

Please reply to:

Contact: Gill Hobbs
Service: Corporate Governance (Committees)
Direct line: 01784 444243
Fax: 01784 446333
E-mail: g.hobbs@spelthorne.gov.uk
Date: 6 April 2011

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.52

Licensing Sub-Committee	31 March 2011
Applicant for Review	Surrey Police
In respect of	Forest and Ocean, 13-15 High Street, Staines TW18 4QY
Respondent	Mr Sung Chul Lim

SUB-COMMITTEE DECISION WITH REASONS

Modification of conditions and reduction in hours

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.

1. This Sub-Committee has before it an application for Review of the Premises Licence at Forest and Ocean, 13-15 High Street, Staines. The Review is brought by Surrey Police.
2. The Respondent is Mr Sung Chul Lim who is the Premises Licence Holder.

ATTENDANCE

3. A number of people attended the Sub-Committee hearing to make representations. They are:
 - a. Sgt Scott, Licensing Sergeant for Spelthorne on behalf of applicant for the Review;
 - b. PC Ashley, Surrey Police witness;
 - c. PC Coleman, Surrey Police witness;
 - d. PC De Cogan, Surrey Police witness;
 - e. PC Johnson, Surrey Police witness;
 - f. PC Allan, Surrey Police witness;
 - g. Mr De Pear, interested party;
 - h. Ms Michelle Hazelwood, Solicitor from John Gaunt and Partners, representing the Premises Licence Holder;
 - i. Mr Sung Chul Lim, Premises Licence Holder (with interpreter);
 - j. Mr Steven Price, DPS; and
 - k. Mr Steven Chandler, Consultant appointed to the Forest and Ocean

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. Surrey Police outlined, in its written statement and in representation at the hearing, the reason why the application for review was being made which was due to concerns about the ability of the premises to uphold the licensing objectives. Sgt Scott related a catalogue of incidents of alcohol fuelled disorder connected to Forest and Ocean, during a 6 month period from September 2010 to March 2011. The resultant policing necessary was disproportionate to the ability of the police to respond in order to prevent crime and disorder. The issues of concern related to:
 - a. Staff selling to drunks
 - b. Door staff not managing crowds
 - c. Designated Premises Supervisor not adhering to licence conditions
 - d. Despite meetings between the police, DPS and premises licence holder, problems with control persisted
 - e. The majority of incidents occurring after 23.00hrs on Friday and Saturday evenings.

6. All the incidents were detailed in the Report of the Head of Environmental Health and Building Control as included with the agenda papers for the hearing. The five police officers attending the hearing gave accounts of the incidents they had witnessed as follows:
7. Sgt Allan described the events of 20 November 2010 which he stated were typical of a Friday or Saturday evening at the premises. He had attended at 01.56hrs due to a drunk patron needing assistance. He observed over 50 persons exiting the premises, many of whom were drunk and aggressive. Some wandered into the middle of the road and vehicles were forced to take evasive action. He had cause to break up numerous fights and all those involved said they had been drinking in the Forest and Ocean.
8. Sgt Scott confirmed that this was a typical situation on a Friday and Saturday night and that he spoke to the DPS, Simon Price on the same day about his concerns. At the time of his visit there were approximately 60 persons congregating outside smoking and there was no cordoned off area in place. He was concerned that the numbers crowding outside were intimidating to pedestrians and drivers in the vicinity. The front door of the premises was open with very loud music emanating. Sgt Scott asked the DPS to turn down the volume of the music but this request was refused.
9. Sgt Scott explained that as a result of his concerns he arranged a visit to the premises by the Alcohol Enforcement Team. This group of 5/6 officers were tasked with a covert operation to look at the management practices within the licensed premises. The visit took place on 11 December 2010. The conditions observed within the premises were described as shocking: a customer who was so drunk he was slumped against a pillar and in spite of being hardly able to stand up he was served another alcoholic drink by a member of staff, who did not challenge or question him. A doorman standing nearby did not intervene. The toilets at the premises were in a disgusting state with no evidence of any attendants. There were concerns that persons might be doing drugs within the cubicles. Sgt Scott was attending outside the premises at the same time as this operation was in hand. He observed over 60 persons outside the entrance. There was no cordoned off area and the crowd was not being marshalled as agreed with the DPS on 20 November 2010. He asked the doorstaff not to allow the re-entry of two males who were heavily intoxicated, however he subsequently saw one re-enter unchallenged. He informed the DPS of his concerns and arranged a further meeting. He was then called to a fight involving 18 persons, one of whom was the person who had re-entered the premises against his instructions; he was extremely intoxicated. On returning to the premises he saw a male throw a glass bottle at a police car parked outside the

premises. This male confirmed he had been drinking in Forest and Ocean but he was so drunk he could barely finish a sentence.

10. Sgt Scott held a meeting with the DPS and the premises licence holder on 15 December 2010. The DPS was informed of police concerns and given a verbal warning due to breaches of licence conditions. Sgt Scott informed the DPS that he should have a roped off smoking area at the front of the premises and that he needed to retrain staff about serving persons who were drunk. The DPS agreed to implement the smoking area immediately. During a visit by Surrey Police on 23 December 2010, the on duty licence holder was unable to operate the CCTV system and there was no designated smoking area.
11. Surrey Police attended the premises again on 24 December 2010 due to the large numbers of people congregating outside. The smoking area was full and not being marshalled. The door supervisors were unable to manage the number of people inside and outside the premises even though it was under capacity. On speaking to the DPS, he admitted that the door staff were ineffective. Sgt Scott stated that he had concerns that in spite of this admission on 24 December 2010, the door staff in place at the date of the hearing were the same. PC De Cogan gave a more detailed account of her observations during the visit of 24 December 2010. She described a large crowd outside the premises at 23.30hrs, smoking and talking, who obscured the front door. The premises was also very busy inside. The crowd became hostile during the evening and the door staff did not have adequate control. She saw people who appeared to be under the influence of drugs. She observed a 16 and 17 year old who were known to her, exiting the premises. They were not challenged by the door supervisors, even though they clearly looked under age.
12. PC Ashley related his concerns regarding the CCTV images of the evening of 24 December 2010 which were seized from the premises on 15 January 2011. He was advised by the DPS that the tapes seized only covered the internal cameras and that he was unable to download the external camera images but would contact the police when they were available. On 21 January 2011 the DPS sent an email to advise that the images on the external cameras for 24 December 2010 had been overwritten and could not be downloaded.
13. PC Coleman, the Neighbourhood Specialist Officer for Staines Town and the Staines Town Pubwatch Liaison Officer advised that Pubwatch meetings were held once a month. The DPS, Simon Price had not attended meetings on 12 May, 8 June, 9 August, 16 September and 14 December 2010. The DPS and Premises Licence holder attended a meeting with police on 15 December 2010 and retrieved a number of photos of banned persons, whose ban had expired. Such photos should have been handed back as soon as possible, following the expiry of the ban.

14. Sgt Scott stated to the Sub-Committee that the Police were concerned by this catalogue of incidents which resulted in attendance by his team at the premises on 2, 3 or 4 weekends every month. Sgt Scott emphasised that he had tried to work with the staff at the premises through meetings and visits but despite their assurances that efforts would be made to address problems, the police still had concerns. Sgt Scott stated that in his view the premises was not run effectively and hadn't demonstrated that it was dealing with the problems raised by police. The respondent had not taken on board advice about: management of customers outside the premises smoking, the level and amount of drunkenness, the ineffective door staff and the level of noise emanating from the premises.
15. Sgt Scott noted that the DPS, Simon Price had now been replaced by his father, Steven Price. However, in view of the fact that the majority of incidents occurred after midnight he requested that the Licensing Sub-Committee modify the conditions of the premises licence by a reduction in opening hours on a Friday and Saturday night to 23.00hrs.

Interested Party

16. Mr De Pear advised the Sub-Committee that the residents' concerns were similar to those that had been raised on 25 October 2010 when the premises sought an extension of hours. On Friday and Saturday nights it was their experience that crowds of people outside the Forest and Ocean blocked the pavement so that residents, who found this intimidating, could not get past. He witnessed this again last weekend at 2 to 2.30am. The residents also had concerns about: patrons who frequently urinated against their walls and hedges; loud noise emanating from the premises and from the people smoking and drinking outside and rubbish in the form of cigarette butts and glass containers. These disturbances seemed to occur every weekend.

Premises Licence Holder

17. Miss Hazlewood advised that her client took the police and residents' concerns very seriously. Mr Lim had become the Premises Licence Holder in February 2010 and although this had never been a good location in terms of promoting the licensing objectives, he had hoped that introducing a different element of business would change the attitude of the customer base. However, she accepted that they had made mistakes.
18. The Forest and Ocean is located in the Market Square and consists of a Korean restaurant at the front of the premises and karaoke rooms at the rear. In the evening, the restaurant becomes a disco/club with a karaoke theme. Mr Lim operated other karaoke bars without issues.

19. Miss Hazlewood acknowledged that the DPS, Simon Price had been too young and inexperienced to take hold of the premises and to manage its problems. Simon Price had been removed as DPS and a new DPS had been appointed this week: Simon Price's father, Steven Price. She described him as a man with life experience who could stand his ground and impose authority at the premises. He had experience in management in the Leisure industry, but as he had no late night operations knowledge, the premises licence holder had also employed a consultant, Steven Spalding. Mr Spalding had 30 years experience in the licensed trade and particularly of operating night clubs. Mr Steven Price and Mr Spalding would work closely over the next 3-4 months to enforce within the minds of the staff and customers the expectations of what was acceptable at the premises.
20. Miss Hazlewood also acknowledged that the existing licence was weak in regards to control and enforcement at the premises and consequently her client had agreed to propose some further conditions. These are:
- (a) Alcohol and other drinks may not be removed from the premises in open containers.
 - (b) The operators should take all reasonable steps to ensure that patrons awaiting entrance to the premises or leaving the premises do not cause annoyance or nuisance to any other persons in vicinity of the premises and to monitor the number of persons awaiting entry on the pavement and within the designated smoking area, such area to be limited to an occupancy of 25 persons at any time.
 - (c) A Drug Safe Deposit Box shall be located on site, such box to be checked regularly and the contents are to be disposed of in conjunction to the Police's recommendations or by the Police.
 - (d) Regular checks will be undertaken throughout the premises in relation to drug use and in particular within the toilet area. A record shall be kept of the result of checks detailing how and when any illegal substances were found.
 - (e) Premises is to use half pint and pint, polycarbonate or toughened glassware from 22:00 hours on Thursday, Friday and Saturday and at such other times as recommended by Surrey Police and/or risk assessed to be in the interest in promoting the licensing objectives.
21. The new management proposed to operate a zero tolerance policy towards drugs at the premises. Every customer would be searched on coming into the premises and a drug deposit box utilised. Rigorous ID checks would take place at the front door to prevent underage people gaining entrance. It was proposed to introduce an ID scanner and approval for the system would be obtained from the police before installation. A new door staff team from a different company

(GMTV Securities) had been brought in to supervise the doors from the day of the hearing.

22. Miss Hazlewood advised the Sub-Committee that the new DPS had trained all the staff, scheduled re-training for September and compiled a training manual. A radio was installed at the bar for staff to contact management. The new management had been involved in discussions with adjacent premises to find a solution to moving the designated smoking area away from the front of the building. It had been agreed to trial the location of the smoking area at the side of the premises where noise would be trapped by the surrounding buildings. This would reduce the numbers of people in front of the premises which would assist both the police and the residents.
23. Miss Hazlewood referred to the police request for a noise limiter to be installed at the premises. She explained to the Sub-Committee that if noise nuisance had been considered a particular problem at these premises then the Environmental Health Officer would have submitted a representation to this effect, which was not the case. However, the new DPS had taken on board the police concerns in this respect and intended to investigate the existence of noise breakout points and weaknesses in the fabric of the building and address them.
24. Mr Steven Price expressed an intention to co-operate fully with the police and residents and his wish to understand the effect of licensable activities at the premises from their point of view. He had already taken a number of measures to reduce the volume of noise at the premises and intended to find ways that the sound levels could be controlled on the DJ equipment. He offered to liaise with residents to address any issues they still had. He also gave a personal assurance that he or another member of staff would always attend the Pubwatch meetings.
25. Miss Hazlewood commented on the police request that the premises close at 23.00hrs on a Friday and Saturday night. She was of the opinion that this would move the problem of large numbers of people exiting onto the street to a time when other premises in the vicinity were also closing. On behalf of her client Miss Hazlewood offered a solution by way of a condition of no re-entry after 01.00hrs which would be trialled during the week following the hearing, with sale of alcohol ceasing at 01.30hrs and the premises closing at 02.00hrs.
26. Steven Price responded to a question from the Chairman regarding the problems the police had experienced in obtaining CCTV images. He stated that he and one other staff member had been trained in the use of the CCTV but that more training would be needed. He would look at the equipment installed to see whether it could be upgraded.

FINDINGS

27. The Sub-Committee has considered the representations made by the Applicant for the review, Surrey Police, the interested parties and the respondent. The Sub-Committee finds as follows:
28. The Sub-Committee was persuaded by the evidence of Surrey Police that over the past 6 months there have been a number of incidents involving drunk and disorderly behaviour within and in the vicinity of the premises. It was extremely concerned by the incidents reported by Surrey Police as well as those of local residents.
29. The licensing objectives have been undermined by: the lack of any management control or supervision by the DPS, Simon Price; no staff training; an ineffective door staff team and a lack of effective conditions on the licence.
30. The premises licence holder has now removed the DPS, Simon Price, and replaced him with his father, Steven Price, together with an experienced consultant. This new team has started to implement measures to address the issues of crime and disorder, public safety, public nuisance and protection of children from harm.
31. The premises licence holder has offered additional conditions on the licence to address some of the concerns raised at the hearing and has indicated that if hours were to be reduced, an earlier closing time on Friday and Saturday nights of 2am could be considered.
32. The Sub-Committee notes that many policies and procedures appear to have been recently installed. It is for the Premises Licence Holder and the new DPS to now demonstrate that these procedures can work to reduce the number of incidents in the Premises.
33. The Sub-Committee was impressed by the new regime and their commitment in endeavouring to address all the relevant points raised by the police. It is hoped that the changes will help to bring about a new era for the premises.

CAUSES OF CONCERN

34. 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 causes of concern may be summarised as follows:

- (a) The number and frequency of incidents, primarily due to patrons being intoxicated, that have occurred both inside and outside the premises.
- (b) The fact that the majority of the incidents requiring police attendance occurred after midnight on Friday and Saturday nights.
- (c) The fact that patrons are consuming excessive amounts of alcohol on the premises.
- (d) The lack of management control of large crowds of customers outside the premises, leading to disorderly behaviour and public nuisance.
- (e) The levels of noise emanating from the premises.
- (f) A lack of co-operation with the Police to implement suggested improvements to deal with the problems at the premises.
- (g) The CCTV system was not working for a period of time.

LEGAL POSITION

35. 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

36. 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.

"It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warning should be issued in writing to the holder of the licence. However, where responsible authorities ... have already issued warnings requiring improvement - whether orally or in writing - that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach."

37. The Sub-Committee noted that the premises had not been given any written warnings by the Police. However, the police had met with the premises licence holder and DPS at their offices and visited them at the premises on a number of occasions to address the issues and assurances had been given of change. The Sub-Committee did not consider a written warning would be appropriate in the

context of this review hearing, bearing in mind the changes which had already been implemented.

OPTIONS

38. The Sub-Committee has considered which of the remedies available to it would be most proportionate and reasonable to meet the four licensing objectives and address the concerns outlined above.

Modification of conditions

Reduction in Hours

39. The Sub-Committee is persuaded by the evidence of Surrey Police that a greater number of the incidents at these premises are occurring on Friday and Saturday evenings after midnight. The Sub-Committee considered the evidence of Sgt Scott who works in the town centre and his proposal that a reduction in hours would help these premises promote the licensing objective on crime and disorder.
40. The respondent stated that a reduction in hours to a closing time of 23.00, as requested by the police, would result in more rather than less problems at this location in the town, due to the large number of other licensed premises in the vicinity with a similar closing time. The Sub-Committee took this on board and also considered that such a reduction in hours would fundamentally change the operation of the premises from a club to a pub.
41. The Sub-Committee noted the respondent's offer to reduce the hours of operation to a closing time of 02.00hrs but in view of the numbers of incidents occurring between 23.00hrs and 02.00hrs, did not feel that this would be sufficient to address the concerns highlighted by the police or promote the licensing objective on the prevention of crime and disorder. Further, the Sub-Committee had to bear in mind that the regime change has only been initiated recently and in response to the calling of this review hearing, and there was no sustained evidence to show that the problems at these premises were being successfully addressed. The Sub-Committee therefore considered it was necessary and proportionate to reduce the hours of licensable activities and the closing time of the premises to align with that currently operating on a Thursday. In making this decision, the Sub-Committee had considered the closing times of other premises in the vicinity and concluded that the closing time of 01.00hrs was appropriate in order to stagger the hours with those of nearby premises.

42. The Sub-Committee has therefore decided to modify the conditions of the licence by reducing the licensable hours on Friday and Saturday to 10:00 am to 00:30 am (the following morning). The closing hour of the premises will be thirty minutes thereafter (1am).

Additional conditions

43. The Sub-Committee considered whether the problems at this premises could be remedied by the imposition of conditions. It concludes that this is both necessary and proportionate.
44. The Sub-Committee accepts the additional conditions proposed by the representative of the premises licence holder, as follows:
- (a) Alcohol and other drinks may not be removed from the premises in open containers.
 - (b) The operators should take all reasonable steps to ensure that patrons awaiting entrance to the premises or leaving the premises do not cause annoyance or nuisance to any other persons in vicinity of the premises and to monitor the number of persons awaiting entry on the pavement and within the designated smoking area, such area to be limited to an occupancy of 25 persons at any time.
 - (c) A Drug Safe Deposit Box shall be located on site, such box to be checked regularly and the contents are to be disposed of in conjunction to the Police's recommendations or by the Police.
 - (d) Regular checks will be undertaken throughout the premises in relation to drug use and in particular within the toilet area. A record shall be kept of the result of checks detailing how and when any illegal substances were found.
 - (e) Premises is to use half pint and pint, polycarbonate or toughened glassware from 22:00 hours on Thursday, Friday and Saturday and at such other times as recommended by Surrey Police and/or risk assessed to be in the interest in promoting the licensing objectives.
45. In addition, the Sub-Committee notes the offer of the DPS, Steven Price, to liaise with residents and his commitment to Pubwatch and consider that it is appropriate to include conditions to this effect:
- (f) The DPS to attend Pubwatch meetings on a regular basis.
 - (g) The DPS to contact and liaise with the local Residents on a regular basis in respect of their concerns about noise and public nuisance.

46. The Sub-Committee felt it was necessary to replace the existing CCTV condition on the licence with a more comprehensive condition agreed by Surrey Police as meeting their requirements. The condition to read as follows:

"The premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a Surrey Police Crime Reduction Officer. All entry and exit points will be covered enabling frontal identification of every person entering in any light condition. The CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises. All recordings shall be stored for a minimum period of 7 days with date and time stamping. Recordings requested for the preceding 7 day period shall be made available upon the request of Police or authorised officer within 48 hours.

A staff member from the premises who can operate the CCTV system shall be on the premises at all times when the premises is open to the public. This staff member shall be able to show Police recent data or footage with the minimum of delay when requested.

A log to be kept of the CCTV which will record the following:

- A) any faults in the CCTV system and actions taken and when to rectify the situation.
- B) details of any recordings given to Police or authorised officer.
- C) log detailing when CCTV checked to ensure working correctly, including checking that the recordings are clear and that the clock is showing the correct date and time."

47. The Sub-Committee has, on this occasion, accepted the conditions which have been submitted by the Premises Licence Holder. The Sub-Committee does expect to see that the conditions and the further efforts of Mr Price and Mr Spalding to assist Mr Lim will bring about a reversal of fortunes for this establishment.
48. The Sub-Committee recognises that this hearing has provided a good opportunity for the parties to discuss and communicate the concerns they have and hopes that this hearing is the start of greatly improved communications between the parties to ensure that the licensing objectives are upheld. The Sub-Committee encourages the Police and the DPS to maintain a regular dialogue to resolve any issues at the premises.
49. The existing licence contains a condition in relation to noise nuisance. The Sub-Committee has not made any additional conditions regarding noise nuisance. The police and residents are reminded that they should report all future incidents of high noise levels and nuisance to the Council's Environmental Health Section. The Sub-Committee notes that the new DPS has agreed to assess the building

for weaknesses in its fabric and areas of noise breakout, with a view to addressing excessive noise levels.

Exclusion of Licensable activity

50. The Sub-Committee then went on to consider the removal of a licensable activity. The Sub-Committee does partially attribute the problems at these premises to the licensable activity of supply of alcohol, however to remove this licensable activity would be tantamount to revoking the licence; it does not consider this action to be necessary or proportionate in the circumstances.

Removal of DPS

51. The Sub-Committee notes that the DPS in place at the time of the incidents which resulted in Surry Police calling this review has now been replaced and therefore no further action is required. The new DPS demonstrated to the Sub-Committee that he is trying to resolve the issues at the premises and it is hoped that he will follow through on his assurances.

Temporary Suspension of License

52. The Sub-Committee deliberated whether a suspension of the premises licence was necessary or proportionate. Although the premises had been a focal point of disturbance in the town centre for some months, the Sub-Committee recognised that a regime change was in hand and that a temporary suspension would not achieve a promotion of the licensing objectives.

Revocation of License

53. On the evidence presented, the Sub-Committee considered whether revocation of the premises licence was necessary and concluded that it was not, as a number of measures had been taken already to address the police concerns and promote the licensing objectives.

DECISION

54. 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.
55. The Sub-Committee has decided to:

- a. modify the conditions of the licence as set out above;
- b. reduce the licensable hours on a Friday and Saturday to 10:00 am to 00.30 am (the following morning). The closing hours of the premises to be thirty minutes thereafter (1.00am).

56. The Sub-Committee feels that given its serious concerns about crime and disorder at the premises it must advise the premises that they need to ensure that they work with the police and responsible authorities and ensure that crime and disorder is reduced within the establishment. Any crime or disorder incident must be dealt with efficiently and effectively by the Premises Licence Holder.

Cllr. R.W. Sider (Chairman)

Cllr. R.B. Colison-Crawford

Cllr. Mrs. V.J. Leighton

Date of Decision: 31 March 2011

Date of Issue: 6 April 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.