

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
10 August 2011 (10.30 am - 12.30 pm)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and Lynden Thorpe

Residents' Group Brian Eagling

Mr Keith Bush represented the London Borough of Havering's Trading Standards Service (the applicant). The Police were represented by PC Dave Leonard. Alice Peatling attended on behalf of the London Borough of Havering's Children and Young People's Service. Mr Vikas Goyal attended and was represented by Mrs Gill Sherratt. The LB Havering Licensing Officer, Mr Paul Jones, the legal advisor and the clerk to the Sub-Committee were also in attendance along with a representative of the Press. Councillor Denis Breeding was also in attendance.

All decisions were taken with no votes against.

The Chairman reminded those present of the action to be taken in an emergency.

1 REPORT OF LICENSING OFFICER

PREMISES

Costcutter
18A Station Lane
Hornchurch
Essex
RM12 6NJ

DETAILS OF APPLICATION

Application for a review of the premises licence by the London Borough of Havering Trading Standards Service under section 51 of the Licensing Act 2003 ("the Act").

APPLICANT

Keith Bush,
Operations Divisional Manager,
London Borough of Havering,
Trading Standards Service,
5th Floor, Mercury House,

Mercury Gardens,
Romford, Essex
RM1 3SL

1. Details of existing licensable activities

Supply of alcohol (Off sales)		
Days	From	To
Monday to Sunday	07:00 hours	23:00 hours

2. Grounds for Review

The London Borough of Havering Trading Standards Service is committed to preventing underage sales of alcohol within the Borough. Costcutters in Hornchurch had sold alcohol to underage volunteers on 3 occasions since July 2010, the latest sale occurring on 4 June 2011. The venue had failed a total of 4 underage sales since August 2009. Trading Standards believed these failures at the venue demonstrate that the premises had repeatedly failed in its duty to protect children from harm.

3. Promotion of the Licensing Objectives

The review had been requested in order to promote the licensing objectives as shown below

The prevention of crime and disorder
The protection of children from harm

4. Details of Representations

Trading Standards – (a responsible authority under the Licensing Act 2003) – The representation stated that:

Since the operation of the premises licence in February 2009, there had been 4 separate sales of alcohol to underage volunteers by staff at the premises. The written representation gave details of each of those test purchases.

2 of the test purchases took place prior to a meeting between responsible authorities in the summer of 2010 which sought to address the increase in crime and anti-social behaviour which Hornchurch had been subjected to. During that meeting, Costcutter was identified, among others, as a potential problem premises. At that meeting, it was agreed that a further 3 test purchases would be undertaken at the premises. Subsequently, 2 of the 3 test purchases resulted in a failure for the premises.

Mr Goyal attended a meeting with Trading Standards and agreed to a 48 hour closure of the premises in lieu of prosecution for persistently selling alcohol to minors. The venue was closed from 29 October 2010 to 31

October 2010. Mr Goyal also agreed to implement a 'Challenge 25' policy at the premises.

A further test purchase took place on 25 November 2010. On that occasion, the sale was refused.

In May 2011, Trading Standards was contacted by the Integrated Youth Service which had identified Costcutter as a premises which was selling alcohol to underage persons. On 4 June 2011, the premises failed a test purchase by an underage volunteer. After the sale, the premises was visited by Trading Standards staff and the Police. The individual who sold the alcohol advised that he was not authorised to work behind the counter and did not hold a personal licence. The individual in charge of the premises at the time of the sale also did not hold a personal licence. The representation explained that neither member of staff understood the Challenge 25 policy and could not find the refusal register. There were also considerable difficulties in communicating with the members of staff and as such, Trading Standards staff and the Police remained at the premises until Mr Goyal had advised that he was making his way back to the premises..

The representation explained that as Trading Standards staff and the Police were leaving the premises, they observed a proxy sale arrangement occurring between 3 young girls (aged approximately 15) and an older gentleman. The Police Officer intervened in the proxy sale.

Mr Goyal requested an urgent meeting with a number of responsible authorities to discuss matters relating to the operation of the premises licence. The meeting took place on 6 June 2011. The seriousness of the position was explained to Mr Goyal and it was suggested that in order to avoid a review, the sale of alcohol be stopped in the short-term. He was reminded that it was a condition of the licence to ensure that a personal holder was present at all times when alcohol was being sold. The Police also suggested that the front window in the premises be cleared of advertising promotions to ensure that that staff had clear sight of what occurring in the street outside.

On 9 June 2011, Trading Standards staff visited the premises, noting that some effort had been made to clear advertising in the window space, however there were two very large promotional posters at eye level and some boxes of crisps obscuring the window. In addition, the Challenge 21 poster displayed in the window was obscured by advertising. Mr Goyal was advised to correct this. It was also noticeable that the quantity of alcohol in the premises had not been visibly reduced.

Trading Standards considered that, despite some assistance from Mr Goyal, it had no option but to seek a review of premises licence.

In summary, the representation pointed out that staff at the premises had made 3 sales of alcohol to underage volunteers in less than a year and a total of 4 sales in recent times. None of the members of staff making the

underage sales were personal licence holders. Trading Standards was also concerned that staff at the premises were not capable of ensuring that any of the licensing objectives would be adhered to.

The venue had a mixed history when it came to refusing sales to underage volunteers. After each failure, there would be short term compliance, and then another failure. There were some patterns to the failures. All had occurred after 5pm and no personal licence holder had been present, as required by a condition on the licence. The location of the premises was near to a bus stop which attracted youths and as such required constant attention to ensure underage sales were not made. Mr Goyal had not hired staff who were competent enough to work in compliance with the licensing objectives.

Mr Goyal had failed to adhere to the conditions on the premises licence by ensuring a personal licence holder was on site at all times, and the premises had failed numerous test purchases in a relatively short period of time. In addition, a 48 hour closure was issued for persistent breaches of the licence, yet the premises subsequently failed a further test purchase. Consideration should be given to revoking the premises licence.

The Trading Standards Officer advised that the papers for the review had been served upon the premises on 24 June 2011, and there had still been no reduction in the amount of alcohol in the store. There was no personal licence holder on site. In his opinion, there were still no signs of improvement, despite the serious nature of the meeting of 6 June.

Chief Officer of Metropolitan Police (“the Police”) (a responsible authority under the Licensing Act 2003) –

The representation stated that:

The premises had all too frequently been operating in contravention of the current conditions on its licence and the management had failed to satisfactorily address the promotion of the licensing objectives with particular emphasis on the protection of children from harm.

The premises had been known to Police for making sales to underage persons including the 4 test purchases undertaken by Trading Standards. Despite several meetings following test purchases, the management of the premises had been unwilling or unable to address the concerns of responsible authorities. As such, revocation of the premises licence should be given serious consideration.

At each of the test purchases, there had not been a personal licence holder on site, and the staff present at those times demonstrated a lack of knowledge of Licensing, or of the Challenge 21 policy. This was a concern particularly given the location of the premises, and the number of children in the area.

The Police had held doubts about the application for a licence for these premises when it was first made, but withdrew any objection on the basis of conditions offered, particularly the assurance that a personal licence holder would be present when any sale of alcohol was made. Further assurances had been made throughout, including at the meeting of 6 June, yet no improvements had been forthcoming, and the Police were no longer able to rely on assurances from the premises Licensee.

Despite assistance, the management of the premises were unwilling or unable to address the concerns raised, and to prevent the sale of alcohol to children. No improvements had been made, and the premises had one of the poorest records the Police representative had come across. In light of the licensing objective of protection of children from harm, revocation of the licence appeared to the Police to be the only option.

London Fire & Emergency Planning Authority (“LFEPA”) – None

Health & Safety Enforcing Authority - None

Planning Control & Enforcement – None

Children and Family Services–

The Children and Family Service supported the review of the licence on the grounds that children were not being protected from underage drinking. The Service was concerned at management failure to ensure that staff were provided with appropriate guidance to assist them in making correct judgments when deciding to question or refuse the sale of alcohol, and the number of failed test purchases in a short period of time. It demonstrated a lack of vigilance in an area frequented by a high number of young people.

The responsibility needs to be taken on and taken seriously, as children themselves may not understand the risks of underage drinking, and there was a higher responsibility placed on sellers of alcohol.

The Service supported Trading Standards that consideration be given to revoking the licence.

The Magistrates Court – None

Representation from Interested Party – None

Reply for the Premises Licensee

The representative for the premises licence holder, Mrs Sherratt, accepted that this was a serious matter and did not seek to question any of the evidence presented by the responsible authorities supporting the review.

She commented that her client, rather than acting in an irresponsible manner, had simply been naïve to his responsibilities and didn't understand the legal obligations of the licence. He had put trust in other persons to manage the day-to-day operation of the business but this had failed and he

felt let down. He recognised the faults that he had made and sought to rectify the situation but had taken on too much responsibility with this premises and other businesses, spread himself too thin, and mistakes had been made. The representative did point out however that the premises had also passed a number of test purchases. It was stated that this was not a retailer who didn't care, he had made efforts to comply, but simply hasn't had enough of his focus on this business.

Mrs Sherratt suggested that rather than going down the route of revocation, due consideration should first be given to other options available, particularly as revocation of licence could have serious consequences for the long-term viability of the business. The action taken by the Sub-Committee ought to be proportionate and necessary. It was suggested that revocation should be the last option taken, if there was no hope of the premises upholding the licensing objectives under Mr Goyal's management.

Mrs Sherratt put forward the possibility of additional/amended conditions being added to the premises licence. These were as follows:

- The premises licence would accept a lengthy suspension to deal with the issues it had been facing, and to allow responsible staff to be employed who each held a personal licence and each of whom had to attend a 3-monthly refresher training course.
- The condition relating to the presence of a personal licence holder be amended to read that every person that sells alcohol must have a personal licence, meaning that all staff with this responsibility would have to pass tests, thus dealing with any concerns over lack of communication or understanding.
- Challenge 25 would be adopted.
- Mr Goyal would be removed as DPS.

Mrs Sherratt referred the sub-committee to the High Court case of *Prasannan v Kensington and Chelsea* [2010] EWHC 319 (Admin), which highlighted that even in the most extreme of circumstances, revocation was only a last resort and that other options should be considered first. Mrs Prasannan had failed several test purchases, and displayed a poor attitude throughout, to the extent that the Court took an unfavourable view of her, and she was not believed on any point. Yet she was given another chance to operate.

Mrs Sherratt put it to the Sub-Committee that Mr Goyal was someone who had made numerous mistakes but that he wasn't someone who wouldn't learn from them. He asked for one last chance. This was the first review of the premises, and the Sub-Committee ought to take a stepped approach. Going straight to revocation would not be taking a stepped approach.

In response to questions by members of the sub-committee, Mr Goyal explained that he did not understand the condition that a personal licence holder had to be on the premises when alcohol was being sold, and thought it was the authorization, rather than the actual presence of the licence

holder that was required. He accepted that this was his mistake and that he wanted to make amends by undertaking all necessary action to comply with the licence. He explained that alcohol accounted for between 25-35% of revenue, but that having alcohol available often led to purchases of other products. He had personally trained staff at the premises and had advised them what to do when making sales of alcohol. He accepted that the training was insufficient and that he would employ a professional to undertake such training in the future. Mr Goyal acknowledged that he had accepted the conditions on the licence, despite not understanding them, simply in order to obtain a licence. He stated that he had not given enough of his time and attention to the premises, and had hired the wrong people. He planned to sort out all staffing and training issues (and to some extent had already begun to do so), and all issues surrounding communication, and the understanding of the licensing objectives. He planned to retain Mrs Sharratt, his representative at the hearing, to ensure all elements were understood, and to provide advice on where he had gone wrong and what steps should be taken.

5. Determination of Application

Consequent upon the hearing held on 10 August 2011, the Sub-Committee's decision regarding the review of a premises licence for Costcutter, 18a Station Lane, Hornchurch was as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 of the First Protocol of the Human Rights Act 1998.

Decision

The Sub-Committee noted that Mr Goyal was issued the licence in February 2009. Within 6 months the premises had failed a test purchase arranged by Trading Standards. In spite of advice and warnings from Licensing Officer, Trading Standards and the Police, and even following a 48 hour closure, three further test purchases were failed. The warnings are not making any difference.

The sub-committee was not convinced that the assurances and proposals offered by Mr Goyal would be complied with having regard to the premises' history as on numerous previous occasions similar assurances have been totally disregarded. Many suggestions had been made by responsible authorities, and in some circumstances serious steps taken, yet the premises were unable to consistently pass test purchases, adhere to the conditions on its licence, or promote the licensing objectives as required.

Mr Goyal had stated he was unclear on the condition requiring a personal licence holder to be on site when alcohol was sold. This may explain early failures to comply, but failures continued even after this condition had been made clear to him by way of meetings with and assistance provided by Trading Standards, Licensing and Police Officers.

The sub-committee had heard the plea of naivety on Mr Goyal's behalf which he stated had resulted in the issues presented by Trading Standards, but regardless of the reason for the failures, the resulted had been numerous underage sales of alcohol of which the sub-committee had been made aware of, and failed test purchases likely indicated there were undetected sales which resulted in the underage consumption of alcohol. The fact that the premises were brought to Trading Standards' attention by the Integrated Youth Service as a problem premises indicated further that this had been the case. The sub-committee was not prepared to allow this to continue.

Mr Goyal had stated that he accepted the conditions on the licence without properly considering them simply to obtain a licence, displaying a disregard for the responsibility required of premises and individuals selling alcohol. On that basis, the sub-committee could not be satisfied that he would, in future, comply with the existing conditions of the licence, or any others it may have been minded to impose,

The sub-committee acknowledged its duty within the borough to protect children from harm and it was with this in mind that revocation was deemed necessary and proportionate. The licence was thereby revoked.

Chairman