

Licensing Act Sub-Committee - Record of Hearing held on Wednesday 25 February 2013 at 7.30pm

MEMBERS: Councillor THOMPSON (Chairman); Councillors Mrs HEARN and WARNER.

1 Appointment of Chairman.

Councillor Hearn proposed that Councillor Thompson chair the hearing. This was seconded by Councillor Warner.

RESOLVED: (Unanimous) That Councillor Thompson chair the hearing.

2 Declarations of Disclosable Pecuniary Interests (DPIs).

None were received.

3 Review of Premises Licence – SQ Convenience Store

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Senior Specialist Advisor outlined the report detailing the application for a review of the premises licence for SQ Convenience Store, 16 Station Parade that had been made by Sussex Police under the prevention of crime and disorder licensing objective.

On 23 August 2012, the Designated Premises Supervisor at the time Mr Mehrab Rahmani was reported for summons for an offence of knowingly selling alcohol on the premises to a person who was drunk. Mr Mehrab Rahmani pleaded guilty to the offence on 7 December 2012.

A consultation period took place for the review from the 16 January 2013 to the 12 February 2013. Two representations were received in favour of the review and these were appended to the report. In addition to this, Mr Mehrab Rahmani had submitted thirteen letters along with a petition with over 700 signatures all in support of the premises. These were also appended to the report.

Also prior to the meeting, Mr Mehrab Rahmani had submitted a witness statement, dated 21st February 2013 and a copy of the store's refusal log in support of his representation.

On the 5 February 2013, Mr Mehrab Rahmani relinquished his role as Designated Premises Supervisor at SQ Convenience Store and replaced by Mr Sultan Rahmani.

As part of their representation, Sussex Police had submitted supplementary evidence that was appended to the report. It consisted of two witness statements and a log of incidents involving street drinkers in Eastbourne from 1st April 2012 – 15th February 2013. Prior to the meeting Sussex Police had also submitted a map indicating the location of incidents of crime and disorder

committed by street drinkers between 1st April 2012 and 15th February 2013 and that was circulated to all interested parties prior to the meeting.

Mr Peter Savill, Barrister representing Sussex Police addressed the Sub-Committee requesting that the premises licence be revoked. He referenced Mr Mehrab Rahmani's witness statement and objected to the suggestion that the police had repeatedly targeted the premises and Mr Mehrab Rahmani. Mr Mehrab Rahmani had pleaded guilty to the offence of knowingly selling alcohol on the premises to a person who was drunk and regardless of whether Mr Mehrab Rahmani wanted to retract his plea, the conviction still stood. Sussex Police would only target premises when there was a constant undermining of the licensing objectives. Given that Eastbourne had a growing problem regarding street drinkers, Mr Mehrab Rahmani's negligence while exercising his duties as Designated Premises Supervisor was considered unacceptable.

Mr Savill continued that Sussex Police had no confidence that the licensing objectives would be promoted in the future and following the appointment of Mr Sultan Rahmani as Designated Premises Supervisor (DPS), the undermining of the licensing conditions had continued.

Mr Savill then referenced SQ Convenience Store's licence conditions that indicated that all alcohol would be sold behind the counter. Further inspections on the premises had shown that alcohol continued to be displayed around the store despite the change of DPS and Mr Mehrab Rahmani indicating in his witness statement that all strong lager and alcohol from the fridge would be placed behind the counter.

Mr Savill then outlined the concerns Sussex Police had with Mr Sultan Rahmani's lack of experience running off-licensed premises. Mr Savill referenced a Licensing Act Sub Committee on the 9 January 2012 for Kass Convenience Store, where Mr Sultan Rahmani had admitted that he had limited experience in running licensed premises.

He then made reference to the petition that had been submitted by Mr Mehrab Rahmani. The Sub-Committee was advised that one of the signatures on the petition was a well known street drinker.

Sussex Police also had major concerns with the store's refusal log that recorded when a member of staff at the premises had refused the sale of alcohol. Mr Savill identified that the log had been filled out sporadically and several fields were completed incorrectly or with vague details.

Mr Savill concluded that Mr Sultan Rahmani's lack of experience in addition to the continued breach of the licence and Mr Mehrab Rahmani's plea of guilty had led to Sussex Police forming the opinion that the prevention of crime and disorder licensing objective would be undermined.

Sergeant Vokins, representing Sussex Police then addressed the Sub-Committee on the issue of street drinkers in Eastbourne, as indicated by the 486 reported incidents from the 1st April 2012 – 15 February 2013. He then gave an outline of the Neighbourhood Policing Scheme, where it is expected that local premises adhere to the licensing act and help promote the four licensing objectives.

The Sub-Committee enquired over whether Mr Mehrab Rahmani, had been advised that he would receive a caution, if he pleaded guilty to the offence

of knowingly selling alcohol to a person who was drunk. Mrs Jean Irving, representing Sussex Police addressed the Sub-Committee and advised them that it is not down to Sussex Police to advise Mr Mehrab Rahmani.

The Sub-Committee then enquired over the claim made by Mr Mehrab Rahmani that the premises was being targeted and the severity of this incident. Sergeant Vokins advised that the incident was very serious as Mr Mehrab Rahmani was the DPS. Mrs Irving informed the Sub-Committee that of the 8 premises that were targeted, SQ Convenience Store was the only premises where alcohol was sold to a person who was drunk.

Mr Hussain, representing Mr Mehrab Rahmani addressed the Sub-Committee in response to the representation made by Sussex Police. He first made reference to the attached schedule of incidents. He stated that the log was generalised and not specific to the premises in question. He believed the schedule only demonstrated a problem with street drinkers for the town as a whole. Sergeant Vokins responded to this, by indicating that the schedule identified certain areas where there were a significant greater number of incidents, such as the avenue of Wharf Road and Station Road. There were a total of 85 incidents recorded near the premises.

Mr Hussain acknowledged the demonstration of anti-social behaviour in the area, but identified that the schedule did not pinpoint where the street drinker bought alcohol from. He believed that the big stores, with massive promotions are more attractive for street drinkers. The Sub-Committee was advised that the premises does not advertise special promotions for the sale of alcohol.

He then outlined the premises history and informed the Sub-Committee that the premises had been operating for a period of 10 years, and had been licensed for the last 7 ½ years,. This was the first incident at the premises during this period and revoking a licence on the basis of this, would be unfair. Mr Hussain advised that unless the DPS selling alcohol on the premises knew an individual who was a street drinker, it would be difficult to identify whether a member of the public was under the influence of alcohol.

Mr Hussain then discussed the incident, where Mr Mehrab Rahmani sold alcohol to an individual who was drunk. Mr Hussain made reference to the witness statement of Mr Jamie Sykes submitted by Sussex Police. Mr Hussain enquired over whether Mr Sykes actually entered the premises. It was advised that Mr Sykes did not enter the premises at the time of the incident and only saw events from outside. Mr Savill responded that Mr Mehrab Rahmani had already pleaded guilty; therefore the conviction should not be undermined. Mr Hussain acknowledged this but stated that Mr Mehrab Rahmani regretted pleading guilty to the plea and was entitled to explain the events of that day.

Mr Hussain informed the Sub-Committee that no-one saw the transaction taking place, only the individual entering and exiting the premises. He then advised the Sub-Committee that CCTV footage which recorded the incident at the time showed that the individual who was served didn't appear to be under the influence. Unfortunately the footage had been deleted, so was unable to be part of Mr Hussain's representation.

Mr Hussain then discussed the representation made by Mr Fuller that was made in support of the review. Mr Fuller had objected to the premises licence being renewed on the grounds of continuous disruptive behaviour by street drinkers. Despite this objection Mr Hussain identified that Mr Fuller had not provided any evidence to attribute the blame to the premises and this was even acknowledged in his letter.

Mr Hussain then referenced Mr Benning's representation in support of the review. Mr Benning had claimed that many residents including himself had been assaulted by street drinkers after purchasing alcohol from the premises. When asked whether any of these incidents had been reported, Sussex Police advised that none had been. Mr Benning had also stated that the premises had been caught selling alcohol to underage and/or drunk customers and received several warnings however Mr Hussain pointed out, there was insufficient evidence to support this claim.

Mr Hussain then referenced the schedule of street drinker incidents, where the Police had indicated that there were a significant greater number of incidents in the nearby vicinity of the premises. Mr Hussain identified that these incidents should not be attributed to the premises and the most likely cause for the amount of street drinkers in the area, was the nearby drug rehabilitation centre.

The Sub-Committee enquired over whether it was usual for a licence to be revoked for one incident. They were advised that in accordance with the Council's Licensing Policy, revoking a licence would only normally occur when offences such as the sale of alcohol to persons who are drunk or under 18 occurred on a regular basis.

Mr Hussain then addressed the issue of the premises' refusal log and the concerns raised by Sussex Police. Mr Hussain acknowledged that there was an inconsistency in recording a refusal but the letters submitted in support of the premises had shown that people had witnessed Mr Mehrab Rahmani refuse the sale of alcohol to a person who was underage or drunk on numerous occasions. He also advised that those present tonight may wish to support this when they address the Sub-Committee.

The Sub-Committee was advised that numerous letters had been submitted tonight as additional evidence to assist the Sub-Committee in their decision making process. The Regulatory and Litigation Lawyer however informed the Sub-Committee that this contravened Section 18 of Licensing Act 2003 where evidence needed to be submitted 5 working days prior to the meeting and agreed by all parties. The Sub-Committee agreed to withdraw the evidence and not consider it as part of their decision making process.

Mr Hussain then gave an overview of the numerous representations received in support of the premises and the Rahmani brothers. There had been 15-20 submissions along with a petition with 700 signatures, supporting the running of the premises, in addition to the service provided by the Rahmani brothers. Mr Hussain referenced several incidents that demonstrated the Rahmani brothers going out of their way to help members of the public and questioned whether a big convenience store would do the same.

Mr Hussain then addressed the issue of a known street drinker signing the petition in support of the premises. He stated that anyone is entitled to sign

the petition and the Rahmani's would not necessarily have known that the person was a street drinker.

Mr Hussain then continued with evidence showing that the Rahmani brothers had promoted the licensing objectives. This included the confiscation of fake identification, appended to the report.

Mr Hussain concluded by advising the Sub-Committee that it would be unfair to revoke the premises licence after one incident. He then informed the Sub-Committee that Mr Mehrab Rahmani had been incorrectly advised by his licensing representative at the time following the incident, where he was told that he would only receive a small fine. This had led to Mr Mehrab Rahmani not choosing a solicitor at the time, due to expense and pleading guilty.

The Sub-Committee enquired over the lost CCTV footage and whether Mr Hussain was implying that the footage had been tampered with or erased deliberately. Mr Hussain advised that the CCTV footage had only been returned the Saturday before the meeting. Mr Hussain indicated that Mr Mehrab Rahmani was not going to pursue this further.

When asked directly about the incident, Mr Mehrab Rahmani indicated that it did not appear that the gentleman was under the influence of alcohol as he had also purchased additional items such as baked beans and a loaf of bread. He also informed the Sub-Committee that he normally is able to identify straight away whether someone is under the influence.

Sussex Police then asked Mr Mehrab Rahmani why the strong lager had been placed in the fridge, despite the condition of the licence stating that all alcohol must be sold from behind the counter. As a mandatory condition, the lager should not have been placed in the fridge at all. Mr Mehrab Rahmani acknowledged that it was a condition and stated that they were placed in the fridge because the customers preferred the drinks cool. When advised of the seriousness of breaching a licensing condition, Mr Mehrab Rahmani reassured that all alcohol had now been placed behind the counter.

When asked about several elements of the premises refusal log, Mr Mehrab Rahmani advised that the initials SR in several for the staff member field stood for Mr Sultan Rahmani, the premises new DPS. Mr Mehrab Rahmani also explained that the reason that the log had not been used on some occasions was that they had been refusing the sale of alcohol but forgetting to record it in the log.

Mr Mehrab Rahmani acknowledged that there could be room for improvement in both the completion of the refusal log, with all fields filled out with sufficient information and the recording of training carried out on members of staff. Sussex Police had identified that both of these did not come up to the required standard.

The Sub-Committee queried whether the refusal log was part of the licensing conditions for the premises. The Senior Specialist Advisor informed them that it was not compulsory therefore no licensing condition was breached.

Sussex Police queried why Mr Sultan Rahmani, who had now replaced Mr Mehrab Rahman as DPS, was not present at the meeting tonight, so he

could demonstrate to the Sub-Committee how he would promote the four licensing objectives and not exacerbate existing problems in the area with street drinkers. Mr Mehrab Rahmani advised that he was at the store; otherwise it would have had to be closed.

Sussex Police then informed the Sub-Committee that Mr Mehrab Rahmani was also the Designated Premises Supervisor at Shams Convenience Store that had been found to undermine condition 10 of that licence which stated that beer and cider over 5.6% abv would not be sold at the premises. The premises had undermined the licensing conditions by carrying on unlicensed licensable activities such as the sale of beer and cider above 5.6% abv (alcohol by volume), the exposure for unauthorised sale of alcohol above 5.6% abv and the keeping of alcohol above 5.6% abv on the premises. Mr Mehrab Rahmani advised the Sub-Committee that he was away when that incident occurred. He also informed the Sub-Committee that the alcohol above 5.6% abv found on the premises, was supposed to be at SQ Convenience Store. He admitted that it was a mistake that the products were put on the shelves as this resulted in the breach of a licensing condition.

Sussex Police queried whether any data relating to a percentage of alcohol sales at the premises were available. Mr Hussain responded that although they didn't have any figures available, that was not required to indicate that alcohol sales were an integral part of any small business. If a restriction on alcohol sales was enforced, it would significantly impact the business.

Mr Hussain then addressed the issue behind the condition of alcohol being sold behind the counter. It was acknowledged that there had been some confusion with the understanding of the mandatory licensing condition but Mr Mehrab Rahmani had now obliged and moved all alcohol behind the counter at the premises.

Mr Jones, Mr Somerville, Mr Hall, Mr Dunn, Mr Lonergan, Ms Garbet, Mr Summerfield, County Councillor Rodohan, Mr Ovenden, Mr Gill then all addressed the Sub-Committee in support of the premises.

Following all the evidence presented, Mr Savill then summarised on behalf of Sussex Police. He reiterated that the admission by Mr Mehrab Rahmani of knowingly selling alcohol to a person that was drunk remained a conviction and proved that the premises had undermined the prevention of crime and disorder licensing objective. Mr Savill then stressed the importance of the licensing conditions attached to the premises as it ensured the licensing conditions are promoted. Mr Mehrab Rahmani had admitted a breach of a licensing condition by displaying alcohol around the store rather than behind the counter. A breach of a licensing condition is a criminal offence which could be punished by 6 months in prison and a £25,000 fine.

Mr Savill continued that evidence tonight had proved that the Rahmani brothers had undermined the licensing objectives and while the store's refusal log was not part of the conditions, it was still considered good practice, following Secretary of State Guidance and the log didn't meet the required standard.

Mr Savill then stated that even though Mr Mehrab Rahmani had stepped down as DPS, he would still be heavily involved in the running of the

premises and undertake training of staff. No evidence presented tonight, had shown that sufficient training had been carried out and the lack of training or training log was a major concern. Mr Savill also reiterated that Mr Sultan Rahmani, did not have sufficient experience in running licensed premises therefore Sussex Police cannot have any confidence that the licensing objectives would be promoted and reiterated that the licence be revoked.

Mr Hussain responded on behalf of Mr Mehrab Rahmani and again made reference to the witness statement on the day of the incident that was unable to accurately describe events that took place inside the premises. He again mentioned that it was the store's first offence over a 7 ½ year period. He then concluded by making reference to the vast amount of representations made in support of the premises that highlighted that the licensing objections were being promoted. Mr Hussain acknowledged that there had been some confusion regarding the condition of alcohol being sold behind the counter but nonetheless the premises was a well run business. Mr Hussain suggested that a formal warning would be sufficient action for the Sub-Committee to take.

Before the Sub-Committee retired to consider and determine the application, the Regulatory and Litigation Lawyer advised the Sub-Committee that the condition of alcohol being sold behind the counter had been drafted in short form and taken from the operating schedule, therefore was not as detailed as it should have been, which could have led to the misinterpretation. The plans submitted with the premises however did seem to indicate that all alcohol would be sold behind the counter.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives, the Council's Statement of Licensing Policy and guidance under the Licensing Act 2003.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: (1) That the licence holder SQ Convenience Store Ltd receive a formal warning.

(2) That the premises licence in respect of the SQ Convenience be modified as set out in the attached appendix.

The meeting closed at 11.30 p.m.

**M Thompson
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Monday 25 February 2013

- Premises Licence Holder: SQ Convenience Store Ltd
- Premises: SQ Convenience Store, 16 Station Parade
- Reasons for Hearing: Relevant representations received from responsible authorities under the prevention of crime and disorder licensing objectives.
- Parties in attendance: Mr Mehrab Rehmani (Co-Licence Holder) and Mr Hussain (Barrister)
- Sussex Police:
Mrs Jean Irving, Sergeant Vokins, Mrs Cathy Wolfe and Mr Peter Savill (Barrister)
- Interested Parties:
Mr Jones, Mr Somerville, Mr Hall, Mr Dunn, Mr Lonergan, Ms Garbet, Mr Summerfield, County Councillor Rodohan, Mr Ovenden, Mr Gill.
- Licensing Authority:
Mr Jay Virgo (Senior Specialist Advisor), Miss Danielle Bryant (Licensing Officer) and Mr Geoff Johnson (Regulatory and Litigation Lawyer).
- Decision made: That the premises licence holder be given a formal warning to adhere to full licensing conditions, regulations and practices. In addition to this, the following conditions would be attached to the premises licence to ensure the four Licensing Objectives are promoted.
- 1) The store's refusal log should be kept up to date at all times and all fields in the log should be filled out correctly with the necessary information.
 - 2) Beer and Cider above 5.6% abv (alcohol by volume) are prohibited from being sold at the premises.
- Reasons for Decision: The Sub-Committee has reviewed the Premises Licence having given due weight to the evidence placed before it, namely the responsible authorities (Sussex Police), the licence holder, interested parties, as well as the regulations and guidance under the Licensing Act 2003, the Council's Statement of Licensing Policy and the Licensing Objectives.
- Having weighed up all the evidence it was considered that the continued sale of alcohol at the premises would not exacerbate the incidents of alcohol related crime and disorder

in the Town Centre. The Sub-Committee however did request that the premises prohibit the sale of beer and cider over 5.6% ABV (alcohol by volume). This would reduce the potential of street drinkers causing crime and disorder and entering the store to buy products heavily associated with them.

The Sub-Committee acknowledged that Mr Mehrab Rahmani had pleaded guilty to the offence of knowingly selling alcohol to someone who was drunk but as this was the only offence at the premises over a 7 ½ year period of licensable activities, a formal warning was considered the necessary step to take. In accordance with the Council's Licensing Policy, revoking a licence would only normally occur when offences such as the sale of alcohol to persons who are drunk or under 18 occurred on a regular basis.

The Sub-Committee had particular regard to the overwhelming support for the licence holder from the interested parties. The representations made and the petition signed by over 700 people had indicated that while Mr Mehrab Rahmani did make a mistake, he remains a popular member of the community, who had in the past refused the sale of alcohol to people who are drunk or underage on numerous occasions.

The Sub-Committee did acknowledge that the premises' refusal log did not meet the expected standard of quality and therefore requested that the licence holder ensure it is kept up to date and filled out correctly.

Date of Decision: 25 February 2013

Date decision notice issued: 27 March 2013

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant for the review, the holder of the premises licence and any other person who made relevant representations in relation to the application.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.