

MINUTES OF THE PREMISES/PERSONAL LICENCES SUB-COMMITTEE 'A'**HELD ON 17 JUNE 2016 AT 10.00 A.M. IN THE COUNCIL CHAMBER, WEELEY****Present:** Councillors V E Guglielmi (Chairman), Whitmore and Winfield**Stand-by Member:** Councillor Raby**In Attendance:** Solicitor (Linda Trembath), Head of Environmental Services (John Fox), Licensing Manager (Simon Harvey), Democratic Services Officer (Janey Nice) and Licensing Assistant (Emma King)**Also in Attendance:** Miss Tania Anthonypillai (Applicant), Mr Jeyaseelan Thambithurai Mr Suresh Kanapathi (Consultant – Arka Licensing) and Inspector Julia Finch (Inspector Essex Police)**1. TRIBUTE**

In view of the murder of the previous day of Mrs Jo Cox MP, the Chairman announced that she would hold a minute's silence in tribute to the memory of Mrs Cox.

2. WELCOME

The Chairman welcomed all those present to the meeting and explained the procedure that would be followed.

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

4. MINUTES

The minutes of the meeting of the Sub-Committee held on 8 April 2015 were approved by Councillor Raby, as a correct record as the only Councillor present who attended the last meeting of the Committee, and signed by the Chairman.

3. DECLARATIONS OF INTEREST

There were none.

5. LICENSING ACT 2003 – FOR THE REVIEW OF PREMISES LICENCE – J J SUPERMARKET, 21 – 23 JACKSON ROAD, CLACTON-ON-SEA, ESSEX, CO15 1JA

The Sub-Committee had before it for its consideration, as set out in item A.1 of the Report of the Corporate Director (Operational Services), an application for the review of the above Premises Licence currently being held by Miss Tania Anthonypillai.

Mr Harvey added that the responsible authorities, Licensing Authority, Trading Standards and Police and co-applicants had been in discussion and had offered a proposal for the Sub-Committee to consider and agree.

The Council's Licensing Manager (Simon Harvey) briefed the Committee on the review of the Premises Licence which was submitted by Essex Police and was received by the Licensing Authority on 27 April 2016 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder and the Protection of Children from Harm had been breached. Copies of the full review application and supporting documentation were attached to the report as Appendices A to E.

Mr Harvey said that as a minimum outcome the police would like Miss Tania Anthonypillai removed as the Designated Premises Supervisor (DPS) for those premises and replaced by an experienced and responsible person who would have a proactive approach to managing the staff and customers of an alcohol off-sale outlet that is in a busy and challenging environment and also which had a history of problems in regards to breaching the Licensing Objectives. The Police and Responsible Authorities parties to the review would require any new DPS to have a regular and significant presence in the store on a daily basis in order to manage and promote the Licensing Objectives positively.

Mr Harvey informed the Sub-Committee that Essex County Council Trading Standards had submitted a representation for the Protection of Children from Harm as this particular Licensing Objective had been breached and full details of this submission was on pages 25 to 27 of the Agenda's supporting papers. He added that the Council's Licensing Authority had also submitted representations on the grounds of Crime and Disorder and the Protection of Children from Harm, full details of this were on pages 32 to 34 of the afore-mentioned supporting documents.

Mr Harvey advised the Committee that on pages 9 and 10 of their agenda and papers, the relevant parts of the Section 182 Guidance which accompanies the Licensing Act 2003 Sections and the Council's Statement of Licensing Policy with regards to reviewing premises licences could be found. The papers also drew attention to the relevant human rights implications.

Mr Harvey also informed the Sub-Committee that subsequent to the review application being submitted and prior to the agenda being printed, Mr Suresh Kanapathi of ARKA Licensing Consultants had notified the Licensing Manager that he was now acting on behalf of Miss Tania Anthonypillai. On instructions from Miss Anthonypillai he had proposed to the Police, as applicants for the review, and the Licensing Authority and Essex County Council Trading Standards both, as Responsible Authorities supporting the review, that the DPS at the premises should be replaced with her husband, Mr Jeyaseelan Thambithurai. Mr Kanapathi informed the Sub-Committee that Mr Thambithurai had held a personal Licence since 2010 and he had extensive experience in dealing with people who appeared to be drunk and also with under age sales. In addition, he said, Mr Thambithurai would work alongside Mr Rasa Raventheran who had originally been proposed as the replacement DPS for Miss Anthonypillai.

The Sub-Committee and all other parties present at the review and who had an interest in it, were handed an exchange of emails between Mr Harvey and Mr Kanapathi which included copies of Mr Thambithurai's Personal Licence ID. The emails contained an agreement that Mr Thambithurai placed a sign outside the shop informing customers that drinking and congregating on the forecourt of shop was prohibited and that the shop's staff would actively discourage customers from doing so. The email exchange confirmed that consultation had taken place with Essex Police and Essex County Trading Standards who were happy to replace the DPS with Miss Anthonypillai's husband Mr Thambithurai.

The Chairman adjourned the meeting to allow the Sub-Committee to peruse the submitted emails.

When the meeting recommenced Mr Harvey said that further information had come to light which might cause the Police concern under the Licensing Objective of Crime and Disorder and the Sub-Committee might wish to consider this along with their deliberations.

The Police Inspector present, Ms Julia Finch, informed the Sub-Committee that a check had shown that Mr Thumbithurai had a conviction in 2011 under the Road Traffic Act 1988, section 6(6) for failing to supply a specimen of breath in connection with being stopped for, or suspected of, driving while over the legal limit for alcohol in the blood stream when asked for by the Police. Mr Harvey said this matter needed to be clarified before any transfer of the DPS on JJ Supermarket premises licence into Mr Thumbithurai's name as this was what is known as a 'relevant offence' under the Licensing Act 2003 which might prevent a person from applying for, or continuing to hold a Personal Licence. If this was the case, Mr Thumbithurai may not be able to be transferred onto the premises licence as the DPS.

Mr Harvey said that under Section 52 of the Licensing Act 2003, the Sub-Committee had to make a decision that was necessary and proportionate, this could be that they decide to take no action or may wish to send an informal warning letter; all options were relevant in this case.

Inspector Finch informed the Sub-Committee that JJ Supermarket had voluntarily signed up to the 'Reduce the Strength' scheme in 2014 to help reduce the impact on street drinking. However she said the Police were contacted in July 2015 by two Officers from the Council who had supplied witness statements that they had visited the shop and noticed a member of staff selling alcohol to a drunken member of the public. She said that under Section 141 of the Licensing Act 2003 they were asked to investigate and PC Southgate accompanied by two of the Council's Officers attended JJ Supermarket. In August 2015, she said, two Council Officers attended the store and they again witnessed a member of staff selling alcohol to a drunken person. She said that PC Southgate had raised considerable concern and as a result Mr Harvey (Licensing Manager) had also attended the Police station to give Miss Anthonypillai advice on upholding the law.

She said that since then under Operation Benison, Essex Police and the Council's Licensing Enforcement Officers had visited various licensed premises and on subsequent visits in November 2015, December 2015 and January 2016 no issues were identified. However in February 2016 Essex Police and Essex County Trading Standards attended JJ Supermarkets and the DPS was observed selling alcohol to an under-age person despite being part of the Challenge 25 Scheme. She said that the DPS received a caution under the Licensing Act 2003, but she added that Essex Police had concerns that the current DPS does not have full control of the staff and shop which was the reason for the application for the review of the licence.

The Chairman asked if the revelation would make a difference to the transfer of the DPS licence and was informed that the conviction was spent and should have no bearing on the application.

Councillor Whitmore asked if the staff member selling alcohol to a drunken person had held a personal licence and the Police officer said they had not at that time and that they had recommended all staff should receive the appropriate training, however that particular member of staff was no longer employed by JJ Supermarket and another member of staff did hold a personal licence.

When Councillor Winfield asked about selling alcohol to youngsters he was informed that the store was part of the Challenge 25 Scheme.

The Chairman raised a concern about the conviction Mr Thumbithurai had received in 2011 and asked the rest of the Sub-Committee, the Police and supporting Responsible Authorities represented at the review hearing if they were happy to hear the application that day and if the premises licence holder, their representative and the proposed new DPS wished an adjournment to have a discussion on how they wished to proceed in light of the new information. All sides confirmed that they were happy for the proceedings to continue. The Chairman asked if the information regarding Mr Thumbithurai's conviction for refusing to provide a specimen of breath would make a difference to the transfer of the DPS licence and was informed by Inspector Finch that, on looking further at the conviction, it was now spent, that it appeared a relatively minor offence for which Mr Thumbithurai was fined, suggesting that no alcohol was involved and therefore should have no negative bearing on the review application.

Mr Harvey confirmed that the applicant should have declared that he was a Personal Licence Holder to the Court who also should have asked him if he was a Personal Licence Holder depending on what he advised the Court his profession was. He also advised that Mr Thumbithurai should have advised the Council who had originally granted his Personal Licence of this conviction. Mr Thumbithurai said that he had not declared it as he did not realise it was relevant as he had only received a fine for refusing to give a specimen when asked by the Police. Mr Harvey informed the Committee that although it had been treated by the Police as a failure to provide a specimen of breath rather than drunk driving it would be treated in the same way, but was happy to accept the information from Inspector Finch that the conviction was spent. Inspector Finch added that if there had been evidence of Mr Thumbithurai consuming alcohol the result would have been more than a fine and the case would have been taken further which meant he could have received a 12 month ban from driving or even imprisonment.

Mr Fox, the Head of Environmental Services said that he had no questions and had nothing to add to his representation and was happy for the application to proceed.

The Chairman asked Mr Thumbithurai why the Sub-Committee should agree to the transfer of the DPS licence to him. Mr Suresh responded on his behalf informing the Sub-Committee that Mr Thumbithurai was a very hard working individual, not only working at JJ Supermarket but also running another store in Great Yarmouth, he and his wife were both committed to running their businesses and had taken to improve matters after being spoken to by the Police. The one member of staff concerned without a personal licence was currently undergoing training for his personal Licence. He also confirmed that the shop now had a sign outside informing customers that alcohol was not allowed to be consumed on the premises or outside and added that there had been no complaints or representations from members of the public.

Mr Thumbithurai, when asked by the Chairman, confirmed that he was reviewing his staff at his other store so that he would be working at JJ Supermarket and would undertake more staff training for the staff at JJ Supermarket and confirmed that he would now be living above the store and that his wife would also be working alongside him in the shop.

Councillors Whitmore and Winfield asked questions about training staff in the Licensing Objectives and Mr Thumbithurai added that the staff were also receiving training in conflict resolution to deal with drunken persons being refused the sale of alcohol. They asked if the store had had any other problems or offences and it was confirmed that there had been no other problems since JJ Supermarket had opened. Miss Anthonypillai confirmed that the Licensing Authority had suggested that all of the staff received personal licence training up to level 2. Mr Thumbithurai also confirmed again when asked, that he would be moving permanently to JJ Supermarket and had a properly qualified Manager to run his other store in Great Yarmouth and there would always be a qualified member at the other store at all times. Mr Harvey suggested to Miss Anthonypillai that if their staff had passed the Level 2 qualification then they should proceed with applying for and being granted a Personal Licence. He could see little point in paying for their Level 2 training but not going ahead to get a Personal Licence. He added that for £37 a person then had a Personal Licence to keep and use indefinitely.

Councillor Whitmore asked if there were any CCTV cameras in the store and Mr Thumbithurai confirmed there were and even pointed them out to drunken customers when they were being difficult. Councillor Whitmore also said that he would like Mr Thumbithurai to be more diligent in his dealings with under-age sales and wanted assurances that this would be the case. Mr Thumbithurai said that until the recent events he had had no problems with JJ Supermarket, he had signs in the store pointing out that they did not sell to underage customers, and that they asked for ID. Councillor Winfield pointed out to him that if he was in any doubt whatsoever about the age of a customer he should refuse to sell alcohol.

Inspector Finch asked who was living above the supermarket and Miss Anthonypillai confirmed that her husband lived above the shop as well as another member of staff. She added that although she worked in the shop she did in fact live in Harrow.

Mr Harvey asked about the other store in Great Yarmouth and Mr Thumbithurai gave the Licensing Manager the address and informed Mr Harvey that it was a smaller shop selling food and alcohol.

The Sub-Committee then **RESOLVED** that the public be excluded from the meeting, pursuant to Section 100A(4) of the Local Government Act 1972, during the period when the Sub-Committee would be deliberating and considering its decision, on the grounds that such deliberations involved the likely disclosure of exempt information, as defined in Paragraph 5 of Part 1 of Schedule 12A, as amended, of the Act.

Members of the Sub-Committee then withdrew from the meeting to deliberate and consider its decision. The Solicitor and Democratic Services Officer were asked to accompany Members to give advice if any legal points were raised and to record the decision.

Following such deliberations, other Officers, Members and members of the public were readmitted to the meeting. The Solicitor reported that she had not provided the Sub-Committee with any legal advice on this occasion.

It was unanimously **RESOLVED** that the decision of the Sub-Committee be as follows:

"The Sub-Committee has given careful consideration to this application for a review and to the actual representation(s) received from Essex Police on the grounds that the Licensing Objective(s) in respect of The Prevention of Crime and Disorder and the Protection of children from Harm had been breached for the reasons set out in their representation(s). In making their decision, the Sub-Committee had taken into account:-

- (i) relevant matters set out in the Licensing Authority's own Statement of Licensing Policy;
- (ii) the relevant parts of the Guidance issued by the Secretary of State; and the range of powers provided to Licensing Authorities by the Licensing Act 2003 in determining a Review.

The Sub-Committee were also aware that it must act to promote the Licensing Objectives as set out in the Licensing Act 2003 and that any decision it took in determining a Review must be necessary for the promotion of those objectives.

The decision of the Sub-Committee was as follows:-

1. In respect of the application for the Review of a Premises Licence/Club Premises Certificate submitted by Essex Police in respect of the premises known as JJ Supermarket, the Sub-Committee's decision is to uphold the Licensing Authority's previous decision to grant a Licence subject to the modification of the conditions currently attached to that Licence and the imposition of certain additional conditions:-

2. The following additional conditions will accordingly be attached to the Licence:-

That signs are prominently displayed in and outside the shop premises advising customers that alcohol will not be sold either to those who cannot satisfy a challenge in accordance with the requirements of "Challenge 25", which we are told the business has signed up to, or who appears to be under the influence of alcohol and drunk in accordance with the law, and that signs will also be displayed encouraging customers and others not to congregate outside the shop.

In addition, the Sub-Committee having heard from all interested parties has decided:

3. To remove Miss Tanyia Anthony Pillai as the Designated Premises Supervisor, and to approve Mr Jeyaseelan Thambithurai as the new Designated Premises Supervisor subject to a formal application being completed and submitted to the Licensing Authority. The date of removal and approval shall be noted as the date of this Review hearing.
4. And that, in accordance with the proposals made by the current and new Designated Premises Supervisors, all staff working at the premises will be trained, and hold a Personal Licence.

The reasons these conditions are added, and changes have been made, are to promote the Licensing Objectives for the Prevention of Crime and Disorder, and for the Protection of Children from Harm, the issues raised in the application for this review.

Details of the Sub-Committee's decision will be notified to all interested parties in writing.

Finally, I must mention that all parties who are aggrieved at the decision of the Sub-Committee have the right of appeal to the Magistrates' Court."

The meeting was declared closed at 12.43 a.m.

Chairman