

LICENSING SUB-COMMITTEE 4

Tuesday 4th March, 2014 at 10.05 am
in the Council Chamber, The Council House, Dudley

PRESENT:-

Councillors Bills, Cowell and Perks

Officers: -

Mr R Clark (Legal Advisor), Mrs L Rouse (Licensing Clerk), Mr B Hughes (Observer) and Mrs K Taylor – All Directorate of Corporate Resources.

19 **ELECTION OF CHAIR**

In the absence of the Chair (Councillor Roberts) it was

RESOLVED

That Councillor Bills be elected Chair for this meeting of the
Sub-Committee only.

(Councillor Bills in the Chair)

20 **APOLOGIES FOR ABSENCE**

Apologies for absence from the meeting were received on behalf of
Councillors Roberts and Woodall.

21 **APPOINTMENT OF SUBSTITUTE MEMBERS**

It was reported that Councillors Bills and Cowell had been
appointed as substitute Members for Councillors Woodall and
Roberts respectively for this meeting of the Sub-Committee only.

22 **DECLARATIONS OF INTEREST**

No Member made a declaration of interest in accordance with the
Members' Code of Conduct.

23 **MINUTES**

RESOLVED

That the minutes of the meeting of the Sub-Committee held on 10th December, 2013, be approved as a correct record and signed.

24

APPLICATION FOR A LICENSED PREMISES GAMING MACHINE PERMIT – THE WHITE HORSE, 12 DUDLEY STREET, SEDGLEY

A report of the Director of Corporate Resources was submitted on an application for the grant of a Licensed Premises Gaming machine permit for three machines in respect of The White Horse, 12 Dudley Street, Sedgley.

Mr G Roberts (Designated Premises Supervisor), and Mr S Beale (Area Manager) were in attendance at the meeting.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council.

Following a brief discussion in relation to the layout of the premises, it was

RESOLVED

That the application made for the grant of a licensed premises gaming machine permit for three machines in respect of The White Horse, 12 Dudley Street, Sedgley, be granted.

25

APPLICATION FOR REVIEW OF PREMISES LICENCE – HARRY'S, 19 BRADFORD ROAD, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Harry's, 19 Bradford Road, Dudley.

Mr H S Bagry, Premises Licence Holder and Designated Premises Supervisor was in attendance at the meeting.

Also in attendance were Mr C King, Principal Trading Standards Officer and Mr G Wintrip, Age Restricted Products Officer, both from the Directorate of the Urban Environment; Ms D McNulty, Office of Public Health; and Ms K Turley and PC A Baldwin, both Planning and Licensing Officers, West Midlands Police.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council.

Mr King then presented the representations of Trading Standards and in doing so highlighted that the grounds for the review had been based on the serious undermining of the two licensing objectives, namely, the prevention of crime and disorder and the protection of children from harm due to the poor management of the premises following the sale of alcohol to a person under the age of eighteen.

Mr King informed the Sub-Committee that on 4th December, 2013, a sixteen year old child test purchaser had been sold alcohol from the premises contrary to section 146(1) of the Licensing Act 2003 and in direct contravention to the licensing objectives.

On 30th January, 2013, an officer from Trading Standards carried out a visit to the premises and spoke to Mr Bagry. The purpose of the visit was to provide advice in relation to preventing underage sales of age restricted products, and Mr Bagry was given detailed advice including information in respect of acceptable proof of age and the importance of keeping a refusals register. Mr Bagry was provided with an information pack that included an advice booklet, a Challenge 25 poster, a refusals register, a poster about proof of age and a sample Proof of Age Standards Scheme card. He was also requested to ensure that it was brought to the attention of all staff to ensure they were aware of their obligations under the Licensing Act 2003, Mr Bagry also signed an ARP form 0789 to acknowledge receipt of the information pack during the visit.

Mr King further stated that on 4th December, 2013, Trading Standards together with West Midlands Police, carried out a test purchasing exercise which was part of an ongoing series of test purchase exercises to test compliance once a premises had been advised. On that occasion, a sixteen year old male test purchaser volunteer purchased a bottle of Magners Pear and Ginger cider with 4% alcohol by volume. The seller made no attempt to ask the age of the volunteer or proof of identification.

Following the sale, and having returned to the premises, it was discovered that the individual who sold the alcohol to the test purchaser had been a Mr J Singh, which was witnessed by the officer. When cautioned, and having been informed of the sale to the test purchaser, Mr Singh replied, "Oh I'm sorry sir", a Fixed Penalty Notice was then issued.

On inspection of the premises, it was noted that there were age restricted products literature displayed, and a "Challenge 25" was advertised.

In concluding, Mr King stated that should the Sub-Committee be minded not to revoke or suspend the premises licence, they could consider including additional conditions to the licence. A full list of the proposed conditions had been circulated to all parties prior to the meeting.

Ms McNulty presented the representations of Public Health, which had been circulated to all parties in accordance with the Licensing Act 2003. She made particular reference to the number of well-documented impacts on the health of adolescents as a consequence of alcohol consumption.

It was noted that in the opinion of Ms McNulty, the sale of alcohol to underage young people was considered to be very serious and supported the recommendations suggested by Trading Standards.

Ms K Turley then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Police had carried out checks on the police systems and that there was no recent intelligence in relation to underage sales at the premises or any issues such as anti-social behaviour or crime in the area.

Mr Bagry then presented his case, and in doing so stated that he had operated the premises for three years, and owned a number of premises' in Telford. He further stated that he was sorry that the sale had been made as the operation of the business was usually strict, and assured the Sub-Committee that the incident would not happen again.

Mr Bagry further reported that there had been a number of test purchase exercises at the premises that resulted in no sale being made, which was evidenced in writing. In responding, Mr King stated that there had not been any previous test purchase exercises at the premises, and that Trading Standards did not send out letters following test purchase exercises.

In responding to a question, Mr Bagry confirmed that Mr J Singh was his cousin, who lived above the premises, and was a competent member of staff who had received appropriate training.

In responding to a question by the Chair, it was confirmed that a "Challenge 21" prompt had been installed on the registers, however Mr J Singh had made a mistake in selling alcohol to a child. Mr Bagry further stated that Mr Singh had worked at the premises for two years.

In responding to a question by the Legal Advisor, Mr Bagry confirmed that he was in agreement with the conditions suggested by Trading Standards.

Reference was made to the Refusals Register and it was confirmed that despite a request made for the Refusals Register to be brought to the Sub-Committee, Mr Bagry had failed to do so. It was further noted that on 4th December, 2013, following a request by officers, Mr Bagry was unable to locate the register.

In responding to a question by a Member, Mr Bagry confirmed that Mr Singh had been made aware of his responsibility to request for proof of identification.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Chair then outlined the decision.

RESOLVED

That, subject to the following conditions being applied to the premises licence, no further action to be taken in relation to the review of the premises licence in respect of Harry's, 19 Bradford Road, Dudley : -

Conditions

- (1) A written Proof of Age Policy (Challenge 25) is to be put in force, which all staff authorised to sell alcohol will be trained in and adhere to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age standards Scheme (PASS) proof of age card such as Citizen card. No other form of identification shall be accepted.
- (2) A4 notices to be displayed on the door to the premises and near the point of sale stating that it is an offence to buy alcohol for persons under the age of 18.
- (3) A Register of Refusals of Sale of Alcohol which indicates the date, time and reason for refusal will be operated and maintained at the premises. The Premises Licence Holder shall review the book once a week ensuring it is completed and up-to-date. The Premises Licence Holder will sign the book each time it is checked. This book shall be made available for inspection by an officer of any responsible authority.

- (4) CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer so that the alcohol display area and the point of sale area can be viewed. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request immediately, and all staff are to be trained and able to operate and download CCTV. The hard drive is to be locked but readily accessible to staff.
- (5) The Premises Licence Holder will take proportionate steps to review the premises' CCTV on a weekly basis in order to identify persons under the age of 18 who are attempting to buy alcohol or persons over the age of 18 buying on their behalf. A record of these checks shall be maintained and be available for inspection upon request by an officer of any responsible authority.
- (6) All persons engaged to sell alcohol must complete a training programme, which includes a written test, to verify the competency of that person prior to them being authorised to sell alcohol.
- (7) The premises licence holder shall ensure that monthly reviews are conducted with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy. The monthly reviews will be recorded in writing.
- (8) A file shall be maintained at the premises for each person authorised to sell alcohol (with proof of identity which will be a copy of passport and/or driving licence). This file shall contain all training records for each person along with copies of monthly reviews as stated in point 7. This file shall be made available for inspection by any officer from a responsible authority upon request.
- (9) Any person who is suspected of purchasing alcohol for any person under the age of 18, shall be refused service.

REASONS FOR DECISION

This is an application by Trading Standards, to review the premises licence in respect of Harry's, 19 Bradford Road, Dudley.

The review has been brought as a result of a failed test purchase on 4th December, 2013, in which a twenty-two year old employee sold a bottle of cider to a sixteen year old test purchaser. Mr Joban Singh, the seller, admitted the sale and received a fixed penalty notice.

Age restricted literature was on display in the premises, in accordance with advice given on an advisory visit on 30th January, 2013. However, no refusals register could be located and Mr Bagry did not bring it today, despite being asked to do so in writing.

The Premises Licence Holder stated that he had considered the conditions that Trading Standards suggested could be imposed on his licence, and that he could comply with them all and accepted them.

The Sub-Committee is concerned that Mr Bagry has not taken the issue of refusing under age sales as seriously as he should have done, and therefore imposes the conditions recommended by Trading Standards, in order to ensure that the premises are properly managed.

APPLICATION FOR REVIEW OF PREMISES LICENCE – YEW TREE STORES, YEW TREE HILLS, NETHERTON, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Yew Tree Stores, Yew Tree Hills, Netherton, Dudley.

Mrs S Samra, Premises Licence Holder and Designated Premises Supervisor was in attendance at the meeting together with her husband, Mr S Singh Samra.

Also in attendance were Mr C King, Principal Trading Standards Officer and Mr G Wintrip, Age Restricted Products Officer, both from the Directorate of the Urban Environment; Ms D McNulty, Office of Public Health; and Ms K Turley and PC A Baldwin, both Planning and Licensing Officers, West Midlands Police.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council.

Mr King then presented the representations of Trading Standards and in doing so highlighted that the grounds for the review had been based on the serious undermining of the two licensing objectives, namely, the prevention of crime and disorder and the protection of children from harm due to the poor management of the premises following the sale of alcohol to a person under the age of eighteen.

Mr King informed the Sub-Committee that on 4th December, 2013, a sixteen year old child test purchaser had been sold alcohol from the premises contrary to section 146(1) of the Licensing Act 2003 and in direct contravention to the licensing objectives.

It was noted that a tobacco test purchase exercise was undertaken at the premises on 30th November, 2012 with no sale being made.

On 30th January, 2013, an officer from Trading Standards carried out a visit to the premises and spoke to a Mr Samra, husband of Mrs Samra. The purpose of the visit was to provide advice in relation to preventing underage sales of age restricted products, and Mr Samra was given detailed advice including information in respect of acceptable proof of age and the importance of keeping a refusals register. Mr Samra was provided with an information pack that included an advice booklet, a Challenge 25 poster, a refusals register, a poster about proof of age and a sample Proof of Age Standards Scheme card. He was also requested to ensure that it was brought to the attention to all staff and that they were aware of their obligations under the Licensing Act 2003, Mr Samra also signed an ARP form 0759 to acknowledge receipt of the information pack during the visit.

Mr King stated that on 5th July, 2013, a tobacco test purchase exercise was conducted at the premises. On that occasion, an underage volunteer purchased a packet of 10 cigarettes, and it was discovered that the individual who sold the cigarettes was Mr Samra. Mr Samra was interviewed under caution and received a warning letter.

On 10th October, 2013, a yearly advisory visit was carried out at the premises and officers spoke to Mr Samra, who was present at the time of the visit. The purpose of the visit was to provide further advice relating to the law concerning the sale of age restricted products. Mr Samra signed an ARP form 0980 to acknowledge that the visit had taken place.

Mr King further stated that on 4th December, 2013, Trading Standards together with West Midlands Police, carried out a test purchasing exercise which was part of an ongoing series of test purchase exercises to test compliance once a premises had been advised. On that occasion, a sixteen year old male test purchaser volunteer purchased a can of Carling cider with 4% alcohol by volume. The seller made no attempt to ask the age of the volunteer or proof of identification.

Following the sale, and having returned to the premises, it was discovered that the individual who sold the alcohol to the test purchaser had been Mr Samra, which was witnessed by the officer. When cautioned, and having been informed of the sale to the test purchaser, Mr Samra replied "Jesus Chris, not again", a Fixed Penalty Notice was then issued.

On inspection of the premises, it was noted that there were some age restricted products poster displayed.

In concluding, Mr King stated that should the Sub-Committee be minded not to revoke or suspend the premises licence, they could consider including additional conditions to the licence. A full list of the proposed conditions had been circulated to all parties prior to the meeting.

Ms McNulty presented the representations of Public Health, which had been circulated to all parties in accordance with the Licensing Act 2003. She made particular reference to the number of well-documented impacts on the health of adolescents as a consequence of alcohol consumption.

It was noted that in the opinion of Ms McNulty, the sale of alcohol to underage young people was considered to be very serious and supported the recommendations suggested by Trading Standards.

Ms K Turley then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Police had carried out checks on the police systems and that there was no recent intelligence in relation to underage sales at the premises or any issues such as anti-social behaviour or crime in the area.

It was noted that Mr and Mrs Samra had operated the premises for twenty-three years.

In responding to a question by the Chair, Mr Wintrip confirmed that the Refusals Register was at the premises during the visit on 4th December, 2013, and that it had always been displayed when he visited the premises.

Mr Samra then presented the case on behalf of his wife, Mrs Samra, and in doing so referred to a recent bereavement of a family member, that had caused a lot of stress, in particular, that they travelled to Leeds on a number of occasions to support the family member.

In responding to a question by the Chair, it was confirmed that Mr and Mrs Samra lived above the premises, and although a till prompt had not been installed, there were Challenge 25 stickers displayed by the register.

Arising from comments made by Mr Samra, Mr King stated that although he sympathised with Mr and Mrs Samra, he remained concerned as there had been two sales to under age children within a five month period, and requested what steps had been introduced by Mrs Samra since the sales. In responding, Mrs Samra stated that she would insist on proof of identification should any persons appear to be under the age of eighteen, and that she was very sorry.

It was noted that there were four members of staff at the premises, which comprised of Mr and Mrs Samra and their two sons. In responding to a question, Mr Samra confirmed that it was not the intention to transfer the business over to his sons.

In responding to a question by the Chair, Mr Samra stated that appropriate training had been provided and that only passports and driving licences were accepted as proof of identification.

Reference was made to the conditions suggested by Trading Standards, Mr Samra confirmed that although he could replay CCTV footage he was unable to download any data, however, he would be willing to undertake training.

In responding to a question by the Legal Advisor, Mrs Samra confirmed that she was in agreement with the conditions suggested by Trading Standards.

In summing up, Mr King on behalf of Trading Standards, stated that although he sympathised and accepted the circumstances outlined by Mr and Mrs Samra, he remained concerned that there had been two age restricted products sales to underage children due to the poor management of the premises.

In summing up, Mr and Mrs Samra apologised for the sales, and assured the Sub-Committee that it would not happen again.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Chair then outlined the decision.

RESOLVED

That, subject to the following conditions being applied to the premises licence, no further action to be taken in relation to the review of the premises licence in respect of Yew Tree Stores, Yew Tree Hills, Netherton, Dudley : -

Conditions

- (1) A written Proof of Age Policy (Challenge 25) is to be put in force, which all staff authorised to sell alcohol will be trained in and adhere to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age standards Scheme (PASS) proof of age card such as Citizen card. No other form of identification shall be accepted.
- (2) A4 notices to be displayed on the door to the premises and near the point of sale stating that it is an offence to buy alcohol for persons under the age of 18.
- (3) A Register of Refusals of Sale of Alcohol which indicates the date, time and reason for refusal will be operated and maintained at the premises. The Premises Licence Holder shall review the book once a week ensuring it is completed and up-to-date. The Premises Licence Holder will sign the book each time it is checked. This book shall be made available for inspection by an officer of any responsible authority.
- (4) CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer so that the alcohol display area and the point of sale area can be viewed. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request immediately, and all staff are to be trained and able to operate and download CCTV. The hard drive is to be locked but readily accessible to staff.

- (5) The Premises Licence Holder will take proportionate steps to review the premises' CCTV on a weekly basis in order to identify persons under the age of 18 who are attempting to buy alcohol or persons over the age of 18 buying on their behalf. A record of these checks shall be maintained and be available for inspection upon request by an officer of any responsible authority.
- (6) All persons engaged to sell alcohol must complete a training programme, which includes a written test, to verify the competency of that person prior to them being authorised to sell alcohol.
- (7) The premises licence holder shall ensure that monthly reviews are conducted with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy. The monthly reviews will be recorded in writing.
- (8) A file shall be maintained at the premises for each person authorised to sell alcohol (with proof of identity which will be a copy of passport and/or driving licence). This file shall contain all training records for each person along with copies of monthly reviews as stated in point 7. This file shall be made available for inspection by any officer from a responsible authority upon request.
- (9) Any person who is suspected of purchasing alcohol for any person under the age of 18, shall be refused service.

REASONS FOR DECISION

This is an application by Dudley Trading Standards to review the premises licence of Yew Tree Stores.

The review has been brought as a result of a failed test purchase on 4th December, 2013, in which Mr Sewa Samra, sold a bottle of Carling cider to a sixteen year old test purchaser. No attempt was made to ask for age or proof of identity. A fixed penalty notice was issued after Mr Samra admitted making the sale.

Advisory visits had been made to the premises on 30th January, 2013 and again on 10th October, 2013, to provide information and support in relation to avoiding under age sales. Despite the visit in January, Mr Samra sold a packet of cigarettes to a test purchaser on 5th July, 2013. Whilst this was not a sale of alcohol, the Sub-Committee finds that this is evidence of the premises licence holder's response to advice in respect of protecting young persons, and the management of the premises generally. Mrs S Samra is both the Premises Licence Holder and Designated Premises Supervisor, and she attended the review hearing today, with her husband.

The Sub-Committee does not find there is sufficient evidence to remove Mrs Samra as the Designated Premises Supervisor today but it does have concerns about her management of the premises as the Designated Premises Supervisor. The business does need to consider this issue seriously.

The Sub-Committee does however impose the conditions put forward by Trading Standards, upon the premises licence. Both Mrs and Mr Samra confirmed that they had read the conditions, understood them and were prepared to accept them upon the premises licence.

Mrs Samra was informed of her right to appeal the decision of the Sub-Committee.

The meeting ended at 12 pm

CHAIR