

LICENSING SUB-COMMITTEE

Minutes of the meeting held at 2.00 pm on 18 July 2018

Present:

Councillor Nicholas Bennett J.P. (Chairman)

Councillors Melanie Stevens and Pauline Tunnicliffe

52 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Councillor Nicholas Bennett JP was appointed Chairman for the meeting.

53 DECLARATIONS OF INTEREST

There were no declarations of interest.

54 REVIEW OF THE PREMISES LICENCE AT BEST N EXPRESS, 89 QUEENSWAY, BR5 1DQ

Councillors: Nicholas Bennett J.P (Chairman), Melanie Stevens, Pauline Tunnicliffe

Licence Holder's Legal Representative:	Ms Praisooty
Licence Holder:	Mr. Kanapathy Ratnasingham (Who is also the DPS)
Designated Premises Supervisor (DPS):	Mr. Kanapathy Ratnasingham (Who is also the licence holder)
Council's Licensing Team Leader:	Mr. Steve Phillips
Council's Lead Trading Standards Practitioner:	Ms. Ruth Hancock
Council's Lawyer:	Mrs. Raheli Paris

APPLICATION FOR A REVIEW OF THE LICENCE AT BEST N EXPRESS, 89 QUEENSWAY BR5 1DQ

I Decision:

The Licensing Sub-Committee agreed that the current licence's condition would apply as well as the additional conditions recommended by the Council's Trading Standards to be added to the Licence as stated in the recommendations listed on page 15 of 112 (Conditions Numbers 1- 3) and that condition Number 4 should come into force after 31st October 2018. Condition number 5 did not apply.

II The Review:

The application to review the premises licence of **BEST N EXPRESS, 89 QUEENSWAY BR5 1DQ**, was brought by Ms. Ruth Hancock on behalf of London Borough Bromley, Trading Standards. At the hearing Ms. Hancock (the Council's Lead Trading Standards Practitioner) summarised the background to the application. Ms. Hancock explained that photographs of the volunteers who had taken part in the test purchase exercises would be circulated, and that the photographs were taken on the day that the test purchase took place.

The date on the photograph had defaulted in error to a date in 2014. Ms. Hancock explained that the error occurred due to a technical fault in the Council's photograph camera. Ms. Hancock further explained that the Council had since fixed the camera and subsequent photographs would have the correct date of any pictures taken.

The reason for the review was as a result of an underage sale of Alcohol and Tobacco exercise undertaken by the Council's Trading Standards. On the 10th February 2018, a member of staff at the premises sold alcohol to a volunteer under the age of 18 without asking for relevant identification to prove whether or not the volunteer was 18 years old. It was that sale which had instigated the review.

The grounds for the review were related to the licensing objective which focused on the protection of children from harm.

III Findings of fact

BEST N EXPRESS (trades as Great Grapes), 89 QUEENSWAY BR5 1DQ
an off licence along the parade of shops on Queensway Petts Wood.

(a) **Matters leading to the review were noted on the Review pack**

IV Facts arising out of the Hearing

(a) **Trading Standards' case:**

The Trading Standards' case was stated by Ms. Hancock who explained the Trading Standards' procedures, how the challenge 25 was tested--including the use of an 18 year old volunteer who was asked to purchase age restricted items. It was noted that on 15th August 2017, Trading Standards made an inspection visit to the premises and spoke with Mr. Babu Santhiralin. Ms. Tracey Firth of Trading Standards discussed the law relating to underage restricted products and a free underage sales information pack was given.

On 10th February 2018, the underage test purchase took place, resulting in a sale, and was the subject of the review. On the 19th March 2018, a complaint was received from a local resident regarding a sale of individual cigarettes from open boxes to underage minors.

Licensing procedures were followed by the Chairman and an opportunity to ask any questions regarding the trading standard's case was availed to all and no questions were asked.

(b) The Licence Holder's Representation:

The licence holder's legal representative did not challenge the facts presented in the review application and at the hearing. However, she mentioned that the review was the premises' first. The member of staff who had made the underage sale of alcohol was no longer working at the premises, and he had been dismissed.

Concerning the date noted on the photographs produced by Ms. Hancock; the license holder's legal representative revisited the point. There appeared to be some hesitation with respect to the licence holder and his legal representative accepting the photographic evidence presented by Trading Standards as being taken on the date of the test purchase. It was also mentioned by the licence holder's legal representative that the appearance of the volunteers on the photographs made it difficult to determine their age. Ms. Hancock outlined the procedures taken by her team when selecting volunteers and the age that they were required to be. After a discussion between all parties, it was agreed that the photographic evidence combined with the clear explanation given by Ms. Hancock during the hearing was accepted by the licence holder and his legal representative as good evidence.

The premises refusal log book had been kept, and was circulated for members to view during the hearing.

The licence holder continued to cooperate with the Council's Trading Standards' Team. This has been the first occasion that the premises had failed a test purchase.

(c) At the hearing and during various discussions:

- Members pointed out the discrepancies around the employee Babu's full name. The explanation from the licence holder was that the name 'Babu' was in fact the person's nickname.
- 'Babu' had limited and insufficient training provided by the licence holder (by mere verbal explanation), and not the required licencing training which is expected for licensing staff.
- The till used at the above premises did not have a prompt to remind members of staff to ask for an ID. It was agreed that the owner should check it regularly to ensure that the till prompted when required.
- There was a refusal log book which was kept. A discussion between the Chairman, Members and the licence holder (and his legal representative) regarding entries in the refusal log book took place. It was agreed that entries to any refusal log book ought to be correctly

entered and to be checked regularly to ensure that entries to the said book(s) are efficiently and correctly made.

- There were two new staff members--both were yet to receive the appropriate licensing training. The owner agreed to ensure that at least one staff member received the relevant licensing training. The owner, in response to a Member's question stated that if both current staff refused to undergo the required licensing training, he would dismiss them and hire new staff that would be prepared to undergo the required licensing training course.
- That it would be reasonable to attach the relevant recommendations as additional conditions into the current licence. This was a fair approach rather than having to suspend the licence. However, condition number 4 would have to take place at a later date as it would be impracticable to come into force immediately.
- Members discussed condition number 4 during the deliberation of the hearing, and agreed for condition number 4 to come into force after 31st October 2018. The reason for condition number 4 to coming into force after the 31st October 2018 was to allow the licence holder time to provide the relevant training to his staff member(s) at the premises.
- That the licence holder and his staff would allow access for Trading Standards to revisit the premises at a later date (within the next 6 months). The licence holder's legal representative mentioned to her client and made him aware of the implications of any further failed test purchase to underage minors. The licence holder agreed to relevant training for the staff members at the above premises.
- It transpired that the owner had moved from his Milton Keynes address (of which the original license relates to), to an address in Orpington. The Council's licensing team leader mentioned to the owner, that as a separate process, the owner would have to ensure that he contacts the Council's licensing team to update the relevant records.

V Licensing Sub-Committee Members' Input

During the licensing hearing, the Chairman, Licensing Sub-Committee Members and the licensing team leader asked relevant questions at various points. The Chairman also asked questions around the entries in the refusal log book which was circulated at the hearing.

Members deliberated on the above matter and reached a decision.

VI Policy Guidance

The Licensing Authority, with the view to promote the licensing objectives would choose to determine a review by exercising its powers from a range of appropriate measures provided in the Licensing Act 2003 (as amended).

The Council's Statement of Licensing Policy 2016-2021:

The Council's Licensing Authority instructed its officers to adopt a zero tolerance approach to criminal offences committed in licensed premises in the Borough as indicated in the statement of Licensing Policy 2016-2021. Matters such as a breach of licence condition(s), may be investigated once a complaint or concern is raised.

Guidance issued under section 182 of the Licensing Act 2003 (As Amended)

Paragraph 11.19 – 11.20 of the Licensing Amended Guidance Issued under section 182 of The Licensing Act 2003 reads:

Paragraph 11.19 "Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- Exclude a licensable activity from the scope of the licence, for example to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- Suspend the licence for a period not exceeding three months;
- Revoke the licence".

Paragraph 11:20 states:

"In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review".

VII The Licensing Sub-Committee's conclusions

The Licensing Sub-Committee carefully considered all the facts and circumstances of the case including the evidence presented to them by the Council's Trading Standards Team, and the representations by the licence holder's legal representative. They also considered relevant policies and guidelines relating to the above review.

The Licensing Sub-Committee took into account the licence holder's representations and the fact that the licence holder was cooperative following

the failure of a test purchase and had agreed to incorporate the conditions as mentioned.

Relevant measures such as staff training, diligently implementing the Challenge 25 policy, keeping a clear refusal record log book, ensuring the till reminder notice was working to prompt employees of the relevant restricted sales were to remain in place at all times. The licence holder agreed to work with the Council's Trading Standards Team in promoting the Licensing Objectives by providing access to Trading Standards' visit to the premises within the next six months as agreed.

The Licensing Sub-Committee took into account the fact that this was the first review of the premises licence, and decided that:

The decision at the hearing should be a formal warning to the licensing holder (DPS) and that in the event of a further breach of the licence, the licence holder may face severe measures.

The added conditions to the premises licence were necessary and proportionate in the circumstances so as to promote the relevant licensing objectives.

The Licensing Sub-Committee made the above review decision having considered all relevant matters and was satisfied with the course of action in order to promote the relevant licensing objective.

The licence holder had a right of appeal against the above decision to Bromley Magistrates' Court within 21 days, if he wished to exercise that right.

**55 REVIEW OF THE PREMISES LICENCE AT COSTCUTTER,
CHATSWORTH PARADE, PETTS WOOD, BR5 1DF**

Councillors: Nicholas Bennett J.P (Chairman), Melanie Stevens, Pauline Tunncliffe

Licence Holder's Licensing Agent:	Ms G Sherratt
Licence Holder:	Mr. Kemalraj Varatharaja
Designated Premises Supervisor: (Also Director of the business which is owned by VLK EXPRESS)	Mr. Kemalraj Varatharaja
Council's Licensing Team Leader:	Mr. Steve Phillips
Council's Lead Trading Standards Practitioner:	Ms. Ruth Hancock
Council's Lawyer:	Mrs. Raheli Paris

I Decision:

The Licensing Sub-Committee agreed that: the current licence's condition would apply as well as the additional conditions as recommended by the

Council's Trading Standards, plus the applicant's proposed conditions as submitted prior to the hearing.

II The Review:

At the Licensing Sub-Committee Hearing Ms. Ruth Hancock (the Council's Lead Trading Standards Practitioner) provided a summary of the background to the above review application. Ms. Hancock appraised members of the sub-committee that she had already informed the licence holder's legal representative that photographs of the volunteers who took part in the test purchase exercises would be circulated at the hearing.

She explained that the date on the photograph defaulted by error to a date in 2014, and that this had occurred due to a technical issue with the camera. Ms Hancock explained that the Council had since fixed the camera and subsequent photographs would have the correct date of the pictures taken. Members asked whether the evidence was accepted by the licence holder's legal representative, and the legal representative replied that she had accepted the evidence as explained by Ms. Hancock.

The reasons for the review were as a result of an underage sale of Alcohol and Tobacco carried out by the Council's Trading Standards; through a test purchase; using a volunteer, on the 10th February 2018. A member of staff at the premises sold alcohol to a volunteer under the age of 18 without asking for relevant identification to prove whether or not the volunteer was over 18.

The grounds for the above review are for the licensing objective which focuses on the protection of children from harm.

III Findings of fact

COSTCUTTER 5 CHATSWORTH PARADE PETTS WOOD BR5 1DF:

The business is owned by VLK EXPRESS LTD , it is a licensed business which sold amongst other items, age restricted products such as tobacco and alcohol. It was situated along a parade of shops along Chatsworth Parade in Petts Wood.

(a) Matters leading to the review are noted on the Review pack

IV Facts arising out of the Hearing

(a) Trading Standards' Case:

Ms. Hancock began by explaining the Council's Trading Standards' case. She explained the procedures which Trading Standards applied, and how the challenge 25 was tested including the use of young volunteers who were asked to purchase age restricted items. Also that trading standards had a duty to investigate where complaints were received relating to underage sales of age restricted items such as alcohol or tobacco.

On 3rd January 2017, Trading Standards received a complaint regarding the trader selling cigarettes to underage minors. Trading standards conducted several underage test purchases of alcohol and tobacco. It was not until 10th February 2018, whereby the premises failed a trading standards underage sale test purchase for alcohol and tobacco resulting in a sale--and hence the subject of this review.

Licensing procedures were followed by the Chairman and an opportunity to ask any questions regarding the trading standard's case was availed to all. No questions were asked.

(b) The Licence Holder's representation:

The licence holder's agent did not challenge the facts presented in the review application and at the Hearing. However, she mentioned that the review was the premises' first licensing review. The licence holder and the DPS had made great efforts in correcting mistakes. Roshan Maheindra and Varatharaja Kamalraj (both present at the hearing) being the licence holder and the DPS had undertaken a refresher training course offered by Licensing Matters. They stated that the Challenge 25 age verification policy was in place. The licence holder's legal representative circulated copies of supporting documents prior to the hearing. Furthermore proposed conditions were also circulated prior to the hearing.

The proposed conditions read as follows:

“Refresher Staff training

1. Refresher alcohol training will take place at 3 monthly intervals. All training will be documented and retained on the premises for production to the authorities upon reasonable request.
2. Refresher training will rest knowledge on the licensing objectives and in particular the understanding of Challenge 25 and underage sales.

Challenge 25

3. The Challenge 25 policy would be advertised in the premises by way of clear and unobstructed posters.
4. In addition to the training, all staff will sign a Challenge 25 policy to the effect and that they have understood the policy and would apply it at all times that they were selling alcohol to customers.
5. The store would engage on a system of Challenge 25 test purchases which would be conducted by an independent company every 6 months, over a period of 2 years. The results of those tests and the report will be sent directly to the licensing authority and Trading Standards.

6. The Store would have a system of till prompts in place at the premises that alerted staff to challenge for identification on every occasion a customer brings an age restricted sale to the till.”

The proposals put forward by the Council’s Trading Standards in the application pack numbers 1-3 were acceptable and appropriate. Number 4 regarding a short suspension was not applicable at this time.

That the recommendations numbers 1-3 mentioned in page 17 of the licensing pack were already in place and that the licence holder continued to cooperate with the Council’s Trading Standards’ Team.

A discussion on a way forward should include in the existing licence the relevant recommendations (Numbers 1-3 on page 17) as conditions, and in addition to that; to add the licence holder’s proposed conditions as provided and circulated before the hearing into the current licence. This was agreed to be a more reasonable approach rather than to suspend the licence.

(c) At the discussion during the hearing it was noted that:

- The review was the first one and that Members ought to look at the track record of the above premises in terms of the previous test purchase for underage sale which had resulted to a ‘no sale’ result.
- That the underage sale on 10th February 2018 noted in the report which was the subject of this review, was a one off sale.
- There was a refusal log book which was kept (and was circulated for members to view during the hearing). Members also reminded the licence holder through his legal representative of the importance of good record keeping and updating the refusal log book.
- The report clearly showed that the premises had unfortunately failed the test purchase and at the hearing it was expressed that the licence holder and the DPS regretted this. That they had taken relevant training courses and drawn up proposed conditions.
- The Chairman (through the licence holder’s agent) reminded the licence holder that Bromley Council took licensing objectives seriously, and it had noted the documents produced by the licence holder including the training course documents.
- The proposed conditions by the licence holder were noted and were to be added to the current licence.
- The Chairman drew the attention to the recommendations on page 17 and asked whether the licence holder and legal representative were agreeable to points (additional Conditions) numbers 1-3 (which

excludes point number 4 relating to a short licence suspension). To which the licence holder's agent agreed to the said additional conditions to be added to the current licence.

- It was also agreed that Trading Standards should revisit the premise within the next 6 months.
- The licence holder and the DPS ought to note that this review session was a warning and that the Council would take stronger measures in the event of any further failure of age restricted sales products to minors.

V Policy Guidance

The Licensing Authority with the view to promoting the licensing objectives would choose to determine a review by exercising its powers from a range of appropriate measures provided in the Licensing Act 2003 (as amended).

The Council's Statement of Licensing Policy 2016-2021:

The Council's Licensing Authority had instructed its officers to adopt a zero tolerance approach to criminal offences committed in licensed premises in the Borough as indicated in the statement of Licensing Policy 2016-2021. Matters such as a breach of licence condition(s), may be investigated once a complaint or concern is raised.

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- Remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- Suspend the licence for a period not exceeding three months;
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Paragraph 11:20 states:

"In deciding which of these powers to invoke, it is expected that licensing

authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review”.

VII The Licensing Sub-Committee’s Conclusions

The Licensing Sub-Committee carefully considered all the facts and circumstances of the case including the evidence presented to them by the Council’s Trading Standards’ Team, and representations by the licence holder’s licensing agent. Also, relevant policies and guidelines that related to the review were considered.

Relevant measures were as staff training, diligently implementing the Challenge 25 policy, keeping a clear refusal record log book, ensuring the till reminder notice was working to prompt employees of the relevant restricted sales are to remain in place at all times. That the licence holder agreed to work with the Council’s Trading Standard in promoting the Licensing Objectives, by providing access to trading standards’ visitation of the premises within six months as agreed in at the above hearing.

The Licensing Sub-Committee took into account the fact that this was the first review of the above premises licence, and decided that: the decision at the hearing to be a formal warning to the licensing holder (DPS), that in the event of a further breach of the licence, the Licence holder may face severe measures. The added conditions (those proposed by Trading Standards and those proposed by the licence holder – and both agreed by all parties) to the premises licence were necessary and proportionate in the circumstances so as to promote the relevant licensing objectives.

The Licensing Sub-Committee made the above review decision having considered all relevant matters and was satisfied with the course of action in order to promote the relevant licensing objective.

The Licence holder had a right of appeal against the above decision to Bromley Magistrates’ Court within 21 days.

Chairman