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## Cherwell District Council

### Licensing Sub Committee

Minutes of a meeting of the Licensing Sub Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 29 October 2019 at 10.00 am

Present:

Councillor Richard Mould  
Councillor Douglas Webb  
Councillor Bryn Williams

Officers: Michael Sands, Licensing Technical Officer  
Sophie Phillips, Solicitor  
Aaron Hetherington, Democratic and Elections Team Leader

#### 4 **Appointment of Chairman of the Sub-Committee**

##### **Resolved**

That Councillor Douglas Webb be appointed Chairman of the Sub-Committee.

#### 5 **Declarations of Interest**

There were no declarations of interest

#### 6 **Premises Licence Review Hearing**

The Environmental Health & Licensing Manager submitted a report to consider a request from Oxfordshire Trading Standards (OTS) for a review of the premises licence relating to:

Banbury Express Food and Wine, 179 Warwick Road, Banbury, OX16 1AS.

##### **Resolved**

(1) As set out in the attached determination letter

The meeting ended at 11.13 am

# Minute Item 6

## CHERWELL DISTRICT COUNCIL LICENSING AUTHORITY

LICENSING ACT 2003  
LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005

### RECORD OF DECISION

**Name of premises/  
club/individual:** Banbury Express Food and Wine, 179 Warwick Road,  
Banbury, OX16 1AS

<b>Premises Licence</b>	<input checked="" type="checkbox"/>	<b>Club Premises Certificate</b>	<input type="checkbox"/>
<b>Personal Licence</b>	<input type="checkbox"/>	<b>Temporary Event Notice</b>	<input type="checkbox"/>
<b>Grant</b>	<input type="checkbox"/>	<b>Variation</b>	<input type="checkbox"/>
<b>Provisional Statement</b>	<input type="checkbox"/>	<b>Review</b>	<input checked="" type="checkbox"/>

**Date(s) of hearing:** 29 October 2019

**Licensing Panel members:** Councillor D Webb (Chair)  
Councillor R Mould  
Councillor B Williams

**Committee Clerk:** Aaron Hetherington

**Legal Adviser:** Sophie Phillips

**Licensing Officer:** Michael Sands

**Applicant and  
Representative(s):** Banbury Express Food and Wine Limited (represented by  
Mr Panchal of Personal Licence Courses UK Limited) and  
Designated Premises Supervisor (DPS), Narinder Singh  
Malhotra.

**Responsible Authorities and  
their Representatives:** Oxfordshire Trading Standards – Russell Sharland,  
Tobacco Control Officer  
Declan Brolly – Oxford County Council – Enforcement  
Officer

Thames Valley Police – Alex Bloomfield, Licensing Officer

Cherwell District Council acting as the Responsible  
Authority – Christine Pegler, Lead Licensing Enforcement  
Officer, Cherwell District Council.

**Other persons and their  
Representatives:** N/a

**The Licensing Panel heard oral representations from the following persons:**

Michael Sands  
Mr Panchal  
Narinder Singh Malhotra  
Christine Pegler  
Alex Bloomfield  
Russell Sharland  
Declan Brolly

**The Licensing Panel has determined that the representation from the following person is not relevant:**

N/a

**Reason why the representation is not relevant: e.g. not a licensing objective**

N/a

**The Licensing Panel has determined that the representation from the following person is frivolous/vexatious/repetitious:**

N/a

**Reason why the representation is frivolous/vexatious/repetitious:**

N/a

**The Licensing Panel has taken into account the Cherwell District Council Statement of Licensing Policy and the Guidance issued under s182 of the Licensing Act 2003.**

**The Licensing Panel has decided to depart from the Cherwell District Council Statement of Licensing Policy for the following reasons:**

**Paragraph(s):** N/a

**Reason(s):** N/a

**The Licensing Panel has decided to depart from the Guidance issued under s182 of the Licensing Act 2003:**

**Paragraph(s):** 2.5

**Reason(s):** It is the view of the sub-committee based on the evidence submitted that in the circumstances associated with this particular premises, poor management competency could give rise to issues of crime and disorder.

## **Background**

The relevant background to the review is detailed in the Licensing Officer's report which is published on the Council's website.

## **The Hearing**

Mr Sands detailed the application from his report. Mr Sands set out the basis of the application to review the premises licence and advised the sub-committee of the steps that could be taken under s.52 Licensing Act 2003.

The sub-committee heard from Russell Sharland in relation to the background and reasons for the request for a review of the premises licence. Mr Sharland took the sub-committee through his written representation including the two covert test purchasing operations where the premises sold illegal smuggled cigarettes and did not ask for proof of age and the announced enforcement visit on the 9 June 2019 where 2540 illegal smuggled cigarettes were seized from the premises. Mr Sharland further highlighted the complicity of the DPS and sole director of the Premises Licence Holder, Mr Narinder Singh Malhotra, in these events and the on-going nature of the criminality at the premises. Mr Sharland advised the sub-committee that there was a parallel criminal investigation overseen by his colleague Declan Brolly who was in attendance at the hearing and could answer questions in relation to this if required.

Mr Sharland further highlighted that the tobacco seized from the premises was counterfeit which is ordinarily sold at half the price which means it is more available and encourages smoking and recruitment of the next generation of smokers. This was a particular issue in the Cherwell District where there have been several seizures, prosecutions and reviews brought for illegal sales of tobacco.

With consent of the parties, Mr Sharland provided actual tobacco cartons to the sub-committee which he explained had been seized from the premises and were also shown in the photographic evidence as part of his representation. Mr Sharland pointed out that, in his view, even a lay person would not mistake the product as counterfeit let alone an experienced retailer. Mr Sharland confirmed that the manufacturers had provided a witness statement to Trading Standards that the items seized from the

premises were counterfeit products which Mr Sharland submitted was an aggravating feature as fake products are totally untested and unregulated.

Mr Sharland pointed out that although Mr Malhotra could not get the CCTV to work at the time of request by Trading Standards on 9 June 2019, Mr Malhotra did supply it 9 days later. However, the individual referred to by Mr Malhotra as supplying him with the illegal tobacco could not be identified.

Mr Sharland concluded that there had been an on-going concern in the Cherwell district for several years now. Mr Malhotra had lied and conditions on his licence have been ignored over a period of time. Further, that Trading Standards had a duty to protect the public from illegal smuggled and counterfeit cigarettes and also to protect other businesses operating lawfully. Trading Standards would therefore recommend revocation of the premises licence but if this was not considered appropriate, a suspension with the additional conditions set out by him in his written representation.

Mr Sharland was asked to clarify in questioning (through the chair) whether they considered here to be any issues with the CCTV at the premises resulting in the identity of the individual allegedly supplying the illegal tobacco not being established. Mr Brolly confirmed that the quality of the CCTV and the system at the premises was good; the person could just not be identified.

Mr Sharland further clarified in questioning by the chair that it was Mr Malhotra's evidence that the till system reminded people to ask for proof of age and he could not confirm whether challenge 25 signs were in place at the premises – this would be for a Licensing Officer to confirm.

In questioning by the chair, Mr Brolly confirmed that there had been a criminal investigation in relation to Mr Malhotra which was now concluded and had been passed to the case management unit with a recommendation for prosecution.

The sub-committee heard from Christine Pegler representing Cherwell District Council as a Responsible Authority. Ms Pegler confirmed that till prompts were in place on the till system and Challenge 25 in place at the premises. Ms Pegler confirmed that all references in her presentation to Mr Singh were to Narinder.

Ms Pegler summarised her written evidence and highlighted that Mr Singh had been allowed adequate time to rectify the breaches of licence conditions but had not. Ms Pegler referred the sub-committee to the s.182 guidance and requested members consider revocation of the licence.

Mr Panchal asked Ms Pegler whether if the conditions proposed by Trading Standards and the Police were brought about and the DPS replaced, this would make a difference to her recommendation. Ms Pegler explained that in accordance with the s.182 guidance, revocation should be considered.

The chair asked Ms Pegler whether during her visits there was any interest by the premises in training staff and Ms Pegler confirmed that on both occasions there were no records anywhere in the shop. The first time Mr Singh was spoken too and the second time Mr Crawford was spoken to. Mr Crawford was unaware of any training manuals and was relying on till prompts.

The sub-committee heard from Alex Broomfield in relation to his representation. Mr Broomfield confirmed he had been a licensing officer for 13 years and had taken over from Laura Warner who had been previously involved with the premises. Mr Broomfield explained that the police file confirmed that there were some initial concerns in 2017/18 with youths involved with anti-social behavior and underage drinking. Intelligence had suggested that the source of the alcohol was Banbury Express. This had led to the test purchase which the premises had failed. Mr Broomfield highlighted that as the member of staff working at the time had stated it was his first shift and he was yet to be trained, the police considered a number of outcomes including FPN and prosecution but considered that informal advice was appropriate in the circumstances noting that there was also a breach of the licensing conditions. Mr Broomfield highlighted that a meeting was subsequently held with the premises.

However, Mr Broomfield highlighted it was a criminal offence and at some point the premises licence itself needs to be considered. Mr Broomfield confirmed that the venue remains on the enforcement list and will feature in future test purchases for underage alcohol sales. It was the view of the police that while on tier 1 (lower level of enforcement) there was a need to raise concerns to the sub-committee as part of the broader picture. Mr Broomfield concluded that the police supported the revocation proposal in light of the evidence from Trading Standards and the Licensing Authority's concerns regarding lack of adherence to conditions. The police would question whether the issues could be remedied by the attachment of further conditions in the circumstances.

In questioning by the Premises Licence Holder, Mr Broomfield confirmed that the police had done only one test purchase in relation to supply of alcohol to minors in relation to the premises. There were no documented visits made after the meeting in February 2018 nor further formal engagement. No prosecution was pursued in relation to the failed test purchase by the police because it would have been against the member of staff who was very contrite, had no training and it was the officer's decision at the time that the matter was on the lower end of the spectrum. Further, Mr Broomfield confirmed the result of the meeting was positive. Training on prevention had been provided and robust advice on displaying of age polices such as "Challenge 25".

Mr Broomfield further confirmed in questioning (through the chair) that there was no issue with the CCTV system at the premises and the proposed licence condition was submitted to ensure the enforceability of the condition and rectify apparent ambiguity. The CCTV at the premises was of good quality.

The sub-committee heard from the Premises Licence Holder, Banbury Express Limited, (represented by Consultant Mr Panchal) and DPS, Mr Malhotra, in relation to the application for review of the premises licence.

Mr Panchal acknowledged the work of the responsible authorities and that it was accepted that there was a problem not only in Cherwell but in the wider area in regard to the illegal sale of cigarettes. Mr Panchal explained that he was here to assist the business moving forward. Mr Panchal further explained that the DPS has confessed to the mistakes and further that there had not been any issues with the sale of alcohol after 2018. There had also been some positive views about the CCTV system which was in good condition. Mr Panchal said that the current DPS did co-operate with responsible authorities as much as he could.

Mr Panchal suggested that the conditions proposed would make the licence much stronger. Mr Panchal explained that there would be a training manual on the premises at all times, posters at the premises will be changed, a refusal book and incident log system put in place. This will be easier for officers to look at when they visit. All staff will be in the training manual, trainings and authorisations will be recorded and training would take place every 3 months.

Mr Panchal said to get this all in place the Premises would be proposing an 8 week suspension and a change to the DPS so Mr Malhotra was not managing the premises. The DPS would hold level 3

training which is a higher level and could be imposed as a condition. The premises was happy to accept all other conditions proposed by the Responsible Authorities.

In questioning by all parties, Mr Panchal confirmed the new DPS would be running the premises day to day and would likely live in Cherwell or near-by. They would likely be at the premises 3/4 days per week. The DPS would be the manager and be the physical presence. Mr Malhotra would remain as the director of the company but the DPS would automatically be responsible for what is bought and sold at the shop. The company was unable to confirm who the DPS would be and explained this would be arranged during the suspension period. That person would be put forward to the Council. Mr Panchal confirmed the DPS could be an existing member of staff or disconnected/new recruit. It was not immediately clear who it would be but the person would attend the course. Mr Malhotra would still need to ensure he makes profit out of the business and he would need to sit down with the incoming DPS to work along with him to follow the regulations.

In questioning by the chair, Mr Malhotra confirmed the premises currently has 10-12 CCTV cameras covering the whole premises except the kitchen.

In summing up, the Responsible Authorities remained unsure about Mr Malhotra's suitability as a licence holder and remained concerned regarding his ability to adhere to conditions.

Mr Panchal explained that the company was not arguing with the concerns raised but that the new conditions will promote the four licensing objectives and the new incoming DPS would be much more stringent and robustly trained. During the suggested 8 weeks suspension, matters will be resolved and he was confident that the company would not be sat before the sub-committee again at any point in the future.

All parties were asked if they had anything else they wanted to say and confirmed they did not.

## **The Decision**

The sub-committee has taken note of all the written representations made in respect of the application to review the premises licence for the premises and has listened carefully to all those who spoke at the hearing.

The sub-committee notes in particular that the premises has received ample warning by the Police, the Licensing Authority and Trading Standards as regards the sale of alcohol to children, breach of licensing conditions and illegal tobacco sales which have largely not been heeded. Further, it is noted that there has been ample opportunity for the Premises Licence Holder to rectify failures and implement the guidance given. The sub-committee takes a very dim view of the involvement of the DPS and sole director of the Premises Licence Holder, Mr Malhotra, himself in the sale of illegal tobacco from the premises and his failure to be honest from the outset in his account to Trading Standards.

In light of the evidence from all of the parties, the sub-committee seriously considered the revocation of the premises licence in accordance with the s.182 guidance.

However, the sub-committee note that at the hearing there was a clear acceptance by the Premises Licence Holder of the serious failures at the premises and a desire now to rectify the position going forward. The sub-committee welcomed the constructive proposal to change the DPS and accept the conditions proposed by the Responsible Authorities to ensure the promotion of the licensing objectives. The sub-committee further welcomed the voluntary proposal of a suspension of the licence in order that measures can be put in place. The serious proposal put forward and unreserved acceptance of wrong doing has gone some way to allaying the very serious concerns of the sub-committee in regard to the future operation of the premises and persuaded it that the premises could be operated to promote the licensing objectives with reputable management in place.

The sub-committee was satisfied that on this occasion, upholding the licensing objectives of the prevention of crime and disorder and the protection of children from harm did not require the premises licence to be revoked. However, to uphold the above-mentioned licensing objectives, the sub-committee has determined that the following steps are appropriate and proportionate:

1. The premises licence is suspended for a period of 12 weeks.

The sub-committee considered a period of 12 weeks reflected the need to deter serious and repetitive failures to comply with the law and licence conditions in the interests of the wider community. The sub-committee further considered the period of suspension imposed will enable the Premises Licence Holder to ensure full compliance with the conditions on the

licence including the proper training of all staff and the appointment of a new independent DPS.

2. Mr Narinder Singh Malhotra is removed as the DPS.
3. A condition is added to the premises licence reading that, *'The Premises Licence Holder is to notify in writing the Licensing Authority of the identity of a new Designated Premises Supervisor (DPS), who must be previously unconnected with the premises, Banbury Express Food and Wine Limited and Mr Narinder Singh Malhotra and be able to demonstrate to the Licensing Authority (and the Police or Trading Standards if so required) previous relevant experience of responsibly managing a licensed premises of this type. An application to vary the DPS to this new person must be submitted and granted before the premises may continue the supply of alcohol. This condition must also be complied with in advance of any application to vary the DPS so long as Banbury Express Food and Wine Limited (or any company operated by Mr Narinder Singh Malhotra) is the Premises Licence Holder'*.
4. The premises licence is amended to include the amended and additional licensing conditions for the premises proposed and set out by Trading Standards on page 8 of its review application (page 18 of the public document pack) and set out by the Police on pages 2 and 3 of the representation letter dated 11 October 2019 (pages 32 and 33 of the public document pack) such that there is no conflict between any amended/additional conditions and the current conditions of the licence for the premises.

A copy of this record of decision will be served on all relevant parties.

Subject to the provisions of s.52 (11) and Paragraph 9, Part 1, Schedule 5 of the Licensing Act 2003, the parties have a right of appeal to the Magistrates' Court within 21 days of notification of this decision.