

## **LICENSING SUB COMMITTEE**

**24 November 2016**

Present: Councillor J Fahmy (Chair)  
Councillors J Connal and M Hofman

Also present: Jamie Mackenzie, Business Compliance Officer, Watford  
Borough Council  
Frank Fender, Applicant's Agent  
Srithas Sundralingham, Applicant  
Mounisha Srithas, Applicant's daughter  
Councillor Mo Mills, Observer  
Councillor Stephen Johnson, Observer  
Councillor Keith Crout, Observer  
Councillor Aga Dychton, Observer  
Mike Shaw, Mayor's Political Assistant, Observer

Officers: Senior Solicitor  
Environmental Health Manager (Commercial)  
Senior Licensing Officer  
Committee and Scrutiny Support Officer (AG)

### **4 Committee membership/ election of a Chair**

The Committee and Scrutiny Support Officer confirmed that the sub-committee would comprise Councillors Fahmy, Hofman and Connal.

The sub-committee was asked to elect a Chair for the Hearing.

RESOLVED that –

Councillor Fahmy be elected Chair for the Hearing.

### **5 Disclosure of interests (if any)**

The Chair disclosed that he lived on the ward in which the premises were located but had no interest to declare in respect of the premises. There were no other disclosures of interest.

**Application for a new premises licence: DKSR, 164 Whippendell Road, Watford, WD18 7NB.****Preliminary matters**

There were no preliminary matters raised.

**Facts of the application**

The sub-committee received a report of the Head of Community and Customer Services. The Senior Licensing Officer introduced the report.

The Senior Licensing Officer explained that the premises were not currently licensed and that the application was to allow the shop to trade as an off licence. He drew the sub-committee's attention to the table in paragraph 3.7 of the report detailing the proposed licensing hours. The premises were located in a residential area and within a Sensitive Licensing Area.

He explained that representations had been received from the Licensing Authority and from a local business – and these were shown at Appendices Five and Six of the report. He was not aware of any additional material for the hearing. It was not clear whether the interested party would be attending, but matters could be determined without their attendance. As the representations were valid it would be for the sub-committee to determine what weight it attached to these representations.

The Senior Licensing Officer explained that the premises had been licensed previously and the history of the premises was contained in paragraphs 4.1 to 4.12 of the report. He advised the sub-committee that they had to consider the application put before them today.

The Senior Licensing Officer informed the sub-committee that the application fell within a Sensitive Licensing Area under Policy LP4 of the Council's Statement of Licensing Policy and of the implications of this, including that this policy was not a full cumulative impact policy. He advised the sub-committee that an operating schedule had been submitted at Appendix Three of the report with a range of conditions proposed. Conditions were also shown in paragraph 8.4 of the report with an additional proposed condition from the pool of model conditions at paragraph 8.8. Members were not bound by these conditions but could add to or alter these if they wished.

He concluded by discussing the process by which the sub-committee should make a decision on the application.

There were no questions of the Licensing Officer from members, from the applicant or from the Council's solicitor.

## **Representations**

Mr Mackenzie was invited to give representations on behalf of the Licensing Authority. He outlined his history of employment with Watford Borough Council - having nine years' experience of licensing enforcement.

He reaffirmed that the premises were located in a Sensitive Licensing Area; this being one of the reasons for objecting to the application (there being a need to give greater consideration in these localities). He said that in most instances the Licensing Authority would try and discuss issues with an applicant so as to come to an agreement – such as in regard to conditions. However, this was not appropriate with regard to this application; the report highlighting a number of previous issues with the premises.

Mr Mackenzie explained that in 2009, he was involved in gathering evidence at the premises to prove breaches of the Licensing Act. Following a licensing review, the licence for DKSR was revoked by a licensing sub-committee. The premises appealed the decision but lost the appeal. There was then an immediate reduction of anti-social behaviour in the area.

Two further applications were made for a premises licence - these were unsuccessful. The present applicant's daughter then applied for a licence (as a Designated Premises Supervisor (DPS) also) and this application was approved, with substantial conditions attached (these similar to those proposed today). However, within three months, there were two further incidents which led the police to seek a review of this licence. One incident related to the sale of alcohol to a 15 year old. The second incident was a breach of the licence conditions by selling alcohol above 5.5% ABV. When interviewed under caution in respect of this breach, the applicant's daughter said that this was old stock and was a genuine mistake. However, evidence obtained by the police from the brewer indicated that the items had only recently been manufactured. It was not clear whether the applicant's daughter had made a genuine error or had intended to mislead. This was then taken in to account during the review. Mr Mackenzie outlined the comments made by the legal advisor during the application for the licence in the daughter's name.

Mr Mackenzie said that he hoped that his representations indicated why it would have been difficult to negotiate with the applicant in these circumstances – there had been two licensing reviews, and reassurances had been given on the second occasion (coupled with the apparent untruthfulness during interview of the applicant's daughter). In addition, the new conditions

proposed were the same as those breached previously. It would have been difficult to find agreement on a way to proceed with the application.

Mr Mackenzie informed the sub-committee that there were 320 licensed premises in Watford. He felt it was factually accurate to say that the applicant was amongst the worst licensees in the town. Mr Mackenzie could not bring to mind a premises that had lost its licence on two occasions (albeit the applicant's daughter was the licence holder on the second occasion).

He concluded that if the application were granted, this would have a detrimental effect on the area - and that this was the prime reason the Licensing Authority objected to the application.

The Chair asked whether Mr Mackenzie had had dealings with the applicant's daughter during the period in question. Mr Mackenzie explained that another member of staff had been involved and not the applicant's daughter. The test purchase of alcohol had been conducted by the police. He had not had dealings with the daughter.

There were no questions of Mr Mackenzie from the applicant or his agent or from the Licensing Officer.

In response to a question from the Council's solicitor, Mr Mackenzie confirmed that the applicant was the owner throughout his daughter's previous management of the premises.

### **Address by the applicant**

The applicant's agent presented the application to the sub-committee. Mr Fender drew the sub-committee's attention to paragraph 9.3 of the report and read this to members. He explained how Mr Mackenzie had made representations about the history of the premises in his submission to the sub-committee.

Mr Fender outlined the nature of the business and that the premises were located in a Sensitive Licensing Area – although not a cumulative impact zone (therefore, the requirements were less stringent). He was aware of the previous problems relating to street drinkers and anti-social behaviour. He discussed the proposed licensing hours and that the premises would not create new issues or exacerbate existing problems if the application was granted. Street drinkers would not be able to purchase super strength alcohol on the premises. Furthermore, there would be restrictions on the type of wine sold. He referred to paragraph 8.4 in the report and item 8, clarifying that no beers, lagers or ciders above 5.5% ABV (and not 6.5% as shown in the

report) would be sold at the premises. A choice of drinks would not be available and pricing would make purchasing out of the range of street drinkers. He asserted that the applicant would engage fully with the authorities in respect of any problematical issues.

The premises would remain as a convenience store - with only 10% of the available space used for stocking alcohol. The premises once held a premises licence; Mr Fender reminded the sub-committee about some of the history surrounding the premises - including the surrender of the licence. He appreciated that the sub-committee would take this into account, but the applicant regretted the past and had learned valuable lessons; and the incidents had occurred over three and a half years ago.

Mr Fender discussed rehabilitation of offender issues and that most convictions would be spent within 12 months. He emphasised that the applicant had not been convicted of any offence and in the time he had not held the licence he had learnt lessons and was appealing for an opportunity to prove that the applicant could run a business. Mr Fender questioned how long it should be before trust was shown in the applicant again.

Mr Fender referred the sub-committee to paragraph 9.5 in the report and advised that the applicant be asked what had happened between 2013 and the present day. He explained that the applicant held another premises licence for a shop in Southall, London, and was also the DPS there. The applicant had held the licence since 2008. Mr Fender went on to explain the licensing hours at the premises. Mr Fender had e-mailed the licensing team at the London Borough of Ealing Council to inquire whether there had been any issues in relation to the premises – the Council confirmed that there had been no issues since 2012. The applicant had instructed him that there had been no issues at the premises whatsoever. Mr Fender submitted that this showed the applicant could run an effective premises and proved his suitability as a licence holder.

Mr Fender said that he disagreed with Mr Mackenzie's assertion that additional measures could not assist with the operation of the Watford premises. He proposed a new condition that all sales of alcohol on the premises could only be made by a personal licence holder (PLH) and that they should attend PLH training again. Furthermore, a certificate proving that they had attended the training would be copied to the licensing authority before any sales took place. Mr Fender suggested that a DPS course would be less relevant but this would be attended if the sub-committee felt it to be beneficial.

Mr Fender explained that he suspected the representations from the other

party had been made on the basis that his premises would be in competition with the applicant's business. The Licensing Authority had found no evidence of illegal sales of alcohol at the applicant's premises – as alleged by the other party. He asserted that the bus stop issue (as discussed by the other party) was irrelevant. Furthermore, street drinkers would not be a problem as these were outside the premises. He asked that the sub-committee attach no weight to the representations made by the other party.

Mr Fender informed the sub-committee that the police had not made representations about the application. He had spoken to the local police licensing officer but had heard nothing back from them – they would have had a copy of the application.

Mr Fender concluded that the applicant had made mistakes in the past but had now changed. The applicant would be robust in relation to street drinkers. The fact that the applicant ran a successful premises elsewhere proved his suitability as a licence holder. He asked that the sub-committee grant the application.

In response to questions from members:

- Mr Fender explained that the applicant was based in Watford.
- The applicant said that he was sorry for his mistakes and these would not be made again. He explained that greater competition in Watford had led to the problems at the premises, and that in Watford he was running the premises himself. He had more family support in Southall and there was less competition.
- Mr Fender explained that the shop in Southall was run by the applicant's wife. The applicant had now taken advice from her based on the Ealing model and he would be more effective in Watford as a result.
- Ms Srithas explained that the applicant would have family support if the application was granted – she had been ill previously so had been unable to assist. The applicant would comply with all requirements with support from the family. She explained that they cared about the area and would not engage with street drinkers. The family lived in Southall. If they had the licensing authority's and police support they would be able to protect the community. They had local customers and friends they could turn to.
- Mr Fender informed the sub-committee that the applicant worked well with the police – he was helpful with them around local issues. He had called police in the past. Mr Fender believed that because of the help provided by the applicant the police were not objecting to the application.

The Chair asked what had gone wrong from between the first revocation and when the daughter surrendered the licence on the second occasion. Mr Fender said that the applicant had not concentrated sufficiently on the business. The applicant explained that the Council did not seem to like him. His parents were unable to provide assistance at the time and he had asked his daughter for some help. He had now developed greater respect for the law.

The Chair asked what had changed since the second incident to the present day and asked the applicant to show that he would be a responsible person promoting the licensing objectives. The Chair commented that by just having more respect for the law would not be sufficient. Ms Srithas responded on behalf of the applicant (her father). She explained that the revocation had affected the family and her father had learnt lessons from this. She promised that the family would make changes and they had learnt the hard way. Her father would not make mistakes again – he would have 100% family support.

In response to a question from Councillor Hofman about the illegal sale of alcohol to children in the past, Mr Fender explained that the applicant had instructed him earlier that that his daughter had been taken ill in 2012, and this had distracted him significantly. Nevertheless, it was wrong to sell to children; because of the effects of the alcohol and on the potential for underachievement. Mr Fender drew attention to the additional condition proposed around PLH training - explaining that this would enhance awareness around such sales and of the penalties and consequences of this improper action. He said that a further condition around regular refresher training could also be added.

In response to a question from the Chair, Mr Mackenzie explained that he did not know the identity of the individual who sold the alcohol to the 15 year old. Ms Srithas explained that this was sold by a member of staff (who also worked for a competitor). She and the applicant were at the hospital at the time.

Ms Srithas addressed the sub-committee saying that they had ten years of licensing experience and that the case had impacted on them. They would be law abiding in the future. She asked for a chance to work and to enhance the business for the community.

In response to a question from the Senior Licensing Officer about whether the selling of alcohol would be a cornerstone of the business, Mr Fender explained that the sales would enhance the business and encourage customers to use the premises – in effect a shopping bag mentality. The licence would also enhance the offerings in the premises. However, no more

than 10% of the total sales area would be used for the display of alcohol products – with 90% for other goods. The convenience store element was most important; alcohol would not be the focal point.

In response to a further question from the Senior Licensing Officer, Mr Fender explained that spirits would be on sale behind the counter and it would be an acceptable condition that the general display of alcohol be visible from the counter.

In response to a question from Councillor Connal, Ms Srithas explained that those closing the premises at 11.00 p.m. in the evening and driving to Southall would not then have to return in the morning.

There were no questions from the Licensing Authority or the Council's solicitor.

### **Summary**

The Chair invited Mr Mackenzie to summarise his points. Mr Mackenzie explained that the sub-committee had heard the proposal about additional training for the applicant. However, on the previous licence in 2012, two conditions in respect of training were also required - and yet within six weeks a sale to a person aged under 18 had occurred on the premises. He concluded by reading the top paragraph on page 28 of the report to the sub-committee.

Mr Fender summarised his points. He said that he disagreed with the comments made by Mr Mackenzie. The applicant's business had suffered and he needed the licence to help support his family. Mr Fender had discussed the requirements of the law with the applicant. He re-emphasised that no alcohol would be sold until the PLH training had been undertaken and a copy of the certificate lodged with the Licensing Authority. The incidents referred to occurred three and a half years ago and the applicant should be given another chance.

Ms Srithas concluded that the licensing issues had affected the family. They had learnt the hard way - and causing traumatic pain. She had received a fabulous public education and was just asking for another chance. They loved the Watford community.

There were no additional comments.

### **Decision**

The sub-committee retired to consider their decision.



On the sub-committee's return, the Chair announced the decision.

RESOLVED that –

Having heard the evidence from the licensing authority we have placed substantial weight on their representation. We have placed little weight on the representation from the interested party. The sub-committee is of the view that nothing we have heard today has convinced us that the applicant, who is a personal licence holder and has been in business for some time, would promote the licensing objectives.

Furthermore the sub-committee is not convinced that the conditions offered by the applicant in the operating schedule and in the hearing would mitigate the detrimental effects of granting the licence. We have not heard anything today to convince this sub-committee that granting the application would not undermine one or more of the four licensing objectives.

The sub-committee therefore refuses this application.

In coming to this decision the sub-committee has relied on the provisions of the Licensing Act 2003, the Secretary of State's Guidance, and the Council's Statement of Licensing Policy.

Signed  
Chair Licensing Sub-Committee

The meeting started at 10.30 a.m.  
and ended at 1.10 p.m.