


Licensing Sub-Committee

18th January 2017

Notice of decision

Application reference:	16/00303/PRMREV – Prem950
Application type:	Premises Licence (review application)
Applicant(s) name:	Mr Tahir Awan
Premises:	Superway Express, Shop, 344 Kennington Lane, London SE11 5HY
Summary of decision:	Licence revoked

Decision details:

SUPERWAY EXPRESS – DECISION AND REASONS

1. This is an application by the Metropolitan Police Service for the review of a premises licence held in respect of Superway Express, situated at 344 Kennington Lane, SE11 5HY (“the premises”). Tahir Awan holds the Premises Licence for this business and serves as its Designated Premises Supervisor. The premises operates as a convenience store and off-licence and has a licence which permits it sell alcohol 24 hours a day, every day of the week.
2. This application attracted a total of 20 representations. 18 were submitted in support of the application, with representations being received from Trading Standards, Public Health, the Licensing Authority and a local councillor (Cllr Joanne Simpson which she submitted on behalf of herself and other Princes Ward councillors). The remainder came from members of the public that lived/worked in the vicinity. Two representations were received from residents that objected to the application (supporting the business).
3. The LSC was aware that these premises had been subject to review proceedings on two previous occasions, namely 30th August 2012 and on 18th September 2014 and that each time the outcome was the imposition of additional conditions on the Operating Schedule – a document which the LSC considered comprehensive in its scope. Whilst the LSC acknowledged that these earlier reviews predated Mr Awan’s assumption of responsibility for the premises, the LSC was nonetheless concerned that this was the third time these premises had appeared before this Sub-Committee.
4. This review was instigated by Sergeant David Smith. In his application he details various incidents associated with these premises, including instances when the premises is alleged to have sold alcohol to intoxicated people and in other instances outwith conditions on their premises licence (i.e. in quantities/strengths it shouldn’t have). He also refers to an occasion when the premises was found to have employed someone without the right to work in the UK. The review was brought on the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and protection of children from harm.
5. In his application, Sergeant Smith advises that the Premises is located directly adjacent to Vauxhall Pleasure Gardens and reports that this is an area that is generally beset by anti-social behaviour issues, caused by, or related to street drinking. According to Sergeant Smith, this

behaviour is manifested in different ways, including verbal abuse and harassment directed at residents, littering and noise nuisance (from drunk people shouting in the street). This assessment is supported by PC Steven Duggan the dedicated Ward Officer who provides an impact statement. In that statement he refers to Vauxhall generally as a diverse and thriving hub that is blighted by various crime and disorder issues including violence, aggressive begging and street drinking. He specifically details the contribution of the premises to the general ASB and crime issues in this location. The LSC notes in particular PC Duggan's characterisation of the premises as attracting a constant stream of patrons, both day and night, including street drinkers, known criminals and those that have frequented the many local clubs in the area (a number of which operate well in to the early morning). His later statement of the 30th November 2016, (which includes pictures of a group of males loitering outside the premises just after 6am on 20th November), supports these observations.

6. Mr James Rankin represented the Police and talked briefly to the application. He referred the LSC to the submission of Sergeant Smith and stated that the evidence showed that the premises was operating in a way which had served to undermine the Licensing Objective's. There was evidence of a number of substantial breaches of the premises licence and the law, including the premises serving alcohol to drunk people and the employment of a person without the right to work in the UK. The breaches were long running and symptomatic and evidenced that this was a problematic premises. Mr Rankin observed that one would normally expect a premises that is the subject to review proceedings to 'toe the line' pending the review hearing. The evidence here demonstrated the opposite of that and suggested that the licensee had instead simply thumbed his nose at the authorities. The Police accordingly sought revocation of the premises licence.
7. The LSC then heard from Bernard Conmy of the Councils Trading Standards team (LTS). Mr. Conmy informed the LSC about LTS interactions with these premises, over the course of 2016. He informed the LSC that on 29th May 2016, he attended the premises in a joint exercise with the Metropolitan Police. He advised that in the course of inspecting the premises he discovered duty diverted spirits on the premises (five 70cl bottles of Teachers Highland Cream blended Scotch whisky). This occurs when goods are brought for export and the labels for these products removed and fake labels and a bogus duty stamp applied on them so as to suggest that it is for domestic supply. The loss to the UK revenue was £9.00 per bottle. On being questioned about these products, Mr Awan replied that the stock had been inherited from the previous owner. The goods were confiscated. Mr Conmy also recovered bottles of Guinness Foreign Extra and Dragon Stout which had an ABV of 7.5%. Mr Awan was then referred to a condition set out at Annex 3 of his licence which states that "There will be no sales/supplies of *beers, ales, lagers, ciders or anything similar of 6% ABV or above*". Mr Awan replied that he believed the condition related to 500ml cans and not bottles. Those products were also removed. Mr Conmy also discovered that the premises was not as the licence required providing refresher training to its staff every 6 months and recording this in a training manual.
8. In the course of this inspection, the officers discovered that a male employed by the Premises was an immigration absconder and did not have the right to work in the UK. He was subsequently arrested. The papers indicate that this same male had been discovered working at the premises in August 2015 and that he was arrested at that time for immigration offences. Although this earlier incident precedes the transfer of the licence to Mr Awan (by approximately

2 months), the LSC was nonetheless concerned that this same individual remained employed by the premises.

9. Mr Conmy issued Mr Awan a Trading Standards notice highlighting the matters uncovered in the course of this inspection. Amongst other things, this recorded the stated licence breaches. The LSC notes that on 15th June 2016 Mr Awan attended a meeting with the Police to discuss matters arising from this inspection and was thereafter sent a letter which also highlighted, amongst other things, the above stated licence breaches.
10. Mr Conmy then referred to a follow up compliance visit conducted at the premises on 2 November 2016. In the course of that visit, Mr Conmy found a bottle opener behind the counter. When he questioned a sales assistant about this, that person admitted it was used to open customer's beer bottles for them. Mr Conmy also recovered 3 bottles of Guinness Foreign Extra and Leffe Blond Beer which had an ABV of 7.5% and 6.6% respectively, in breach of the premises licence. He also discovered that the sales assistant could not operate the CCTV system or Business Crime Reduction Partnership radio, both of which were conditions on the premises licence. In view of these matters, Mr Conmy advised that he was asking the LSC to consider revoking the premises licence.
11. Robert Gardner, Licensing Manager, informed the LSC that in light of the evidence supplied by the Police and Trading Standards, he supported their call that the premises licence should be revoked.
12. The LSC heard from Carolyn Sharpe, representing the Director of Public Health who amongst other things observed that the premises did not promote responsible drinking and that its actions had a deleterious impact upon the licensing objectives.
13. The LSC had due regard to the remaining supporting representations. The LSC noted that Cllr Simpson's representation refers to having witnessed the premises selling alcohol to inebriated people. She also claims to have received similar complaints from residents and others about this. In her representation she makes the following observation: "Patrons who wish to buy single cans and/or alcohol whilst already inebriated characteristically tend to congregate in public places. In the case of Superway Express' customers, this typically tends to be Vauxhall Pleasure Gardens and Vauxhall Street. As the local Councillor I have been fighting a long battle against associated littering of these areas. I frequently report instances of dropped cans, empty bottles and cigarette butts in the area." The LSC took particular note of these observations. The resident's representations make similar observations, which again the LSC notes.
14. David Dadds, represented Mr Awan at this hearing. He began by reminding the LSC that the two earlier reviews were conducted prior to his client becoming licensee and that it was inappropriate to hold Mr Awan responsible for those matters.
15. Regarding the alleged sales of alcohol to intoxicated people detailed in the report, Mr Dadds explained that the Secretary of States Guidance issued under Section 182 of the Licensing Act 2003 (the Guidance) was clear that everyone was innocent until proven guilty and that it was not the LSC's role to determine such matters. In some of these instances, the Police had issued

Penalty Notices for Disorder (PND). Mr Dadds informed the LSC that the issue of a PND was not a conviction and indicated that his client intended to fight the relevant matters in the Courts. In each instance, Mr Awan was clear that the individual patrons were not drunk and contended that he was competent to identify intoxicated persons.

16. In respect to the duty diverted alcohol found on 26 May 2016, Mr Dadds advised that the items in question was part of the stock which his client had inherited when he took over the licence and that his client maintained that these items were genuine and that receipts had been produced for them. Therefore, he believed that the explanation given by the Mr Awan to Mr Conmy at the time was reasonable. The LSC was informed that the premises had since been fully inspected by Trading Standards and nothing had been found.
17. In respect to the employee that was arrested for immigration offences, Mr Dadds contended that his client was unaware that this person did not have the right to work in the UK. He said that this person was registered for PAYE, had a national insurance number and held a personal licence issued by the local authority. For these reasons, Mr Awan believed that he was entitled to work.
18. Mr Dadds refuted the allegations levelled in respect to the sale of single cans and advised that his client had reminded staff that cans of alcohol were to be sold in packs of 4.
19. Responding to a question about the failed test purchase exercise conducted on 25th September 2016 when the premises sold 2 cans of Red Stripe Lager to a Council officer, Mr Dadds stated that whilst his client did not accept that this sale had been made, he accepted that it was open to the LSC to find (as it did) that the sale had taken place in the way the officer described. He went on to suggest that notwithstanding the same, the LSC had to consider this incident in context, in that this was 1 failed test purchase amongst 4 or 5 similar test exercises that had resulted in a refused sale.
20. Mr Dadds advised that since December 2016, his client had chosen voluntarily not to sell alcohol between the hours of 5am-9am and that his client was willing to add this as a condition on his licence.
21. Addressing the residents representations, Mr Dadds observed that some appeared to be referring to the wrong premises, were from people who did not live in close proximity to the premises and otherwise were general in form, which meant that little if any weight should be afforded to them.
22. In respect to the bottle opener found at the premises on 2 November 2016, Mr Dadds stated that this was provided only to open soft drinks and not alcohol.
23. Mr Dadds claimed that his client always asked customers whether they tended to take the alcohol home before it was sold but that Mr Awan would be willing to display a notice in his shop reminding customers that they were in a Controlled Drinking Zone and that street drinking was not allowed.

24. Mr Dadds reminded the LSC that in accordance with paragraph 9.42 of the Guidance it was for the responsible authorities and the applicant to show from evidence that the licensing objectives had been undermined. He contended that there was no such evidence and referred to the work that his firm had done with the business to ensure that the premises was now fully compliant.
25. For the record, this particular application took up just over an hour of the hearing. Mr Dadds opening remarks and responses to questions from Members took place over some 40 minutes of that hour. The LSC considers it necessary to point this out in order to indicate the parity afforded to the parties to put their cases across and to address a point made by Mr Dadds in this respect.
26. The LSC carefully considered the 2 representations objecting to the review but was unable to draw any helpful conclusions from either save that the premises was valued by the residents concerned.
27. This application engages the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and public safety.
28. In determining this matter, the LSC had due regard to paragraphs 9.41 to 9.43 of the Guidance noting in particular the expectation set out at paragraph 9.42 that the LSC's decision should be "...evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."
29. The LSC has also had regard to the exhortation at paragraph 11.20 of the Guidance, namely that when reviewing a licence, the Licensing Authority should seek to establish the cause or causes of the concerns which the representations identify and that any remedial action taken should be directed at those causes and be no more than an appropriate and proportionate response to those concerns. The LSC considers that the causes of concern here are threefold, namely that the premises: 1) attracts and sells alcohol to people that are drunk or drink problematically, (specifically patrons of the nearby clubs and street drinkers), who go on to loiter and cause disruption, including crime and disorder and public nuisance, in the wider area; 2) has breached conditions on its premises licence and 3) is poorly managed. The LSC is satisfied that these issues have served to undermine the licensing objectives engaged.
30. The evidence submitted in support of this application alleges that on 8 separate occasions, the premises sold (or attempted to sell) alcohol to people who were intoxicated. That is an offence contrary to Section 141 of the Licensing Act 2003. In approaching this matter, the LSC had specific regard to paragraph 11.24 of the Guidance which states that "*[L]icensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.*" The LSC also had regard to the observation at Paragraph 11.25 that it is not necessary for there to be any criminal convictions or proceedings before being taking any action and that, "*[I]n any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives.*"

31. The most troubling of the abovementioned incidents takes place on the 15th October 2016. On that date, it is alleged that the premises did on two successive occasions sell alcohol to someone who in the opinion of the police officers involved was intoxicated. On both occasions Mr Awan was present and spoken to about the sales. On each occasion the person responsible for the sale was issued a PND– so as to discharge him from liability to prosecution for the substantive offence. On the first occasion, it is explained to Mr Awan that a PND would be issued and his response is recorded by both officers as, “I don’t care I will pay them.” On the second occasion (approximately 90 minutes later) the same officer’s record that they stopped a male who was swigging from a bottle of Heineken and in their opinion appeared extremely intoxicated. He reportedly told the officers he had ‘..been on it all night.’ The same male had a single can of Carlsberg in his back pocket. He informed the officers that he had purchased the alcohol from Superway Express. The sale of that item is a breach of a condition on the premises licence which proscribes the sale of beer other than in packs of four.
32. The LSC were concerned by the officer’s account of their interactions with Mr Awan and the dismissive manner in which he dealt with the officers concerns. It was also troubled by Mr Awan’s subsequent refusal to meet with Metropolitan Police Officers to discuss these incidents.
33. In his application, Sergeant Smith refers to similar incidents that took place on the 22nd and 29th October. The incident of the 22nd October 2016 is alleged to have involved Mr Awan, who although admitting the sale denied that the individuals concerned were drunk.
34. To repeat, whilst the LSC makes no findings in respect to the guilt or innocence of the individuals involved in all of these incidents, the LSC considers that there is sufficient evidence on the balance of probabilities to support the contention that these premises have been engaged in the sale of alcohol to intoxicated persons and finds the evidence of the Police cogent in this connection.
35. The LSC had carefully considered Mr Dadds submissions in respect of these incidents and noted his client’s insistence that the officers in each instance were mistaken. The LSC however preferred the police evidence in each instance, which it considered cogent and compelling.
36. The feature of this review which causes the LSC the gravest concern is the fact that further similar incidents continued to occur after the police lodged its application. The latest being alleged to have taken place on the 11th January 2017. The LSC was also troubled by the incident which occurred on 1st January 2017 at 3am, when according to PC Robinson a clearly intoxicated male was sold a large bottle of whisky by Mr Awan. The LSC is satisfied as to the veracity of PC Robinson’s account of this incident. In view of the history of advice given to Mr Awan and these premises about such matters, the LSC viewed this incident particularly gravely.
37. The supporting documents include statements from two different Community Safety Officers detailing the outcome of two separate test purchase exercises, carried out in September and December 2016. On the first occasion, an officer is sold two cans of Red Stripe lager. On the second occasion, an officer is sold a can of Guinness Foreign Extra with an ABV of 7.5%. These are clear breaches of the premises licence and show the premises blatant disregard for the advice

given by both Trading Standards and the Police about these conditions, previous breaches and the consequence of further breaches of this kind.

38. The conditions relating to staff training and the keeping of records are, in the LSC's view, clear and unambiguous. The condition requires all staff receive refresher training every 6 months and this to be recorded in a training manual. Given that this condition had been imposed following an earlier review one would expect strict compliance with that condition and so it was disappointing that it had not been observed. Mr Dadd's did not provide an explanation for the premises failures in this regard.
39. In light of the above and having fully considered the written and oral representations from the Applicant, Respondent and others and having questioned those present at the hearing, the LSC has determined to revoke the premises licence. In making this decision, the LSC has had regard to the four licensing objectives and took into account the Guidance and the Council's statement of licensing policy.
40. The LSC fully accepts the Police representations and those received in support and have determined that revocation in the circumstances is an appropriate and proportionate response to the concerns that have been raised.
41. The LSC has considered the Guidance carefully in reaching its determination, particularly Paragraph 2.1 and Paragraph 9.12 which states: "In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. ...The police should be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective...The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the Police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing." **For the avoidance of doubt, the LSC was satisfied that the police representations were well founded.**
42. The LSC considered that this application engaged the crime and disorder, public nuisance and public safety strands of the licensing objectives. The LSC heard and accepts that there is a history of problems at these premises and the LSC was satisfied that these matters were relevant to consider. The Council's Statement of Licensing Policy at 13.1 states: "*The promotion of the licensing objectives and achieving common aims relies on a partnership between licence holders, authorised persons, other persons, responsible authorities and the Authority. The authority will aim to give licence holders early warning of any concerns about problems identified at any licensed premises and identify the need for improvement. Repeated or cumulative breaches of licences will potentially lead to a review where the full history of the venue will be examined.*"
43. The LSC was satisfied on the balance of probabilities that the premises had over an extended period been operating in a way which had served to undermine the licensing objectives engaged. The LSC considered that the premises had been trading irresponsibly and that the Licensee had failed to take on board advice offered to him by officers about these matters. He had also failed

to ensure that the premises observed conditions on its licence. Coupled with Mr Awan's dismissive attitude towards the Police in the course of his interactions with them, the LSC had no hesitation in concluding that the premises was poorly managed. Poor management is of course relevant to the LSC's assessment of future compliance.

44. The LSC had given thought to all of the options open to it including the imposition of the hours reduction proposed by Mr Dadds. However it was unclear to the LSC how restricting the sale of alcohol between 5am and 9am would serve to adequately address the issues identified in the course of this review. The LSC was satisfied on the balance of probabilities that the premises operations had exacerbated the crime and disorder and ASB issues experienced in this area by selling alcohol to people who were drunk or for whom drink was problematic, people who then loitered in the general area and caused amongst other things noise nuisance and the littering. Although a number of the alleged incidents of alcohol sales to drunk people occurred during the period between 5am and 9am, the LSC did not think that prohibiting sales during this period would prevent the premises from selling alcohol during the rest of the day to drunk people, street drinkers or others who would then act in an anti-social way. Nor did it think it would ensure that the premises adhered to the conditions on its licence. In short the LSC was not persuaded that this adequately or appropriately addressed the issues that had been raised by this review and therefore rejected it. The licence only authorises the sale of alcohol and the removal of that from the scope of the licence would have been equivalent to revocation and so this option was rejected too. Given the comprehensive set of conditions on the Licence the LSC were not satisfied that adding additional conditions to the licence by itself or in combination with any of the above would appropriately address the concerns raised and, just as importantly, had no confidence in any case that Mr Awan would ensure those conditions were complied with.
45. The LSC had no confidence that Mr Awan could or would operate these premises responsibly or effectively. Consideration had been given to his removal as DPS, however, the LSC were not persuaded that this would affect a change in the way these premises operate, especially as he would remain as licensee. The LSC has had regard to Paragraph 11.22 of the statutory guidance in this respect which states "Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives." Whilst the LSC accepts that Mr Awan should not be held responsible for the historical issues connected with these premises, the LSC was concerned that this was the 3rd review instigated against it in the space of 4 years. That evidenced deeper problems which required a strong response. Following each previous review there had been a change of management but no sustained improvement. The LSC was conscious of the inordinate amount of enforcement resources that had been expended in the effort to make these premises operate in a responsible way and considered that the only appropriate and proportionate response given this background was revocation.
46. As stated the LSC carefully considered all of the options open to it but were not persuaded that any less step than revocation would serve to address the issues which prompted this review. The

LSC was accordingly satisfied that it was appropriate and proportionate to revoke the premises licence.

47. The Applicant, Licence Holder and other parties to this hearing will be aware that they have the right to appeal the decision of the LSC, and that any such appeal must be made within 21 days of notification of this decision.

Date of issue:

8th February 2017

Appeal information

If you wish to appeal a decision made by the Licensing Sub-Committee you must give written notice of appeal, within the period of 21 days beginning with the day on which you were notified by the licensing authority of the decision you wish to appeal, to:

The Appeals Officer
Camberwell Green Magistrates' Court
15 D'Eynsford Road
London
SE5 7UP

Please note that there is no power to extend the time limit for an appeal.

On appeal a magistrates' court may:

- Dismiss the appeal;
- Substitute for the decision appealed against any other decision which could have been made by the licensing authority;
- Remit the case to the licensing authority to dispose of in accordance with the direction of the court.

The court has wide discretion and may make such order to costs as it thinks fit.

The table below sets out each party's entitlement to appeal a decision:

<i>Appeal entitlement: Review of a premises licence</i>		
Nature of decision	Applicant's appeal rights	Other parties appeal rights
Any	The applicant may appeal against the decision.	The holder of the premises licence may appeal against the decision. Any other person who made relevant representations in relation to the application may appeal against the decision.