective on prevention of crime and disorder and address the concerns outlined above.

## **Modification of conditions**

17. The Sub-Committee considered if the problems at this premises could be remedied by the imposition of conditions.
18. The Sub-Committee has agreed that it is both necessary and proportionate to modify the conditions of licence to ensure that the concerns raised do not occur.
19. The Sub-Committee agree that the conditions as agreed between the Police and premises licence holder are the most appropriate to ensure that these premises are run in accordance with the licensing objectives.

## **Exclusion of Licensable activity**

20. The Sub-Committee then went on to consider the removal of a licensable activity. The Sub-Committee does not consider that the removal of a licensable activity as this would be akin to revoking the premises licence as the sale of alcohol is the only licensable activity.

## **Removal of DPS**

21. The Sub-Committee does not consider the removal of the DPS to be either necessary or proportionate in the circumstances.

## **Temporary Suspension of License**

22. The Sub-Committee deliberated long and hard as to whether a suspension of the premises licence was necessary or proportionate. It concluded that it was not.

## **Revocation of License**

23. On the evidence presented, the Sub-Committee considered whether revocation of the premises licence was necessary and concluded that it was not.

## **DECISION**

24. 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.
25. The Sub-Committee has decided to modify the conditions of the licence. The following conditions shall be added to the premises licence:
  26. The Designated Premises Supervisor (DPS) of this premises must possess an accredited qualification in addition to their personal licence qualification. If a change in the DPS occurs that DPS will be required to undertake similar training within six weeks of such change.
  27. All staff (paid or unpaid) to be fully trained in the licensing legislation in relation to the Licensing Act 2003, proof of age training (which is to include training on recognising fake identification), assertiveness training to ensure that all staff are capable of being robust in refusing sales of alcohol to underage or drunk persons and the conditions of this premises licence. All staff to receive refresher training on all of these aspects every six months. Records of all training for all staff (paid or unpaid) to be kept in a compliance file at the premises and such file shall be available for inspection by any Responsible Authority on request.
  28. An age restricted policy will be adopted with appropriate and prominent signage displayed. When checking the identification documents the premises should make use of an ultraviolet light to ensure that any such documents produced are genuine.
  29. The premise is to have a refusals book where all refusals of age restricted goods are recorded. This book is to consist of a bound book with consecutively numbered pages and is to be held at the premises and available for inspection on demand by all the responsible authorities.
  30. If there is an Off watch scheme in the area the premises to be an active member and comply with its rules.

31. All incidents of crime and disorder will be reported to the police and a paper record of incidents will be kept at the premises and available for inspection at all times by the responsible authorities. These records shall be countersigned by the DPS and a representative of the Premises Licence Holder as soon as possible.
32. CCTV is to be installed in and in operation in the premises in accordance with Surrey Police's Operational Guidelines on CCTV for the time being in place.

*Cllr. R.W. Sider (Chairman)*  
*Cllr. K. Flurry*  
*Cllr. M.T. Royer*

**Date of Decision:** 29 March 2010  
**Date of Issue:** 31 March 2010

## **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.

### **181 Appeals against decisions of licensing authorities**

(1) Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.

(2) On an appeal in accordance with that Schedule against a decision of a licensing authority, a magistrates' court may-

- (a) dismiss the appeal,
- (b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
- (c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit.