

Licensing Sub Committee (Panel Hearing) Minutes

Date: 16 January 2020

Time: 10.00 am - 12.30 pm

PRESENT: Councillor A R Green (in the Chair)

Councillors M Clarke and N B Marshall.

Apologies for absence were received from Councillors: C B Harriss

52 INTRODUCTORY REMARKS BY THE CHAIRMAN

The Chairman welcomed everyone to the meeting and following introductions he set out the procedure that would be followed during the hearing.

It was confirmed that additional information submitted by the objector had been circulated to all parties.

It was also confirmed that Mr Sivashenkar was representing the licensee.

53 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor C Harriss.

54 DECLARATIONS OF INTEREST

There were no declarations of interest.

55 BEST ONE EXPRESS, 8 BRIDGE STREET, HIGH WYCOMBE, HP11 2PT

The Panel considered an application under s.51 of the Licensing Act 2003 for a review of the premises licence in respect of Best One Express, 8 Bridge Street, High Wycombe, HP11 2PT.

Mr Brian Whittall, WDC Licensing Officer, apologised that Annex 2 and 3 had not been included in the original bundle of papers. Mr Whittall explained that the pack which had been sent by Compliance Direct had these papers within. Mr Whittall also notified the Panel that Thames Valley Police (applicant) had requested to show the Panel some CCTV footage and that this footage had also been supplied to the licensee's representative.

Mr Whittall then outlined the case to the Panel as detailed in the report, and explained that the premises were located opposite the High Wycombe Bus Terminal and were within a mixed commercial and residential area. The premises were located in close proximity to Desborough Road which had historically been an area associated with anti-social behaviour.

An application was received by Wycombe District Council (WDC) for a premises licence in March 2011 by the brother of the current licence holder. A licence was granted which was further amended in August 2011 by the Licensing Panel further to receipt of a representation from the police in relation to a variation application.

The police subsequently requested a review of the premises licence in September 2011 for breach of licence conditions following a Trading Standards test purchase operation in which alcohol was sold to an underage person. The decision of the Licensing Panel amended the conditions of the premises licence.

On 2 July 2014 the Designated Premises Supervisor (DPS) attached to the premises for Best One Express, Mr Kananayagam Sureshkumar pleaded guilty in the Wycombe Magistrates Court to 7 charges relating to section 136 offences in respect of another premises within High Wycombe town centre.

In October 2014 an application was received to transfer the premises licence into the name of Mr Kananayagam Shanthakumar. This application was granted.

On 4 March 2015, Trading Standards applied under section 51 of the Act to review the premises licence. On 24 February 2015, Trading Standards officers, in conjunction with HMRC officers, seized a quantity of alcohol products at Best One Express that had not had UK duty paid and was not intended for sale in the UK. The Licensing Panel decided that the premises licence should be suspended for a period of three months. As part of their decision, the Panel provided an informative within the Decision Notice to the licence holder that any further review applications may result in the revocation of the premises licence.

A formal warning was issued in March 2015 to Mr Shanthakumar for section 57 offences with a final warning issued for the same offence on 13 May 2015.

In July 2015 an application was received by Mr Shanthakumar to appoint himself onto the premises licence as DPS.

On 28 October 2016 a formal warning was issued to Mr Shanthakumar for a number of licence condition breaches.

Mr Shanthakumar had held a premises licence at another location within this authority, 8 Collins House, Desborough Road, High Wycombe, HP11 2PR. WDC records show the following:

1. On 8 December 2006 a test purchase was conducted by Trading Standards at Best One, Desborough Road. Mr Kananayagam Shanthakumar was on the premises at the time of this visit and sold alcohol to a 15-year old female without challenging her age. Mr Kananayagam Shanthakumar was questioned at the scene by police and a £80 fixed penalty ticket was issued with number 38/10351949. Following this incident, the police applied to review the premises licence under s.51.
2. The decision of the licensing authority was to amend the conditions attached to this premises licence.

3. In March 2015, Trading Standards applied to review the licence having found a number of non-duty (UK) paid alcohol on the premises. Following a hearing the Licensing Panel revoked the premises licence.

Mr Whittall brought the Panel's attention to Annex 2 of the premises licence, (circulated by the licensee's representative) particularly in respect of the following:

- Known street drinkers will not be served alcohol from the premises at any time.
- There shall be no sales of any "white cider" products permitted from the premises. White cider is defined as "cider produced with culinary or dessert apples, which reduces the presence of any colour."

It was noted that the above conditions had been offered by the licensee.

The applicant, Thames Valley Police (TVP) applied under s.51 of the Licensing Act 2003 for a review of the Premises Licence on the grounds of prevention of crime and disorder. The application was served on the licence holder as required and it was advertised both at the premises itself and the Council Offices for the regulatory 28 day period.

No additional representations were received.

In reference to the Council's own Licensing Policy and the National Guidance, the following was noted:

- 2.3 "Conditions should be targeted on deterrence and preventing crime and disorder."

In relation to the prevention of crime and disorder:

- 3.8 "The Authority accepted that the legislation does not require the presence of either a personal licence holder or the Designated Premises Supervisor on the premises at all times when alcohol is sold."
- 3.9 "The Authority will expect prevention of crime and disorder measures to be appropriate to the type and location of premises."

In relation to a Review of a Premises Licence, the guidance stated that:

- 11.10 "Where authorised persons and responsible authorities have concerned about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review."

The Council Policy stated in relation to a Review of a Premises Licence:

- 8.2 "The importance of working in partnership to achieve the promotion of licensing objectives cannot be understated and responsible authorities will aim to give licensees early warning of any concerns identified at a premise."

8.3 “In order to successfully bring a review of a licence, evidence will be required of breaches of one of the licensing objectives.”

8.6 “In cases where the crime prevention objective is being undermined, it is expected that revocation of the licence (even in the first instance) will be seriously considered.

The Panel was obliged to determine the application with a review to promoting the licensing objectives which were:

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

In making its decision, the Panel was also obliged to have regard to National Guidance and the Council’s Licensing Policy. Should the Panel depart from either it was required of them to specify its reasons for doing so. The Panel was also required to take into consideration all of the representations made and the evidence submitted, both written and orally at the hearing.

In promoting the licensing objectives, the Panel could take any of the following steps in relation to the application:

- (a) modify the conditions of the licence;
- (b) exclude a licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months;
- (e) revoke the licence; or
- (f) take no further action or take informal action

The Panel was also asked to consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of residents.

Any decision taken was required to be appropriate and proportionate to the objective being pursued. In particular the following should be taken into consideration:

Article 6 – the right to a fair hearing

Article 8 – respect for private and family life

Article 1, First Protocol – peaceful enjoyment of possessions (which could include the possession of a licence).

In answer to questions, it was confirmed that the information included within the report was highly relevant so that the Panel was fully aware of the licence holder’s history in relation to the hearing. The Panel would attach appropriate weight to the evidence provided when reaching to their decision.

Mr Whittall confirmed that the condition relating to street drinkers was an unusual condition offered by licence holders and he could not think of any other licence in the district which had such a condition. Mr Whittall also confirmed that as partnership

working with TVP, WDC held a number of educational seminar's over the years, particularly to off-licence holders and especially in the Desborough Road area due to historic problems with anti-social behaviour. The last presentation was in 2018 and as part of that education provided by officers from WDC and TVP the issue of street drinkers was discussed. It was noted that if any licence holder had any concerns they could contact the local police teams for assistance. Mr Whittall could not confirm whether Best One's licence holder had attended that seminar. He did, however, confirm that all town centre licensees were invited.

Mr Whittall also confirmed that further visits had been made to the premises to check for compliance.

Mr Andy Dean, Thames Valley Police Licensing Officer, stated that CCTV footage had been obtained from the premises following a request from Mr Whittall for the footage but that he had been unable to view it. TVP could now make the footage available to be viewed. Mr Dean explained that the other party had been provided with the footage ahead of the hearing.

At this point, the CCTV footage was shown to the Panel.

It was noted that there were two files on the footage provided. One had been viewed but the second one could not be opened. It was explained that it showed the shop assistant continuing to talk to the customer for a longer time while he obtained alcohol for him, compared to the first piece of footage that did not.

Sergeant J Hoskin, who witnessed the incident, entered the Chamber at this point and introduced himself to the hearing and stated that he was based at the High Wycombe Police Station.

Mr Dean stated that during an enforcement evening on 18 October 2019 he attended the premises with Caroline Steven (WDC Licensing Team Leader) and noticed that only one page of the two-page summary was on display. On request, the Incident Log was presented but had not been completed. The staff member behind the counter explained that he was a Personal Licence holder but could not prove this. Mr Dean explained that the training logs were not available for inspection either and noted that K Cider was on display in the premises. It was noted that K Cider was considered to be White Cider and that High Wycombe had been plagued by street drinkers and that Sergeant Hoskin had been working on the problem. In Desborough Road there was a food kitchen and a number of street drinkers also live in that area so would pass by Best One. Mr Dean explained there was a condition on the premises licence not to sell alcohol to street drinkers which had been offered by the licensee and he believed that it was the licensee's responsibility to find out who the street drinkers were. The man in question had been around the town for a number of years. Mr Dean stated that police officers were considered to be experts by the courts on the issues of intoxication and drunkenness.

Sergeant James Hoskin, Thames Valley Police, stated that on the evening in question, he was sitting in an unmarked police car on Bridge Street when he saw a known street drinker who was also known to be a problem. He was being 'escorted' and supported by a friend and he was visibly drunk. Sergeant Hoskin observed the man in question going into the shop and coming out again carrying a plastic carrier bag, the contents of which Sergeant Hoskin assumed was alcohol. The man in

question's friend then re-joined him and once again assisting him they went towards the soup kitchen. Sergeant Hoskin then entered the premises and spoke to the staff member there who confirmed he had sold the individual cans of alcohol. Sergeant Hoskin pointed out to the staff member that the individual was intoxicated but the staff member thought he was not and therefore served him. Sergeant Hoskin then asked a Community Support Officer to go to the soup kitchen to do a welfare check and ascertain if the individual was drunk and she confirmed that he was (level 4).

Sergeant Hoskin confirmed that he sees the individual intoxicated on a daily basis although had never seen him needing to be supported by anyone else which led him to believe that the individual was very drunk indeed.

Mr Dean confirmed the PCSO's report in the Panel's bundle reflected the level of intoxication. He also stated that conferences had been held in conjunction with WDC. At the latest conference licensees were asked to help reduce drunkenness within the town centre. It was hoped that the conference would move forward the white cider initiative already being run within the town centre. One of the pictures in the presentation showed cans of white cider, specifically K Cider – for recognition purposes. Mr Dean asked the Panel to look at the history where there had been ongoing breaches of conditions despite steps being taken by WDC and TVP to bring the licensee into line. Mr Dean stated that TVP had now reached the point that after attempting to liaise with the licensee stronger action needed to be taken. TVP was of the opinion that the appropriate course of action was to revoke the licence.

Mr Sivashankar argued that white cider and Strongbow were not the same product despite being made the same way. It was argued that Strongbow had been sold for years without comment from TVP or WDC. However, the WDC legal officer stated that this argument was academic as the licensee had offered this condition which was attached to his licence and that he was responsible for complying with it. In response, it was argued that the condition relating to white cider was imposed upon the licensee. After some discussion, the WDC Legal officer pointed out that the previous licensee had, in fact, offered that condition to be on the licence. It was also noted that as the licensee had been selling Strongbow since his licence was issued in 2011 he had been in breach of that condition since then. It was noted that the condition did not define product names and that it was up to the client to know which ciders he could sell and which he could not to comply with his licence.

Mr Dean confirmed that the individual entered the premises at 18:07. However, it was noted that the timings quoted on the PCSO's written statement when she saw the individual that evening meant that nearly two hours' had lapsed in between Sergeant Hoskin seeing him and the PCSO seeing him. Mr Dean stated that as the PCSO was not in attendance at this hearing, the time could not be confirmed. However Sergeant Hoskin submitted that the written statement time was likely a typographical error and there was not much of a time difference from his memory. Mr Whittall pointed out that when the PCSO saw the individual at the soup kitchen, he still had the black plastic carrier bag with cans in it; he believed that if two hours had elapsed since Sergeant Hoskin seeing him and the PCSO seeing him, the alcohol would have been drunk.

Mr Whittall confirmed that it was he who had requested the CCTV footage not TVP and although the condition on the licence stated that the footage should be made available immediately some leeway was shown for people to retrieve and send the

footage to WDC. Mr Whittall confirmed he had requested the CCTV footage, by letter, on 30 October 2019. This letter stated that “should recordings be unable to be viewed then this shall be considered as a breach of your licence conditions.” Mr Whittall stated that the footage was supplied in a form he could not retrieve and he had therefore forwarded this to Thames Valley Police for viewing. Mr Whittall confirmed that the footage had been supplied by the date requested.

Mr Sivashankar indicated he believed that the Council’s equipment the CCTV images were being shown may be faulty, as evidenced by the inability to play the second CCTV recording.

It was confirmed that there was no such order as an Alcohol Banning Order in place although there is a Public Spaces Protection Order.

Mr Dean confirmed that there was a system within the town centre called Pub Watch which identifies people who cause problems within pubs and these are shared with licensees who were members of Pub Watch. These people were not permitted into pubs due to the problems they caused. Whilst they were not banned from off-licence premises, it was asked of those premises not to serve those people who had been identified as street drinkers. Mr Dean stated that as the licensee had a condition on his licence not to sell to street drinkers it was his responsibility to identify who they were.

Mr Sivashankar of Compliance Direct Ltd, representing Mr K Shanthakumar, explained that two visits had taken place. The first was on 18 October 2019 and showed areas where police had concerns; the Summary displayed only had one page on display instead of the two required. He stated that the second page of the summary was within the same plastic wallet, although it was behind the first page. However, the picture, provided in the additional information supplied by Mr Sivashankar and circulated to all parties, showed that both pages of the Summary were now displayed. On the day of the visit the Summary was in a plastic folder and if a request to see it had been made, it would have been shown. It was recognised that the Incident Log was not completed. There were two incident books although one had not been started and the other had been completed. Mr Sivashankar confirmed that the wrong Incident Log had been shown to officers.

Mr Sivashankar passed to the Panel the Incident Log book, the Refusals Log book and information regarding courses attended and completed. It was noted that the certificates provided were both for Mr Shanthakumar’s wife.

Whilst admitting that on 18 October 2019 when it was noted that breaches of the licence had occurred, these were merely errors rather than blatant, intentional breaches. Mr Sivashankar stated that his client, Mr Shanthakumar had carried out some research in relation to white cider although his research was via Google standard search which did not give any information on white cider and K Cider. Mr Sivashankar also stated that the K Cider was no longer displayed.

In answer to questions, Mr Muruganantharajah, who was working behind the counter on 27 October 2019 and sold cans of beer to the individual in question, commented that he was busy with customers who wanted scratch cards. He then noticed a new customer, the individual in question, who had come into the shop and noticed that he was walking funny and Mr Muruganantharajah asked if he was okay. The individual

stated that he had just been discharged from Stoke Mandeville Hospital where he'd gone due to back pain and wanted to take some beers home. Mr Muruganantharajah got him the beers and sold them to him. Mr Muruganantharajah commented that he could not smell alcohol on the individual's breath.

Mr Shanthakumar explained that as his English was not so good, he did not really understand what was being asked of him during the TVP visit on the 18 October 2019 although whatever they asked for, he gave them. Mr Shanthakumar explained that TVP had checked on Google about white cider and said they would send information in relation to white cider to Mr Shanthakumar. He stated that all staff were trained.

Mr Sivashankar explained that his client was not as expert as the police in relation to identifying drunkenness and that the police officer had a longer period to assess the individual whereas Mr Muruganantharajah only had a small window of opportunity to assess. Mr Sivashankar agreed that there was need for improvement but that revoking the licence would take away his client's livelihood. Mr Shanthakumar had tried to comply with all his conditions and it had been nearly five years since the counterfeit issues. Mr Shanthakumar had done his level best to comply with the licensing objectives. Mr Sivashankar explained that the definitions of white cider and the conditions on the licence needed to be clarified and that it was hoped a solution could be found, preferably with some guidance given to his client.

In answer to questions, Mr Sivashankar confirmed that both pages of the Summary were now on display and accepted that only one page was on display when the visit on 18 October 2019 took place.

Mr Sivashankar confirmed that K Cider had not been displayed since the visit on 18 October 2019. He accepted there was confusion regarding the sale of White Cider and would look to work with the Licensing Authority to clarify this.

Mr Whittal pointed out that K Cider was still on display on 19 November 2019. Mr Sivashankar clarified that Mr Shanthaumar had no clear evidence after 18 October that he could not sell K Cider and that he was waiting for the Council to send more information. However it was removed after the blue notice was put up on 19 November.

Mr Shanthakumar confirmed that he had handed over all relevant documentation during the visit on 18 October 2019 although he did realise that the Personal Licence certificate of one of his employees was missing but that this was being rectified and a replacement had been requested. It was noted that the training records were not handed over.

Mr Shanthakumar confirmed that he allowed six weeks from time of starting work at the shop for a new employee to receive training and to subsequently produce their certificate.

At this point, Ms Caroline Steven, WDC Licensing Team Leader, who was observing, made a request to the Chairman to join the hearing to give evidence, as she had attended the premises with TVP on 18 October 2019. It was noted that she had not provided representation in the bundle but that her evidence would clarify various queries.

The Chairman indicated he was in favour of this and asked each party if they were in agreement. Both the applicant and Mr Sivashankar and his client agreed to this.

Ms Caroline Steven, WDC Licensing Team Leader, introduced herself and thanked the Chairman for allowing her to clarify some issues. Ms Steven stated that she had attended Best One Express with TVP on the 18 October 2019 and during that visit requested to see the training records which would relate to any member of staff at any stage of their employment but none of these records could be produced. In relation to K Cider, both she and TVP were very specific about this not being sold mainly due to its alcoholic strength and that it was known to be the street drinker's drink of choice. It was made clear at the time of the visit that white cider / K Cider must not be sold.

Mr Shanthakumar stated he had requested Ms Steven or Mr Dean to send him details on what was and what was not white cider at which point the WDC Legal officer responded that the condition in relation to white cider had been offered by himself and that he should therefore have researched that information. Ms Steven confirmed that a discussion had taken place during the visit about what constitutes white cider and that she had told Mr Shanthakumar that white cider, was generally high in alcohol content and Mr Shanthakumar was advised not to sell it. Ms Steven also confirmed that as the condition was offered by Mr Shanthakumar it was down to him to research what constituted white cider.

Mr Shanthakumar confirmed he had held a personal licence since 2006.

Mr Dean queried that the individual in question, who was carrying a large backpack on his back, that Mr Muruganantarajah should not have taken his story that he had just been discharged from hospital due to a bad back at face value. Mr Muruganantarajah responded that he did not think that far although he did think that by the way he walking that he was drunk which is why he questioned the individual. He realised now that he had made a bad judgement as he did not know the man was drunk and he did not think about the backpack either. Mr Muruganantarajah explained that he would get a person to talk to him so he would be able to ascertain whether that person was drunk or not. He stated that he did not smell alcohol on the individual's breath.

Mr Sivashankar stated that all records had been handed to the officers but it was pointed out that the Training Records had not been completed and signed off by another person entirely – Mr John F Perrera, although that name had been crossed out. In answer to a question about when these records were amended, Mr Sivashankar stated they were amended on 1 July 2018. It was also noted that there were no dates, no signature or position completed on the records and therefore was incomplete and of no value.

In answer to a question about how Mr Shanthakumar identified street drinkers, he explained that if someone came into the premises regularly he would identify them as a street drinker. However, he confirmed that he did not know their names.

Mr Shanthakumar confirmed that he had attended the awareness seminar.

Mr Shanthakumar also confirmed that he had asked officers several times who identified street drinkers were but had not been given that information. He also confirmed that he was not on the premises the day Mr Muruganantharajah served the individual in question.

The Chairman queried the large increase in apparent refusals to street drinkers since October 2019 and Mr Sivashankar confirmed that following the officer's visit it had concentrated the staff's minds more. Mr Shanthakumar confirmed that he was not a member of Shop Watch as he was not aware of its existence.

Mr Shanthakumar also confirmed that he had checked on Google and with other shops in relation to white ciders and was aware that labels such as White Lightning could not be sold as it was a white cider.

Mr Shanthakumar stated that when he attended the seminar he had not been shown the slide in relation to white cider.

There being no more representations or questions, the Chairman thanked everyone for attending the hearing and explained that he and the Panel would go into private session to make their decision.

The hearing closed at 12:20

During their deliberations the Panel took into consideration all the written and oral evidence presented at the hearing, the legislation, Statutory Guidance and the Council's Licensing Policy. In furtherance of the licensing objectives of prevention of crime and disorder and to strike a balance between the human rights or residents and the rights of the premises licence holder the Panel agreed to revoke the licence due to the number of times the licence had been breached.

RESOLVED: that the licence be revoked.

Chairman

The following officers were in attendance at the meeting:

Liz Hornby	- Senior Democratic Services Officer
Kiran Khanna	- Principal Solicitor & Monitoring Officer
Caroline Steven	- Licensing Team Leader
Hilary White	- Paralegal
Brian Whittall	- Licensing Officer