

LICENSING SUB-COMMITTEE 2

Tuesday 14th January, 2014 at 10.25 am
in the Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Russell (Chair)
Councillors Cowell and Taylor

Officers: -

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

9 DECLARATIONS OF INTEREST

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

10 MINUTES

RESOLVED

That the minutes of the meeting of the Sub-Committee held on 17th September, 2013, be approved as a correct record and signed.

11 CHANGE IN ORDER OF BUSINESS

Pursuant to Council Procedure Rule 13(c) it was:-

RESOLVED

That the remaining items of business be considered in the following order:-

Agenda Item Nos 6, 5 and 7.

12 APPLICATION FOR VARIATION OF LICENCE – BANDIT QUEEN GENTLEMEN'S CLUB, 93 KING STREET, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the conditions of licence in respect of the sexual entertainment venue licence issued to Mr D S Dhillon.

Mr D S Dhillon, Applicant, was in attendance at the meeting together with his Solicitor, Mr T Bytheway.

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

Mr Bytheway then presented the case on behalf of the applicant, and in doing so indicated that the business had been established for eight years with no complaints, and that the applicant had a good relationship with West Midlands Police.

He further stated that when Mr Dhillon had applied for his licence, a number of conditions were attached to the licence in accordance with legislation that prevented all sexual entertainment venue licence holders from advertising their premises.

Mr Bytheway stated that a number of sexual entertainment establishments in other local authorities had been granted an alteration in their conditions that allowed them to advertise their premises, some of which were advertised in Dudley.

It was further noted that when Mr Dhillon renewed his licence in 2013, the legislation had been amended resulting in a number of restrictions being removed from the conditions that permitted advertising of the premises compliant with the Advertising Standards Authority. However, Mr Dhillon did not pursue this as he wanted to inform the local authority of his intentions and gain approval from the Sub-Committee.

Mr Bytheway further stated that the main reason the matter was brought before the Sub-Committee was to seek clarification in respect of two conditions, namely;

(1) Condition 3 (2) (d) – The licence holder shall not permit the display outside of the premises photographs or other images, which indicate or suggest that relevant entertainment takes place in the premises.

(2) Conditions 22 – The licensee shall not allow the use of vehicles including limousines for the promotion of the relevant entertainment.

Reference was made to the draft advertisement submitted by Mr Dhillon, as outlined in appendix 3 of the report submitted, and Mr Bytheway stated that a number of other sexual entertainment establishments and some retailer's advertisements were more inappropriate.

In responding to a question by a member; Mr Bytheway stated that the lack of advertising had a notable impact on the business, as the premises was the only sexual entertainment venue in Dudley, and therefore potential customers would not be aware of its existence. He also stated that in view of the premises having been opened since 2006, it was an asset to the town centre.

In responding to a question by a member in relation to should the Sub-Committee be minded to grant the application, whether the applicant would be agreeable to certain restrictions such as advertising in areas by schools. Mr Bytheway stated that Mr Dhillon would not want to advertise his premises in areas that could cause offence, however the intended advert would not highlight the entertainment inside the premises and was not inappropriate unlike some retailers.

In responding to a question by the Chair; Mr Bytheway stated that the advert had been produced professionally, and although it was Mr Dhillon's intention to use the advert, like most businesses, Mr Dhillon would change the advert in the future to encourage more customers. He further stated that Mr Dhillon would not advertise images of girls wearing provocative clothing, as this would attract the wrong customers to the premises.

Following further discussion in respect of the clarification sought in relation to the conditions of licence, 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 the application received for the alteration of the conditions of licence in respect of the sexual entertainment venue licence issued to Mr D S Dhillon, be granted.

REASONS FOR DECISION

This is an application by Mr Daljinder Singh Dhillon for the alteration of the conditions on the sexual entertainment venue licence, granted 7th June, 2011, to permit advertisement of the licensed premises. The conditions have been previously amended and the current conditions are dated 10th October, 2013.

The Sub-Committee accepts that Mr Dhillon is permitted to advertise his premises provided he complies with the licence conditions and the Code of Practice of the Advertising Standards Authority. In order to clarify the effect of the current conditions, the Sub-Committee modifies them as follows:

1. Condition 3 (2) (d) shall be modified to insert, after, “or other images” the wording (excluding advertising which complies with the relevant code of practice as issued by the Advertising Standards Authority).
2. Condition 22 shall be modified so that the current condition shall be referred to as 22 (a) and there shall be inserted a new 22 (b) to read, “Vehicles may however be used for the sole purpose of displaying advertisements about the premises”.

13 APPLICATION FOR REVIEW OF PREMISES LICENCE – HIGH STREET EXTRAS (PREMIER), 79 HIGH STREET, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of High Street Extras (Premier), 79 High Street, Dudley.

Mrs U Kalaichelvan, Premises Licence Holder, was in attendance at the meeting together with her representative, Mr S Panchal, Mr V Kalaichelvan, Designated Premises Supervisor, Mr P Selvaraj, Manager, and a supporter.

Also in attendance were Mr C King, Principal Trading Standards Officer, Directorate of the Urban Environment; Ms D McNulty, Office of Public Health; and Ms K Turley and WPC A Baldwin, both Licensing Officers from 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 of 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 27th September, 2013, a fifteen year old male 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 on 3rd June, 2011 a tobacco test purchase was conducted at the premises resulting in a sale being made to the underage test purchase volunteer.

It was further noted that on 16th July, 2011 and 26th August, 2011, an alcohol test purchase was conducted at the premises, with no sale being made.

On 27th May, 2011, an officer from Trading Standards carried out an advisory visit to the premises and again on 19th July, 2012. On 24th July, 2012, the officer spoke to Mr Kalaichelvan. The purpose of the visit was to provide advice in relation to preventing underage sales of age restricted products, and Mr Kalaichelvan was given detailed advice including information in respect of acceptable proof of age and the importance of keeping a refusals register. Mr Kalaichelvan was also 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 that they were aware of their obligations under the Licensing Act 2003, Mr Kalaichelvan also signed an ARP form 0635 to acknowledge receipt of the information pack during the visit.

On 19th April, 2013, a tobacco test purchase was conducted at the premises, with no sale being made.

It was noted that a further advisory visit to the premises was carried out by an officer from Trading Standards on 18th September, 2013, to provide advice to help prevent the underage sale of age restricted products.

Mr King further stated that on 27th September, 2013, Trading Standards together with West Midlands Police, carried out a test purchase exercise to determine compliance with the law on the sale of alcohol to children. On that occasion, a fifteen year old male child test purchase volunteer purchased a 330ml bottle of Guinness Foreign extra beer with 7.5% alcohol by volume. The seller made no attempt to ask the age of the volunteer, and did not ask for 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 P Selvaraj.

When cautioned Mr Selvaraj denied making the sale, and continued to do so, despite having been informed that the sale had been witnessed by an officer.

On inspection of the premises, it was noted that there were several Age Restricted Products posters displayed and a "Challenge 21" policy in place, however the refusals register could not be located. Mr Selvaraj was then issued with a Fixed Penalty Notice.

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 then 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 made by Trading Standards.

Ms Turley then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that although there were no logs to the premises, local officers had visited on enquiries and the staff were extremely unhelpful in regard to accessing the CCTV, and there was no one available to operate it or download footage.

She further stated that due to the premises being located on the high street, it was known that a number of the local drinkers were seen purchasing alcohol from the shop, and therefore it was considered that the premises contributed to the anti-social behaviour suffered in the town and market areas.

Regarding the representations of Trading Standards; Mr Panchal asked Mr King whether the premises had made any further sales to underaged persons since 27th September, 2013, and suggested that the premises had been compliant as there had been three test purchase exercises that resulted in no sale being made. In responding, Mr King stated that he was not aware of any additional sales, and that the facts had been presented to the Sub-Committee. Mr King further stated that he did not agree that the premises had been compliant as there had been two failed test purchases since June, 2011.

Mr Panchal then presented the case on behalf of Mrs Kalaichelvan, and in doing so stated that the premises had operated for a long time, and that during the sale of alcohol to the underage test purchaser on 27th September, 2013, Mr Selvaraj was on the telephone and therefore did not request identification.

He further reported that following the sale, a refusals register had been implemented, the premises now operated a "Challenge 25" policy, a number of posters displayed, a training manual developed and Mr Selvaraj had received further training.

Reference was made to the conditions suggested by Trading Standards, in particular, that Mrs Kalaichelvan was agreeable to the conditions and Mr Panchal assured the Sub-Committee that staff would be fully trained in regard to CCTV.

It was noted that Mr Selvaraj had contacted West Midlands Police on Sunday 12th January, 2014, after a number of children had attempted an underage sale.

At this juncture, Mr Panchal submitted a number of conditions that the Sub-Committee may wish to attach to the premises licence.

Mr Panchal further reported that the current Designated Premises Supervisor, Mr Kalaichelvan, would be changed in the near future, and the proposed Designated Premises Supervisor was undergoing training and applying for her personal licence.

In concluding, Mr Panchal asked the Sub-Committee to consider the three previous test purchase exercises when no sale had been made, and that it was unfortunate that the sale on 27th September, 2013 had taken place.

In responding to a question by a member in relation to the training manual and that it appeared to have not been written in; Mr Panchal confirmed that the manual had not yet been used as it was intended to be used once the replacement of the Designated Premises Supervisor had taken place.

In responding to a question by the Chair; Mr Panchal stated that Mr Selvaraj had been reprimanded following the sale and that he did not suggest that by being on the telephone was an acceptable explanation for the sale to have occurred. He further stated that the police were visiting the premises later today to view the CCTV.

In responding to a question by a member, it was noted that there were six members of staff in total at the premises, however the staff would not work together at the same time resulting in only two members of staff in the premises.

In responding to a question by Mr King; Mr Panchal stated that Mr Selvaraj had initially denied the sale, as he could not remember, however he had since accepted the sale and apologised. It was noted that Mr Selvaraj had paid the fixed penalty notice that had been issued to him on 27th September, 2013.

In responding to a question by Mr King; Mrs Kalaichelvan confirmed that on 27th September, 2013 she was at home, and that she would visit the premises once a week as her husband managed the premises. She stated that following the sale, she had spoken to Mr Selvaraj and told him “not to do it again” and discussed the need for identification, and would now visit the premises twice a week.

At this juncture, Mr King requested Mrs Kalaichelvan to provide full names of the staff members at the premises, however Mrs Kalaichelvan was unable to do so. Mr King stated that as the Premises Licence Holder, Mrs Kalaichelvan had responsibility and should have undertaken the appropriate steps to put additional systems in place following the sale of alcohol to a child.

It was further noted that Mrs Kalaichelvan wished to replace the Designated Premises Supervisor in view of her relocating from Dudley.

Following the submission of two refusals registers; Mr King noted that the last entry registered was 1st December, 2013, and asked whether there had been any attempts from underaged persons during December, 2013. In responding, Mr Selvaraj stated that the only incident when a child attempted an underage sale was on 12th January, 2014. PC Baldwin confirmed that there was an incident on 12th January, 2014, however this had not been entered in the refusals register, and that when officers requested to view the CCTV, staff were unable to download the footage as the Premises Licence Holder was in London.

It was noted that the CCTV had been upgraded and staff members had not been trained, and a new system would be implemented in the till registers that prompted staff for identification once an age restricted product had been scanned.

In summing up, Mr King, on behalf of Trading Standards, stated that the review had been brought to the Sub-Committee due to the concerns that the premises had not met the licensing objectives, and that he remained deeply concerned and not assured in the management of the premises.

In summing up, Mr Panchal, on behalf of Mrs Kalaichelvan, stated that efforts were being made at the premises and there that had been attempted purchases by children that had been refused.

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 Councillor Cowell outlined the decision.

RESOLVED

That, following careful consideration of the information contained in the report submitted, and as reported at the meeting, the premises licence issued to High Street Extras (Premier), 79 High Street, Dudley be suspended for a period of two months.

The following conditions will be attached to the premises licence: -

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.

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

REASONS FOR DECISION

This is a premises review, brought by Trading Standards, in relation to High Street Extras, and as a result of a failed test purchase on 27th September, 2013. A 330ml bottle of Guinness was sold to a 15 year old test purchaser by the manager of the premises, Perajhath Selvaraj. He was issued with a fixed penalty notice. He attended the Sub-Committee and evidence was given that at the time of the sale, he was on the telephone and for this, an apology was received and an acknowledgement that this was not appropriate behaviour.

The Premises Licence Holder, Mrs Usha Kalaichelvan attended the Sub-Committee along with the Designated Premises Supervisor, Mr V Kalaichelvan. The review was adjourned on 10th December, 2013 to enable Mrs Usha Kalaichelvan to attend the Sub-Committee.

The premises had received test purchases on 16th July, 2011 and 26th August, 2011 and sales had been refused. A tobacco test purchase had been made on 9th April, 2013 and a purchase refused.

As at the date of the test purchase, a challenge 21 (not 25) policy was in place in the premises but officers could not locate a till refusals register. The Sub-Committee today was shown a refusals register from September, 2013 which contained a number of handwritten entries, including notes of refusals of sales. However there are no entries since 1st December, 2013. There was also a refusals register pre dating the sale which, for some reason could not be found on 27th September, 2013. This was despite the fact that the Sub-Committee heard evidence that the store manager had called the police on Sunday 12th January, 2014, after a number of children had attempted an underage sale. This has not been recorded on the register.

The evidence given by Mrs Kalaichelvan gave the Sub-Committee great cause for concern, in the light of her responsibility as premises licence holder. She altered her evidence about the number of times she visited the premises from once to twice a week and was not able to give the full names of the four staff employed in the shop. The Sub-Committee was also not convinced from the evidence of Mrs Kalaichelvan that she understood and had delivered appropriate training on the sale of underage products since 27th September, 2013.

The Sub-Committee notes that the Designated Premises Supervisor is to be changed in the near future, and the proposed Designated Premises Supervisor is undergoing training. In the light of the very poor management of these premises, the Sub-Committee takes the step of suspending the premises licence for two months to enable the new Designated Premises Supervisor to be trained and appointed and for her to ensure that all staff selling alcohol have received appropriate training including on the use of CCTV.

The Sub-Committee does however impose the 9 conditions put forward by Trading Standards upon the premises licence. These have been accepted as appropriate by the Premises Licence Holder.

A report of the Director of Corporate Resources was submitted to consider an application for the grant of a House to House Collections Licence in respect of Recycling and Management Services Ltd on behalf of the charities known as the Royal Orthopaedic Hospital Bone Tumour Services and Be Child Cancer Aware.

It was noted that the applicant was not in attendance and notification of the non-attendance had not been received.

RESOLVED

That the grant of a House to House Collections Licence in respect of Recycling and Management Services Ltd be refused.

REASONS FOR DECISION

The applicant did not attend today. The applicant also did not attend on 3rd December, 2013. The Sub-Committee proceeded to determine the application. It was not able to gain the information it required to satisfy itself that the application should be granted. It therefore refused the application.

The meeting ended at 1.25 pm

CHAIR