

Minutes of Licensing Sub-Committee 2

Tuesday 3rd June, 2014 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor D Russell (Chair)
Councillors J Cowell and A Taylor

Officers:-

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

25 **Declarations of Interest**

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

26 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 29th April, 2014, be approved as a correct record and signed.

27 **Application for Review of Premises Licence – Booze Corner, 10 Howley Grange Road, Halesowen**

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Booze Corner, 10 Howley Grange Road, Halesowen.

Mr A Singh, Premises Licence Holder, Mrs K Kaur, Designated Premises Supervisor and Mr M Banahan of The Banahan Tennant Partnership Limited, were in attendance at the meeting.

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, Planning and Licensing Officer, West Midlands Police.

Following introductions by the Chair, the Licensing Officer 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 29th November, 2013, a fifteen year old male child test purchaser was sold alcohol, namely a 1 litre bottle of Magners Cider with 4.5% alcohol, from the premises contrary to section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

It was reported that the current premises licence was granted to Mr Singh on 9th October, 2012. It was also reported that Mrs Kalvinder Kaur was the Designated Premises Supervisor and held a personal licence issued by Walsall Metropolitan Borough Council.

It was noted that on 17th October 2012, an advisory visit was conducted at the premises. It was reported that the purpose of the visit had been to provide advice to help prevent the underage sale of restricted products. Mr Singh, who had been present at the time, was given detailed advice, including information in respect of acceptable proof of age and the importance of keeping a refusals register. Mr Singh was also provided with an advice pack relating to the sale of restricted products, an advice booklet, a challenge 25 poster, a refusals register, a poster regarding proof of age and a sample Proof of Age Standards Scheme card and was asked 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. During the course of the visit, Mr Singh signed a form to acknowledge receipt of the information pack.

It was reported that on 5th November, 2012, a test purchase for alcohol was conducted at the premises with no sale being made.

On 27th February, 2013, a test purchase for tobacco was conducted at the premises with no sale being made.

On 3rd October, 2013, an officer from Dudley Trading Standards had conducted a yearly advisory visit to the premises. It was reported that the officer had spoken to Mr Raj Kumar, who had stated he was an employee at the business. The purpose of the visit was to ensure that the business was complying with the law relating to the sale of age restricted products, and to provide advice and support to help prevent underage sales. Mr Kumar signed a form acknowledging that a visit had taken place and was asked to inform the proprietor of the visit.

Mr King then reported that on 29th November, 2013, officers from Trading Standards, together with officers from West Midlands Police carried out a test purchase at the premises to determine compliance with the law on the sale of alcohol to persons under the age of eighteen. It was reported that a fifteen year old male child test purchase volunteer had purchased a 1 litre bottle of Magners cider with 4.5% alcohol by volume. The seller made no attempt to ask the age of the volunteer and did not request any identification.

On returning to the premises, the individual who had sold alcohol to the test purchase volunteer was identified as Mr Jatinder Kumar. Mr Kumar was cautioned and informed that he had sold alcohol to a fifteen year old child. It was reported that Mr Kumar had made no reply.

On inspection of the premises, it was reported that, various age-restricted posters had been seen on display and that a "Challenge 25" policy was in place.

It was reported that, following a police check, Mr Kumar had been identified as being an illegal immigrant and was subsequently arrested and taken away.

Mr King stated that on viewing the CCTV at the premises following the sale, officers had witnessed a number of youths, who appeared to be under eighteen, apparently being served alcohol. It was reported that two young girls, who had looked under the age of eighteen, entered the premises and bought cigarettes without being asked their age or for identification. When challenged, the seller, Mr Sandeep Singh Bhopal, who had stated that he was the son of the owner, indicated that he had known the girls and had served them in the past as he knew that they had been over eighteen.

In concluding, Mr King stated that should the Sub-Committee be minded not to revoke or suspend the premises licence, they consider including additional conditions to the licence. A full list of proposed additional 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 the Police had made enquiries on relevant police systems and had also liaised with the local neighbourhood team. She reported that there was no current intelligence in relation to counterfeit goods at the premises, no recent reports of crime and disorder, no anti-social behaviour attributed to the premises and that local officers patrolled the area and had been no other issues in relation to the premises. However, she stated that the sale of alcohol to a minor was a serious matter and indicated that the West Midlands Police also fully supported the recommendations made by Trading Standards.

In responding to questions from a Member, Mr Singh confirmed that there were currently five members of staff working at the premises, which consisted of himself, his wife, his son and two further employees. He stated that since the incident, he had ensured adequate training had been provided to all staff in relation to the sale of age restricted products.

Concerns were raised in relation to the employee whom, following enquiries had turned out to be an illegal immigrant. Mr Singh confirmed that all necessary checks to the employee's documents had been carried out and that the Home Office had accepted that the investigation had been adequate. A copy of all documentation was circulated to the Sub-Committee.

Mr Banahan then stated the case on behalf of Booze Corner. He stated that since the incident had occurred, Mr Singh had employed two experienced staff and confirmed that three members of staff held personal licences. He reported that Mr Singh did not currently hold a personal licence, however, he would undertake the necessary training should the Sub-Committee wish him to do so. Mr Singh confirmed the hours currently worked by all staff at the premises and reported that an experienced personal licence holder was always present at the premises when open for business.

Mr Banahan reported that since the incident had occurred, Mr Singh had received advice from a Solicitor at the Home Office in relation to guaranteed systems available to check the authenticity of documents. He stated that Mr Singh had twenty-five years experience of working in the trade and had extensive knowledge of the operation and management of the business.

In continuing, Mr Singh confirmed that the Challenge 25 policy was currently in operation at the premises and that the Refusals Register was checked and reviewed regularly. CCTV was also in operation at the premises with a twenty-eight day recording facility, which had been in place since Mr Singh had opened the premises and the content was reviewed, when required. He further stated that up-to-date copies of all employee training records were kept.

In concluding, Mr Singh indicated that the business was his livelihood and that he had dedicated a vast amount of financial investment and effort into making the premises a success.

Concerns were raised that on inspection of the Refusals Register, no entries had been entered between 16th February 2013 and 9th December 2013. In responding, Mr Singh indicated that prior to the incident, he had not considered the maintenance of the Refusals Register to be a priority, however, since the incident had occurred, he ensured the Sub-Committee that all refusals were recorded.

In responding to a question from a Member, Mr Singh confirmed that he would carry out weekly checks of the Refusals Register and CCTV and assured the Sub-Committee that he would adhere to all conditions imposed on his Premises Licence. He also confirmed that all staff would be trained on the operation of the CCTV system.

At the request of the Sub-Committee, Mr Singh read through some proposed conditions. Following perusal, he confirmed that should the Sub-Committee be minded to include additional conditions to his premises licence, he would have no objection.

In summing up, Mr Banahan emphasised that both Mr A Singh and Mrs K Kaur were very experienced in the trade and had never had any problems of this nature in the past. He re-iterated that the business was his clients' livelihood and assured the Sub-Committee that the underage sale alcohol was an isolated incident and would not occur again.

In summing up, Mr King indicated that at the time of the incident, there had been evidence that the business had been poorly managed and asked the Sub-Committee to consider attaching additional proposed conditions to the current 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, 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 Booze Corner, 10 Howley Grange Road, Halesowen:-

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 adhered to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age Standard 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 of 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 underage, shall be refused service.

Reasons for Decision

This is a review of the premises licence of Booze Corner, Halesowen. Trading Standards brought the review as a result of a failed test purchase on 29th November 2013, when a Mr Jatinder Kumar sold a fifteen year old male test purchaser a one litre bottle of cider. The store has a history of passing test purchase exercises in 2012 and 2013, but this employee was an illegal immigrant who did not ask for proof of age before making the sale.

Mr A Singh, Premises Licence Holder, and Mrs K Kaur, Designated Premises Supervisor, attended the review. They presented a letter from the Home Office dated 4th March 2014, which effectively confirmed that Mr Singh had shown due diligence in checking the employment eligibility of Mr Jatinder Kumar.

Mr Singh also presented the refusals register to the Sub-Committee, confirmed that since the incident, all staff had been given new training on checking the age of the purchasers of age restricted products and that the store already complied with the proposed conditions put forward by Trading Standards, specifically with regard to the installation of CCTV, footage being available for twenty eight days and the maintenance of a training file. However, Mr Singh did accept that the refusals register had no entries between February and December 2013 but that the under age sale had “been a wake up call”.

The Sub-Committee finds no evidence to require the revocation or suspension of the premises licence but it does find that the management of the premises had not been as it should have been. Mr Kumar’s training on the sale of age restricted products was not adequate and the refusals register was not used for ten months. This was not an isolated failure to use the register.

Mr Singh accepts that he can comply with the proposed conditions, if the Sub-Committee attaches them to the premises licence and in these circumstances, it does do so.

28

Application for a Premises Licence – SSK Convenience Store, 35 Church Street, Pensnett, Brierley Hill

A report of the Director of Corporate Resources was submitted on an application for a premises licence in respect of SSK Convenience Store, 35 Church Street, Pensnett, Brierley Hill.

Mr D Hardy, Licence Trade Legal Services, Mr T Packiyathan, applicant, Mr Thongarasa, proposed Designated Premises Supervisor and Mr Kanesan, a family member, were in attendance at the meeting.

Also in attendance was Mr C King, Principal Trading Standards Officer, Directorate of the Urban Environment.

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

Mr King then presented the representations of Trading Standards and in doing so highlighted that Trading Standards had concerns that the licensing objectives relating to the prevention of crime and disorder and the protection of children from harm would not be met if the licence was granted. He indicated that the premises had, for the last two years, been of concern to the local police and Trading Standards due to the sale of alcohol to children on at least three separate occasions, two of which had been test purchase volunteers. He stated that there had also been intelligence to suggest that the sale of alcohol to children took place on a regular basis. He further stated that, in addition to the above, warrants had been executed at the premises on two occasions which led to the seizure of a large quantity of Class B drugs and a quantity of counterfeit tobacco. Mr King reported that as a result of the sale of alcohol to children the premises licence was revoked by the Licensing Sub-Committee and the premises licensee was prosecuted for offences under the Licensing Act 2003. He stated that despite the revocation of the licence, alcohol continued to be sold from the premises by the previous management, however, the matter was successfully prosecuted.

Mr King continued indicating that the locality of the premises and the clientele it served required that the business should be run by a strong character that had no connection to the previous regime and who could ensure that the licensing objectives would be strictly adhered to. He expressed concern that the proposed Designated Premises Supervisor, Mr Pirashanthakumar Thangarasa would only be nineteen years of age if the licence was granted. Although, Mr King understood that age should not be used as a measure of an applicant's ability to successfully run a licensed premises, due to the previous problems associated with the premises and the anti-social behaviour in the locality, which was previously attributed to the premises, he had serious reservations concerning Mr Thangarasa's ability to manage the new business to ensure that the licensing objectives were fully upheld.

In concluding, Mr King indicated that Mr Packiyathan's application failed to convince Trading Standards that the previous issues associated with the premises would not repeat themselves and in view of the above, he stated that Trading Standards objected to the granting of the premises licence.

In stating his case, Mr Hardy acknowledged and accepted the concerns raised by Trading Standards, however, emphasised that the applicant had no connection with the previous management of the premises. He indicated that the applicant and his family were very experienced retailers and multiple operators mainly in the Birmingham area and the purpose of the application was to expand the family business.

Mr Hardy indicated that extensive expenditure would be invested in the premises to provide facilities such as a panic button, CCTV and any other facility the applicant deemed appropriate to prevent historic problems occurring. He stated that the proposed Designated Premises Supervisor would ensure that any staff involved in the sale of alcohol and the operation of CCTV would have fully recorded and documented training, including six monthly refresher courses in respect of their responsibilities under the Licensing Act 2003.

In relation to the concerns by Trading Standards in respect of the age of the proposed Designated Premises Supervisor, Mr Hardy emphasised that there would be at least two members of staff present at the premises at all times. He outlined the proposed licensing hours of the premises and stated that there had been no police representations and only two written objections, despite the locality of the premises being in a very populated area.

In response to questions by Trading Standards, Mr Hardy confirmed that the applicant had no connection with either the previous management of the premises or the applicant prior to his application. He stated that the premises was being leased subject to them receiving a premises licence.

Concern was raised by Trading Standards in relation to who the leaseholder of the premises was, which was not made clear at the meeting. Mr King suggested that the applicant consider operating the premises without the option to sell alcohol initially, in order that the establishment could be monitoring to access the management and operation of the store. Mr King continued stating that the applicant was unknown in the area and asked if information could be provided in relation to the family businesses in order that adequate checks could take place to access the management and operation of those establishments. In responding, Mr Hardy confirmed the names and addresses of the two other premises currently trading.

Mr Hardy indicated that the applicant would not trade until all conditions of the licence were implemented. He stated that it would be pointless to spend capital on the installation of a CCTV, panic button and any other facility necessary if the application was unsuccessful.

In response to questions from Members, Mr Hardy indicated that the proposed Designated Premises Supervisor and staff that would be operating the premises were currently all retailers working for the family business and the successful operation of a third establishment would be an extension to the family business. He re-iterated that the applicant had no connection with either the previous management of the premises or the applicant prior to his application.

Mr King continued to express concerns due to the history of the premises, however, he stated that should the Sub-Committee be minded to grant the premises licence, they consider apply additional conditions to the licence.

As a point of clarification, the Legal Advisor asked Mr King whether he recommended the Sub-Committee to defer consideration of the application subject to appropriate background checks being carried out on existing establishments. In responding, Mr King confirmed that he suggested deferring the application until appropriate checks were conducted, however, stated that if the Sub-Committee was minded to approve the application, consideration be given to attach additional conditions to the premises licence.

The Legal Advisor offered Mr Hardy and the applicant the opportunity to read through a list of proposed additional conditions with a view to considering attaching them to the premises licence. Following perusal of the proposed conditions, Mr Hardy confirmed that the applicant would have no objection to any of the proposed conditions being applied to the premises licence.

In concluding, Mr Hardy re-iterated that there had been no police representations and only two written objections, despite the locality of the premises being in a very populated area.

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, the application for the grant of a premises licence in respect of SSK Convenience Store, 35 Church Street, Pensnett, Brierley Hill, be approved.

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 adhered to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age Standard 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 of 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 underage, shall be refused service.

Reasons for Decision

This is an application by Mr Thanikan Packiyathan for a new premises licence for the sale of alcohol between the hours of 8.00am and 10.00pm, seven days a week. The premises has a significant history in the last two years of not meeting the licensing objectives; specifically there have been two test purchases where alcohol has been sold to children. The Licensing Sub-Committee revoked the alcohol licence, but sales continued and the premises licence holder was prosecuted. Class B drugs and counterfeit tobacco was seized from the store.

The applicant and proposed Designated Premises Supervisor attended today and confirmed that they had no family or friendship ties to the previous premises licence holder, or indeed a subsequent applicant for the premises. The applicant managed other stores in Chelmsley Wood and Willenhall and had no history of licensing concerns. The applicant and proposed Designated Premises Supervisor are not known to the Police. They gave evidence to satisfy the Sub-Committee that they understand the previous issues in the store and locality and had a business plan to ensure that the licensing objectives were upheld. They accepted standard conditions put forward by Trading Standards in order to meet the previous concerns of the locality and uphold the licensing objectives.

The Sub-Committee therefore, grants the application for the premises licence and takes the step of imposing the proposed conditions to the premises licence.

Application for Consent to Engage in Street Trading – Forget Me Nots – Gornal Crematorium, Chase Road, Gornal Wood, Dudley

A report of the Director of Corporate Resources was submitted on an application for Consent to Engage in Street Trading – Forget Me Nots – Gornal Crematorium, Chase Road, Gornal Wood, Dudley.

Mrs Julie Watton was in attendance at the meeting.

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

Mrs Watton then presented her case, and in doing so stated that she had been a florist for ten years and it had been her ambition to set up a stall to sell flowers outside Gornal Crematorium. She stated that she was a local person, who resided in Gornal and had a good relationship with her customers. She further stated that she only sold good quality flowers and considered that her business would do particularly well in that locality.

In response to a question from a Member, Mrs Watton confirmed that she would be using her van to transport the flowers, photos of which had been circulated to the Sub-Committee prior to the hearing, together with a circle of buckets to display the flowers in and a small table to place poses on.

In response to a question from a Member in relation to trading on Bank holidays, Mrs Watton confirmed that she only intended to trade on Saturdays and Sundays.

Following consideration, it was

Resolved

That the application made by Mrs J Watton of Forget Me Nots, for Consent to Engage in Street Trading at Gornal Crematorium, Chase Road, Gornal Wood, Dudley, on Saturdays and Sundays each week, be granted.

The meeting ended at 12.20pm.

CHAIR

LSBC2/55