

Minutes of the Licensing Sub-Committee 1

Tuesday 3rd February, 2015 at 10.30 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor K Finch (Chair)
Councillors D Blood and C Perks

Officers:-

R Clark (Legal Advisor), L Rouse (Licensing Clerk) and K Griffiths (Democratic Services Officer) – All Directorate of Resources and Transformation.

15 **Apology for Absence**

An apology for absence from the meeting was submitted on behalf of Councillor D Russell.

16 **Appointment of Substitute Member**

It was noted that Councillor K Finch had been appointed as a substitute member for Councillor D Russell, for this meeting of the Sub-Committee only.

17 **Declarations of Interest**

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

18 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 9th December, 2014, be approved as a correct record and signed.

Application for Review of Premises Licence – KKA, 118 Cinder Bank, Dudley

A report of the Strategic Director (Resources and Transformation) was submitted on an application for a review of the premises licence in respect of the premises known as KKA, 118 Cinder Bank, Dudley.

Mr P Burke, Solicitor and Mrs A Parveen, Premises Licence Holder were in attendance at the meeting, together with Mrs Z Nasar and Mr Asif.

Also in attendance were Mr C King, Principal Trading Standards Officer and Mr G Wintrip, Age Restricted Products Officer, both from the Directorate of Environment, Economy and Housing.

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 licensing objective, namely, the prevention of crime and disorder due to the poor management of the premises following the discovery of illicit alcohol at the premises on 7th February, 2012, 18th December, 2013 and 19th November, 2014 in direct contravention of the licensing objectives.

It was reported that the current premises licence was granted to Mrs Parveen on 7th September, 2005. It was reported that Mrs Parveen was also the Designated Premises Supervisor and had held a personal licence issued by Dudley Metropolitan Borough Council.

It was noted that on 7th February, 2012, a large quantity of illicit beer and 2 large suitcases of illicit tobacco were seized from KKA following a joint investigation by HMRC and Trading Standards. The matter was investigated by HMRC and no prosecutions had been made as a result.

Mr King indicated that on 23rd July, 2012, 2 independent complaints had been received by Trading Standards that illicit tobacco was still being sold from the premises.

On 18th December, 2013, following an inspection by Trading Standards, 15 bottles of illicit whisky and vodka was seized from the premises and a car linked to one of the shop workers.

On 6th June, 2014, a warning letter was sent to the business informing them that the alcohol seized on 18th December 2014 had counterfeit duty paid labels affixed to the rear, and that as a result, all receipts for the purchase of alcohol should be kept for a minimum of 2 years.

Mr King stated that on 12th September, 2014, intelligence was received that counterfeit cigarettes were being sold under the counter for £30 for a carton of 200. The brands mentioned were Palace and MGN. It was reported that the brand Palace was known as “illicit whites”, i.e. cigarettes made for the sole purpose of being smuggled into and sold illegally in another market e.g. the UK.

On 17th September, 2014, it was reported that intelligence was received that cartons of 200 cigarettes were being sold from under the counter at the premises for £30. It was noted that the cigarettes had been in a red packet with 3 initials on them.

On 19th November, 2014, a warrant was executed at the premises in relation to the intelligence detailed above. During the search of the premises, it was reported that no illicit or counterfeit tobacco or cigarettes had been found, however, 5 bottles of illicit High Commissioner whisky and 5 bottles of illicit Glens vodka was found for sale on display behind the counter.

Mr King reported that enquires with the manufacturer of the whisky and vodka, the Loch Lomond Group concluded that “the bottles came from batches that were despatched “under bond” i.e. without payment of excise duty and with the required HMRC removal warrants to our customer’s bonded warehouse. The export labels have therefore been removed at some point by the counterfeiters and counterfeit UK Duty Stamp back labels applied to avoid payment of excise duty. The bottles would not be available through the normal secure supply chain and reputable Cash and Carry outlets and will have been obtained on the black market”.

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 list of proposed additional conditions had been circulated to all parties prior to the meeting.

Mr Burke, Solicitor acting on behalf of KKA, reported that Mrs Parveen had been managing the premises alongside her husband, Mr Umar Daraz for 10 years. He indicated that her husband’s cousin, Mr K Kahn had been responsible for the incidents reported and as a consequence, had been dismissed and had allegedly moved to India. He stated that the family had suffered as a result of the history of offences and had decided to sell the business. Mr Burke reported that the process of sale of the premises was currently underway and that the buyer was Mrs Zahban Nasah, who was in attendance at the meeting.

Mr Burke reported that Mrs Parveen did not dispute the statement made by Trading Standards, however she had denied all knowledge of the incidents occurring. She maintained that she had been unaware of the incidents, complaints made and subsequent investigations until she had received a letter outlining details of the application to review the premises licence by Trading Standards. He recommended a number of additional conditions to include on the licence to ensure effective running and management of the premises in the future.

In response to a question asked by Trading Standards, Mr Asif, Mrs Parveen's brother-in-law confirmed that he managed a premises known as S & F News and Food in Kingswinford.

In responding to further questions from Trading Standards, Mr Burke confirmed that Mrs Parveen and her family would be vacating the premises upon completion of the sale. It was reported that the process was almost complete and that they were currently waiting for the lease to be sent back from their Solicitors.

Concerns were raised by Trading Standards in relation to the current management of the business. It was reported that during each visit to the premises, Mrs Parveen had not been involved or present at the premises; however, her name was recorded in all documentation as Designated Premises Supervisor. Mr Burke confirmed that following Mrs Parveen's realisation of the manner in which the premises had been managed, she was now taking an active role in running the business with her husband.

In responding to a question from Trading Standards regarding the prevention of underage sales, Mrs Parveen indicated that proof of identification was always requested if persons appeared to look underage. She stated that without presenting identification, restricted products would be refused. It was noted that a refusals register was maintained and kept up-to-date and could be inspected if requested, however it was not available for perusal at the meeting.

In responding to a number of further questions by Trading Standards, Mrs Parveen could not offer any explanation as to how the illicit products came to be purchased for and sold at the premises. She maintained that during the raid of the premises by HMRC and Trading Standards, she was not present in the building and claimed that she had never met Mr King until the hearing, despite Mr King stating that they had met on a number of occasions during the process of the investigation.

Concerns were expressed by the Sub-Committee that Mrs Parveen, as Premises Licence Holder and Designated Premises Supervisor, had claimed to be unaware of all incidents, raids and subsequent investigations and queried who had been receiving correspondence in relation to the previous incidences. Concerns were also made regarding the execution of warrants at KKA where a female occupant of the premises next door was observed throwing a box over the wall of the back garden of the adjoining premises and following retrieval of the box, it revealed to contain illicit tobacco and cigarettes.

Mrs Parveen, having been asked the same question a number of times, asserted that she had no knowledge of the whole investigation and the history of complaints received and incidents occurring at her premises.

In response to a question from a Member, Mrs Parveen confirmed that her husband and husband's cousin Mr Khan, had managed the finances of the premises. A general query was made by the Sub-Committee that as Mrs Parveen could not answer any of the questions asked, her husband should have been in attendance at the meeting. Mrs Parveen stated that her husband had been aware that the premises had been purchasing and selling illicit products, however he had failed to inform her. It was noted that the circumstances of the whole incident had caused marital problems and was the cause of the decision to sell the business.

The Sub-Committee indicated that it was clear that Mrs Parveen, as Designated Premises Supervisor, had demonstrated a constant failure to manage the purchase and the sale of alcohol and tobacco in her shop.

An observation by a Member was made in relation to the location of the premises and the close proximity of Hillcrest School and Community College in relation illicit tobacco and cigarettes being available for purchase at the premises to the older students of the school. It was highlighted that there was no evidence that restricted products had been sold to minors, however, Mrs Parveen indicated that a Challenge 25 policy would be in operation at the premises.

In responding to a question from the Sub-Committee, Mrs Parveen confirmed that Mrs Nasah, the prospective purchaser of the premises, was not a relative.

Following a question from Trading Standards, Mrs Parveen was unable to confirm the source of supplier of the illicit products and reported that her husband and Mr Khan had been responsible for the financial affairs of the business. In responding to a question from the Sub-Committee, Mrs Parveen confirmed that every purchase transacted at the premises had been receipted and that receipts had been submitted to her accountant for completion of the annual tax return and had since been returned to her. It was noted that a copy of the annual tax return for the business, together with receipts, could be made available for inspection.

Concerns were raised by Trading Standards that despite Mr Daraz being involved in the poor management of the premises by permitting the purchase and sale of illicit products, he continued to manage the premises. In responding to questions from the Sub-Committee, Mrs Parveen indicated she had a young family and had not worked at the premises for the past 3 years. However, since January, 2015, she stated that she was now taking an active role in the management of the business and confirmed that only products purchased at legitimate Cash and Carry outlets were sold at her premises and at the request of the Sub-Committee, Mrs Parveen confirmed the names of the wholesalers that they routinely used.

In summing up, Mr King reported that the premises had a long history of incidents, during all of which Mrs Parveen had been the Premises Licence Holder and Designated Premises Supervisor but had claimed that she had no knowledge of the history of the incidents, raids and subsequent investigations. He acknowledged that Mr Khan had been dismissed from the premises; however, Mr Daraz continued to manage the premises. Mr King indicated that despite the representations made at the meeting, he was not convinced that a similar incident would not occur in the future.

In summing up, Mr Burke indicated that Mrs Parveen had taken appropriate action by dismissing Mr Khan from the premises as soon as she had been made aware of the incidents occurring at the premises. He reported that the circumstances of the whole incident had caused marital problems and was the cause of the decision to sell the business. It was noted that the purchase and sale of the premises was due to complete in the next 2 to 3 weeks, however no documents had been provided as evidence of the proposed sale. Mr Burke concluded by indicating that Mrs Nasah had offered a number of conditions to be imposed on the licence to prevent any future incidents.

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, following careful consideration of the information presented at the meeting, the premises licence in respect of KKA Cinder Bank, Dudley, be revoked.

Reasons for Decision

This is an application for a review of the premises license for KKA, 118 Cinder Bank, Dudley.

The review is brought by Trading Standards on 15th December 2014, on the licensing objective of the prevention of crime and disorder.

Mrs Anjaman Parveen is the Premises License Holder and she attended the Sub-Committee today. She is also the Designated Premises Supervisor.

The facts are that on 7th February 2012, a large quantity of beer and wine and two suitcases of tobacco were seized from the premises next door at 119 Cinder Bank. Keys to this property were found in a jacket in the shop. No duty had been paid on the products. However, a female shop worker was observed to leave the shop store room and throw a box half full of illicit cigarettes over the back fence of the shop into the garden of 117 Cinder Bank. The HMRC did not prosecute.

Following independent complaints about the sale of illicit tobacco from the store, a visit by Trading Standards on 18th December 2013 found 15 bottles of whisky and vodka both in the premises and in a car linked to one of the shop workers. The alcohol had counterfeit duty labels. A letter was sent to the premises on 6th June 2014 confirming this and stating that the premises should keep receipts for a minimum of two years.

Further detailed intelligence was received on 12th and 17th September 2014 that tobacco was being sold from “under the counter” at the shop, but a warrant executed on 19th November 2014 found no tobacco in the shop, but did find 5 further bottles of whisky and 5 bottles of vodka on the shelves and under the counter, which were seized, and proved to have counterfeit duty labels. These bottles could not have been obtained through a reputable and secure supply chain. This was therefore the third incident of this in the store whilst Mrs Parveen was the Premises License Holder and Designated Premises Supervisor. The third incident took place after she had been given a clear written warning, and on the first occasion, the sales from the shop also included tobacco, as well as alcohol.

Mrs Parveen stated today that she had no knowledge of the financial running of the premises, and that she knew nothing of the events from February 2012 until she received the application and statement of review. She stated that she had not received the warning letter dated 6th June 2014 from Trading Standards. She stated that she knew nothing about the joint Trading Standards/HMRC visit on 2nd February 2012 or the subsequent investigation. Mr King from Trading Standards stated in evidence that he met her more than once in the process of the investigation but Mrs Parveen asserted that she had never met Mr King until today. She said the business was owned by her husband Mr Umar Daraz but was actually run by his cousin Mr Kashif Khan. She stated that it was her belief that Mr Khan was responsible for the business, and that another man working for the business was probably responsible for the supply of the illicit products found at the premises and at 118 Cinder Bank. She did state that she believed all receipts had been retained and sent to her accountant, and then returned. Despite living above the shop, she had not worked in the shop over the last three years. Mr Khan had been dismissed as business manager in January 2015, and had gone to India.

Mrs Parveen's plan was to sell the business and move out of the premises totally. The prospective purchaser was a Mrs Zahban Nasah, who also attended today. The Sub-Committee was informed today that the purchase and sale of the premises would take place in the next 2-3 weeks. No supporting documentation or solicitor's letters were provided as evidence of the proposed sale.

The Sub-Committee is therefore satisfied that Mrs Parveen, as Premises License Holder and Designated Premises Supervisor, has demonstrated a consistent failure to manage the purchase and sale of alcohol and tobacco in her shop over a period of almost three years. This is despite an investigation of HMRC and Trading Standards in 2012 and a specific warning letter regarding the purchase of alcohol from non secure and reputable sources in June 2014. If she really had no knowledge of these events, then she has totally failed to fulfil her duty as Premises License Holder and Designated Premises Supervisor over three years. If she did know, then she has misled the Sub-Committee significantly. The result of her management of the premises license is that products with counterfeit duty labels or with no duty paid have been purchased for the shop and sold from it, and she has not promoted the objective of preventing crime and disorder.

The Sub-Committee therefore revokes the premises license. The Sub-Committee considered a suspension, with the removal of the Designated Premises Supervisor and the imposition of conditions on the license, but is so concerned about the persistent mismanagement of the premises, the very limited disclosure by Mrs Parveen today and the lack of evidence of the potential sale, that these steps are not deemed sufficient to meet the licensing objective. If the sale does proceed, then a fresh application for a premises licence can be made.

Application for a Premises Licence – Halesowen Cricket Club, Seth Somers Park, Grange Road, Halesowen

A report of the Strategic Director (Resources and Transformation) was submitted on an application for a premises licence in respect of Halesowen Cricket Club, Seth Somers Park, Grange Road, Haleswoen.

Mr R Billingham and Mr Roberts, Vice President of Halesowen Cricket Club, were in attendance at the meeting.

Also in attendance and objecting to the application was Mr B Russell. Mr B Russell's father and Councillor D Russell were also in attendance as observers.

Following introductions by the Chair, the Licensing Clerk presented the report on behalf of the Council. It was noted that representations had been received from four residents in relation to potential increase in noise.

Mr Russell then presented his representations and in doing so made particular reference to the potential increase in noise nuisance. He indicated that during the summer months, he had experienced noise emanating from the premises during functions. He stated that the premises did not have a designated smoking area and as a result, customers used the patio doors, located opposite a residential area, as an exit door for a comfort break. Photographs were circulated to show the location of the patio and exit doors. He further stated that, following a meeting with club representatives, residents had not been satisfied that their concerns would be addressed.

Mr Russell reported that he did not object to the proposed licensing hours as long as assurances could be given that the patio doors remained closed at a reasonable time of 11.00pm onwards.

In responding to a question from Mr Billingham, Mr Russell confirmed that he had resided opposite Halesowen Cricket Club for 15 years.

Mr Billingham then presented his case and in doing so made particular reference that there had been no objections received from any responsible authorities in relation to noise nuisance. He indicated that he did not intend to fully utilise the licensing hours applied for, however, wished to retain flexibility for special occasions and instances where it would be commercially viable to remain open. He stated that the club currently had a Club Registration Certificate which curtailed the number of functions the club could hold per year. He confirmed the current licensing hours and indicated that essentially these would not change and therefore anticipated that noise nuisance would not be a problem should the application be granted. He further stated that neither Mr Russell nor any other resident had contacted the club in the past in relation to their concerns and, on that basis, he asked the Sub-Committee to consider approving the application for a premises licence.

Concern was raised by Mr Russell in relation to monitoring people accessing the club during private functions. Mr Billingham indicated that the people organising the function would be aware of who had been invited and any persons trying to gain entry who had not been invited would be refused entry.

In responding to a query, it was confirmed that a Designated Premises Supervisor need not be on site at all times, however they were expected to be sufficiently involved with the business to be able to act as it's representative.

In relation to the alleged noise complaints emanating from the fire and patio doors, Mr Billingham circulated a plan and confirmed the location of all emergency/fire and patio doors. It was noted that the doors opposite Mr Russell's place of residence were self closing fire doors. He acknowledged that on one occasion doors had been kept open due to the hot weather, however, he reported that all windows had now been double glazed and that the main door to the function room would remain closed except for emergency situations.

In summing up, Mr Russell disputed the statement made that doors had been left open on one occasion only causing noise to escape during regulated entertainment. He indicated that people used the fire door when exiting the premises for a comfort break and instead of letting the door close, it was being held open to gain entry back into the club to save people having to walk to the front of the premises to gain access.

In summing up, Mr Billingham indicated that the club had no history of complaints in relation to noise, which was evidenced by no representations from any responsible authorities being submitted. He stated that the premises would essentially be run and managed in the way it had always been, however wished to retain flexibility for special occasions and instances where it would be commercially viable to remain open. In concluding, Mr Billingham reported that should the premises licence be granted and residents had any complaints, then there was provision in the legislation that the club could be brought to the Licensing Sub-Committee for a Review.

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 grant of a premises licence in respect of Halesowen Cricket Club, Seth Somers Park, Grange Road, Halesowen, be approved, in the following terms:-

Sale of Alcohol/Films

Monday – Sunday (inclusive) 06.00 – 02.00 the following day

Regulated Entertainment (Live Music/Recorded Music/Dance

Monday – Sunday (inclusive) 12.00 – 02.00 the following day

Late Night Refreshments

Monday – Sunday (inclusive) 23.00 – 02.00 the following day

Conditions

- (1) That all windows and doors to the premises are to be closed after 11.00pm.
- (2) That the fire door between the sliding patio doors in the main club room, and the fire door in the members lounge shall not be used for access and egress except in the case of emergency.

Reasons for Decision

This is an application for a premises licence for Halesowen Cricket Club, for the sale of alcohol, late night refreshments and live music/recorded music/dance in accordance with their operating schedule.

There have been no representations from any responsible authority, but one local resident made a representation on 21st December 2014. He is concerned that the windows and doors should be kept closed to prevent noise escaping from the premises during any licensed hours. This is a concern about the objective of public nuisance.

Mr Billingham and Mr Roberts attended to make the application, and Mr Russell attended to make his representation in person.

The representation is based on potential noise nuisance if the premises are licensed. His property is directly opposite the club entrance (he has lived there for 15 years), and those doors are apparently fire doors. He stated that he had experienced noise from the club currently that does disturb him, and that the doors have been left open on summer evenings, probably when persons are having cigarettes.

Mr Billingham responded that there have been no complaints in respect of the noise from the club as it has been running, and that the hours of the club will not change. He therefore asserts that the potential for noise disturbance has been exaggerated by Mr Russell. All windows in the club have been newly double glazed.

There have been no representations against the application in itself, and the Sub-Committee grants the application. However, in the light of the representation about alleged past noise nuisance after 11pm and the potential for noise nuisance in the future, the Sub-Committee imposes the two conditions outlined above.

The Sub-Committee notes from the operating schedule that all users of the club will be expected to be of good behaviour both within the premises and its curtilage to prevent nuisance to the neighbourhood.

The meeting ended at 1.00pm.

CHAIR