

LICENSING SUB-COMMITTEE 3

Tuesday 20th August, 2013 at 1.10 pm
in Committee Room 3, The Council House, Dudley

PRESENT:-

Councillor K Finch (Chair)
Councillors Bills and Sykes

Officers

Mr R Clark (Legal Advisor), Mr T Parkes (Enforcement Officer) and Mrs K Taylor (Directorate of Corporate Resources).

8. APOLOGY FOR ABSENCE

An apology for absence from the meeting was submitted on behalf of Councillor Mrs Ameson.

9. APPOINTMENT OF SUBSTITUTE MEMBER

It was noted that Councillor Bills was serving as a substitute member for Councillor Mrs Ameson for this meeting of the Sub-Committee only.

10. DECLARATIONS OF INTEREST

No member declared an interest in accordance with the Members' Code of Conduct.

11. MINUTES

RESOLVED

That the minutes of the meeting held on 16th July, 2013, be approved as a correct record and signed.

12. APPLICATION FOR REVIEW OF PREMISES LICENCE – CRYSTAL NEWS AND OFF LICENCE (ALSO KNOWN AS WORDSLEY NEWS AND BOOZE), 1 KINVER STREET, WORDSLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Crystal News and Off Licence (also known as Wordsley News and Booze), 1 Kinver Street, Wordsley.

Mr C S Randhawa, Premises Licence Holder, and Mr A Curtis, Solicitor, were 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, and PC A Baldwin, Licensing Officer of West Midlands Police.

Following introductions, Mr Curtis requested the submission of further information, specifically a one-page document outlining a business lease agreement. All parties agreed to the request made.

Mr T Parkes, Enforcement Officer, Directorate of Corporate Resources, presented the report on behalf of the Council.

Mr King presented the representations of Trading Standards and in doing so highlighted that the grounds for the review had been based on the undermining of the licensing objective, namely, the prevention of crime and disorder, due to the poor management of the premises following the discovery of counterfeit alcohol for sale on 10th October, 2012 and 16th May, 2013 in direct contravention of the licensing objectives.

Mr King confirmed that the current Premises Licence Holder was Mr Randhawa, and a Mr Afzal was the Designated Premises Supervisor.

On 10th October, 2012, during a routine inspection, an officer found three 1ltr bottles of Glens vodka and one 70cl bottle of High Commissioner whiskey offered for sale at the premises. The bottles were seized as it was suspected that they were counterfeit.

A second inspection was undertaken on 16th May, 2013 which found four 1ltr bottles of High Commissioner whiskey, two 70cl bottles of High Commissioner whiskey and two 70cl bottles of Glens vodka offered for sale at the premises. The bottles were seized as it was suspected that they were counterfeit, together with a hand written sign advertising the 70cl bottles of Glens vodka for sale at £8.99 a bottle.

It was noted that the advertised price of the Glens vodka was considerably cheaper than other retail outlets in the borough, and according to one specialist wine and spirits merchant, it would not be possible to purchase the vodka for that price from a cash and carry warehouse.

The manufacturer of the spirits had confirmed that although the bottles contain genuine whiskey and vodka, they were originally meant for the export market and not for sale in this country. The bottles were found to have counterfeit duty paid labels fixed to the rear so as to avoid the excise duty payable to HMRC.

Requests have been made to Mr Afzal, Designated Premises Supervisor, to contact Trading Standards to discuss the seizures, however Mr Afzal had failed to do so.

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

PC Baldwin 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 incidents of crime in the area.

Mr King clarified that the seized goods were designed for export, and that similar incidents were increasing within the trade. He also stated that when a premises had goods seized on two occasions a review of the premises licence would be brought to a Sub-Committee.

In responding to a question by a member, Mr King stated that counterfeit goods would not have the fiscal mark on the label, however it would be difficult for customers to identify whether the goods were genuine. He also stated that a wholesale purchaser would know that the bottles were not from a legitimate source.

Mr Curtis then presented the case on behalf of his client, Mr Randhawa, and in doing so informed the Sub-Committee that Mr Randhawa was the owner of the building and leased the premises to Mr Afzal, and therefore he was not involved in the operation of the business. It was noted that there was currently a civil dispute between Mr Randhawa and Mr Afzal.

Mr Curtis stated that Mr Randhawa's priority was to protect the licence for future leaseholders, and that an application was ongoing to transfer the lease.

It was noted that Mr Randhawa had owned the building since 1990, which also included a residential area above the premises, and that revocation or additional conditions attached to the premises licence could cause difficulty in leasing the premises in future, as without the licence it would not be a viable business.

Mr Curtis further stated that Mr Afzal was responsible for the operation of the business and had exclusive possession, and that if needed Mr Randhawa would transfer the Designated Premises Supervisor licence to him.

In responding to a question by a member, Mr Randhawa confirmed that he had not visited the premises in over a year, and was shocked when he received a letter notifying him of the seizure of counterfeit bottles.

In responding to a question by a member, Mr Curtis confirmed that Mr Randhawa owned and leased a number of properties, but had no involvement with the businesses.

In responding to a question in relation to Mr Afzal, Mr Curtis stated that Mr Afzal was a personal licence holder, and a formal lease agreement was agreed between Mr Afzal and Mr Randhawa. Mr Randhawa confirmed that he did not previously know Mr Afzal when he approached Mr Randhawa in respect of the premises.

Following comments made, Mr King stated that he did not dispute the comments made by Mr Curtis and Mr Randhawa.

In responding to a question, Mr Randhawa stated that he had attempted to contact Mr Afzal following the seizures, and that he was still working at the premises.

In responding to a question by a member, Mr Randhawa stated that he was aware of the seizures when he received a letter in June, 2013, and that he contacted Mr Afzal who stated that he had contacted Trading Standards to clarify the labels on the bottles, and informed Mr Randhawa that the matter had been dealt with.

In concluding, Mr Curtis stated that if the Sub-Committee did not agree to remove Mr Afzal as the Designated Premises Supervisor, then Mr Randhawa would appoint himself as DPS until the tenancy was transferred to a potential new business occupier. He also stated that Mr Randhawa was not responsible for the operation of the business.

Following all comments, the Legal Advisor stated that the Sub-Committee would determine the application made on the information submitted and comments made at the meeting by all parties, and that any decision made should determine actions that are appropriate for the promotion of the licensing objectives.

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 contained in the report submitted, and as reported at the meeting, the premises licence issued to Crystal News and Off Licence (also known as Wordsley News and Booze), 1 Kinver Street, Wordsley be suspended for a period of six weeks.

REASONS FOR DECISION

This is an application for a review of a premises licence, where the Premises Licence Holder has attended and the Designated Premises Supervisor has not. It is not clear that the Designated Premises Supervisor, Mr Afzal, knows about the date of this Sub-Committee, or that his designation as Designated Premises Supervisor is in jeopardy.

The facts are in agreement; they are that in October, 2012 and May, 2013 the premises was found to be selling vodka and whiskey that should not have been sold in the United Kingdom, because the labels had been counterfeited to indicate that appropriate duty had been paid. It had not. The Sub-Committee heard evidence that a purchaser would not notice the counterfeit labels, but that a wholesale purchaser would have known that the bottles were not from a legitimate source, and that the price was too low to be legitimate. Further, the same products were purchased for the shop in 2013, when the products had been removed in October 2012.

The Premises Licence Holder has indicated that he is in negotiation with Mr Afzal for him to transfer the business as a going concern. If necessary he also indicated that he would appoint himself as Designated Premises Supervisor under his personal licence.

The Sub-Committee accepts that the facts appear to indicate that the purchase of counterfeit alcohol was the responsibility of Mr Afzal as Designated Premises Supervisor, and owner of the business, but it is concerned that the Designated Premises Supervisor has not been able to put his case to this Sub-Committee. To remove him as Designated Premises Supervisor, without notice, and without giving him a chance to put his case forward, would have a very significant impact on his business, in breach of his rights to natural justice.

The Sub-Committee therefore suspends the premises licence for a period of six weeks. This to enable Mr Randhawa to negotiate with Mr Afzal for the transfer of the business, and if necessary, for Mr Randhawa to appoint himself as Designated Premises Supervisor.

13. APPLICATION FOR REVIEW OF PREMISES LICENCE – SANDHARS SUPERMARKET, 69 WELLINGTON 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 Sandhars Supermarket, 69 Wellington Road, Dudley.

It was noted that the Premises Licence Holder was not in attendance at the meeting, and a request had been received by his representative to adjourn the hearing, given that all parties that were responsible for the day to day running of the premises were on a pre booked holiday throughout August.

RESOLVED

That, consideration of the application made for the review of the premises licence in respect of Sandhars Supermarket, 69 Wellington Road, Dudley be deferred to a future meeting of a Sub-Committee.

14. APPLICATION FOR REVIEW OF PREMISES LICENCE – SELECT AND SAVE (FORMERLY KNOWN AS KINGSWAY STORES), 7 BILSTON STREET, SEDGLEY

A report of the Director of the Corporate Resources was submitted on an application for the review of the premises licence in respect of Select and Save (Formerly known as Kingsway Stores), 7 Bilston Street, Sedgley.

Mrs R Ralhan, Premises Licence Holder, together with her husband, Mr R Ralhan, and Mrs Hussain, Representative, were 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, Public Health, and PC A Baldwin, Licensing Officer of West Midlands Police Authority.

Following introductions by the Chair, Mr T Parkes, Enforcement Officer, Directorate of Corporate Resources, presented the report on behalf of the Council.

Mr King 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 with respect to the sale of alcohol to children.

Mr King informed the Sub-Committee that on 24th April, 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 8th January, 2013, an officer from Trading Standards carried out a visit to the premises and spoke to Mrs Ralhan, who stated that she was the joint owner of the business with her husband. The purpose of the visit was to provide advice in relation to preventing underage sales of age restricted products, information in respect of acceptable proof of age and the importance of keeping a refusals register. Mrs Ralhan 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. It was reported that during the course of this visit, Mrs Ralhan signed an ARP 00772 form to acknowledge receipt of the information pack.

It was noted that on 16th January, 2013, a tobacco test purchase exercise was conducted at the premises which did not result in a sale.

Mr King further stated that on 24th April, 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 four cans of Foster lager with 4% 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 Mrs Ralhan. It was noted that Mrs Ralhan's husband was also present at the time, and that she made no relevant comment after being cautioned after the alleged offence was pointed out to her.

On inspection of the premises, it was noted that there was a 'Challenge 25' poster displayed but no other Age Restricted Product literature was evident, and that the Refusals Register, which was issued on 8th January, 2013, was found to be unused and still in the envelope it was provided in.

Mrs Ralhan 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 proposed additional conditions had been circulated to all parties prior to the meeting.

PC Baldwin 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 incidents of crime in the area.

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, was the sale of alcohol to underage young people considered to be very serious and supported the recommendation to revoke or suspend the premises licence.

Mrs Hussain then presented the case on behalf of Mr and Mrs Ralhan, and in doing so stated that that the premises was a family-run business, and that although Mrs Ralhan accepted responsibility for the sale of alcohol to a child, she was upset and distracted at that time due to her mother being admitted to hospital.

Mrs Hussain further stated that Mrs Ralhan had implemented a number of measures in accordance with the proposed conditions suggested by Trading Standards.

Mr Ralhan stated that he understood the mistake made, and that he had increased his hours working at the premises to a full-time basis.

In responding to a question, the refusals register was circulated at the meeting, and Mr Ralhan confirmed that the Fixed Penalty Notice was paid the day following the sale on 24th April, 2013.

Following the representations of Trading Standards, Councillor Bills highlighted the importance of operating a refusals register, in particular that it should remain by the register at all times in order to enter any refusals immediately.

In responding to a question by the chair in respect of the proposed additional conditions submitted by Trading Standards, Mrs Hussain confirmed that Mr and Mrs Ralhan were in agreement with the proposals.

In responding to a question, Mr Ralhan confirmed that both he and Mrs Ralhan worked at the premises on a full-time basis, and a member of staff who was a personal licence holder worked weekends only.

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 Select and Save (formerly known as Kingsway Stores), 7 Bilston Street, Sedgley: -

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 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' CCTV shall be reviewed 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 other person, regardless of age, shall be refused service.

REASONS FOR DECISION

This is a review brought by Trading Standards, for a failed test purchase on 24th April 2013, by the premises licence holder, Mrs Ruma Ralhan.

The Sub-Committee heard this review on 16th July, 2013, and deferred the matter, due to a confusion as to who the premises licence holder was. It has now been confirmed that there was a typographical error by the licensing office, and that Mrs Ruma Ralhan is the premises licence holder. She was previously known, prior to marriage, as Ms Devi.

The sale is not disputed. Mrs Ralhan apologises for this. Her mitigation today is that her mother was ill and taken to hospital in April 2013 and that she was upset and distracted. The premises did refuse to sell tobacco to a test purchaser in January, 2013. However, at the test purchase on 24th April, 2013, the refusals register provided by Trading Standards was unopened in its envelope.

Mr and Mrs Ralhan have today agreed to the licence conditions put forward by Trading Standards.

The Sub-Committee has decided that this under age sale could have been prevented by proper use of a refusals register and competent management of the premises. It therefore takes the step of imposing the proposed conditions upon the premises licence.

The Sub-Committee accepts that the sale of alcohol to young persons is a very serious matter in terms of their health and development.

15. APPLICATION FOR A LICENSED PREMISES GAMING MACHINE PERMIT – THE LUTLEY OAK, 327 STOURBRIDGE ROAD, HALESOWEN

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 Lutley Oak, 327 Stourbridge Road, Halesowen.

Ms L Bayliss, Account Manager from Gamestec, and Ms S Hayder, Manager of The Lutley Oak, were in attendance at the meeting.

Following introductions by the Chair, Mr T Parkes, Enforcement Officer, Directorate of Corporate Resources, presented the report on behalf of the Council.

Ms Bayliss made her own representations and in doing so outlined the recent refurbishment of the premises, and that the main reason for the application was following an increase in demand.

After a short discussion, it was

RESOLVED

That the application made for the grant of a licensed premises gaming machine permit for three gaming machines in respect of The Lutley Oak, 327 Stourbridge Road, Halesowen, be granted.

16. APPLICATION FOR HOUSE TO HOUSE COLLECTIONS LICENCE – BREAST CANCER (INTERSECOND LTD) “DO NOT DELAY”

A report of the Director of Corporate Resources was submitted on application for the grant of a House to House Collections Licence in respect of Breast Cancer (Intersecond Ltd) “Do Not Delay”.

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 Breast Cancer (Intersecond Ltd) “Do Not Delay” be deferred to a future meeting of the Sub-Committee when the applicant shall attend the meeting and prior to that meeting supply the information contained in Section 2 (f) of the House to House Collections Act, 1939, and that should the applicant fail to attend the Sub-Committee the application be heard in absence.

Meeting ended at 3.40 pm

CHAIR