

LICENSING SUB-COMMITTEE 1

Tuesday 29th March, 2011 at 10.00am
in The Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Ryder (Chairman)
Councillors Evans and K. Finch

Officers

Mr T Holder (Legal Advisor), Mrs J Elliott (Licensing Officer) and Ms K Farrington (Directorate of Corporate Resources).

5. DECLARATIONS OF INTEREST

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

6. MINUTES

RESOLVED

That, the minutes of the meeting held on 7th December 2010, be approved as a correct record and signed.

7. APPLICATION FOR REVIEW OF PREMISES LICENCE – LARCH ROAD NEWS AND GENERAL STORE, LARCH ROAD, KINGSWINFORD

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Larch Road News and General Store, Larch Road, Kingswinford.

Ms Ramsarran, Legal representative from Hollies Solicitors, Mr Riar, Premises Licence Holder and Designated Premises Supervisor, Ms Allport and Ms Williams, both employees at the premises, were in attendance at the meeting.

Also in attendance were Mr C King, Principal Trading Standards Officer and Ms J Morris, Age Restricted Products Enforcement Officer, both of the Directorate of the Urban Environment.

Following introductions, the Chairman outlined the procedure to be followed.

Mrs J Elliott, Licensing Officer, Directorate of Corporate Resources, presented the report on behalf of the Council. Following the presentation of the report, she confirmed that additional paperwork had been circulated to the Sub-Committee prior to the meeting.

Mr King presented the representations of Trading Standards and in doing so highlighted that the grounds for review had been based on the serious undermining of the four licensing objectives by allowing a sixteen year old test purchaser to buy alcohol from the premises, contrary to section 146(1) of the Licensing Act 2003 and in direct contradiction of the licensing objectives.

Mr King informed the Sub-Committee that two complaints, from the same person, had been received regarding underage sales of alcohol from the premises in October 2007. On 31st July 2008, a child test purchaser, as part of a test purchase exercise, had visited the premises in an attempt to buy alcohol and on that occasion, the sale had been refused. On 10th March 2008, an officer from Trading Standards had visited the premises and spoke with Mr Riar to offer him advice and guidance in relation to preventing underage sales of age restricted products, including alcohol and supplied him with an information pack, which included, a Challenge 25 poster, refusals register and a poster listing acceptable forms of identification.

On the 18th June 2009, Mr King indicated that Mr Riar had signed up to a Social Responsibility Scheme, a multi-agency initiative led by Trading Standards and Community Renewal in partnership with West Midlands Police and local businesses, designed to tackle underage drinking and its associated community issues. The Scheme was based on a code of good practice, introduced amongst off-licences in areas considered to have a reputation of underage binge drinking and anti-social behaviour related issues.

On 17th December, 2010, officers from Trading Standards together with West Midlands Police carried out a joint visit to the premises and spoke with Ms Williams to provide advice and issue her with a further information pack containing the same items as in the previous pack, to present to Mr Riar.

Mr King stated that following the joint visit in December 2010, Trading Standards together with West Midlands Police carried out a test purchasing exercise on 22nd January, 2011 to determine compliance with the law on the sale of alcohol to children, and on that occasion, Ms Allport sold alcohol to a sixteen year old child volunteer. Mr King reported that Ms Allport had asked the boy for identification, however, when he replied that he did not possess any, she stated "oh go on, I'll let you off" and proceeded with the sale. Following the sale, Mrs Allport was confronted by representatives from Trading Standards and the Police and a Fixed Penalty Notice was issued. Mr King confirmed that he had received notification by the Police that the fine had been paid. When asked what formal training Ms Allport had received in relation to the sale of alcohol, she confirmed that she had been requested by Mr Riar to ask for identification at all times if she was unsure of the age of the customer and indicated that proof of age posters were clearly displayed near the area in which alcohol was located. A copy of a photograph of the child volunteer was circulated at the meeting.

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 to prevent a similar incident re-occurring in the future. A full list of the proposed additional conditions had been circulated to all parties prior to the meeting.

In responding to a question from the legal representative in relation to the procedure followed once a complaint had been received in relation to the sale of alcohol to an underage persons, Ms Morris confirmed that the guidance issued under Section 182 of the Licensing Act 2003, indicated that one single offence involving the sale of alcohol to minors was sufficient to bring the offending premises to a review.

In responding to a question in relation to child volunteers, Ms Morris confirmed that child volunteers were trained to always tell the truth if asked their age and not to carry identification with them. She also confirmed that if the sale of alcohol was refused, the child volunteers, under no circumstances should try and talk the member of staff into selling them alcohol, they should leave the premises immediately.

The legal representative then presented the case on behalf of Mr Riar and whilst acknowledging the offence committed, she indicated that Mr Riar had been a premises licence holder for eleven years and had always adhered to the licensing objectives and the conditions of his licence. She referred to the visit from Trading Standards on 10th March 2009 and confirmed that the posters handed to Mr Riar in the package given had been clearly displayed around the premises and that he always employed responsible staff who would comply with the licensing regulations. She also referred to the Social Responsibility Scheme run in partnership with Trading Standards and the West Midlands Police and stated that Mr Riar had signed himself up to the Scheme.

In confirming the measures Mr Riar had recently put in place to prevent a similar offence happening again, the legal representative indicated that a register of refusals was now in operation at the premises, which was completed immediately following refusal of alcohol sales and monthly meetings and training sessions were conducted for staff. A copy of the minutes of the most recent meeting and the register of refusals book was circulated to the Sub-Committee for perusal. She also confirmed that Mr Riar had recently purchased a price gun, which stamped the name of the business on all items requiring labelling, especially alcohol.

In referring to the member of staff who had committed the offence, the legal representative indicated that she had been an employee at the premises for two years with a good reputation and understanding of the licensing regulations. He stated that Ms Allport had a momentary lapse of judgement and had deeply regretted her actions and assured the Sub-Committee that it would not happen again.

In concluding, the legal representative urged the Sub-Committee to be lenient when deciding on an appropriate course of action as Mr Riar had three young children to support and to consider the fact that he had successfully operated the premises for a long period of time adhering to the licensing objections and conditions of his licence. She confirmed that Mr Riar would be willing to accept the attached additional conditions to his licence should the Sub-Committee deem them appropriate.

Arising from a question raised from Ms Morris in relation to the reason why Ms Allport proceeded with the sale of alcohol to the child volunteer knowing that he had no identification available, Ms Allport stated that he had been very polite to her. However, she had told him that she would not serve him next time unless he presented her with identification.

In responding to a question in relation to relevant training received, Ms Allport confirmed that she had been instructed by Mr Riar to always ask for identification if unsure of customers' age and to record any refusals in a book, however, she confirmed that she had never recorded any refusals in a register prior to the incident. In responding to the same question, Mr Riar confirmed that prior to the employment of staff, he would discuss the licensing laws, with particular mention to the law on selling alcohol and tobacco to children and requested that valid proof of age identification be presented at all times by persons who appeared to be under the age of 18.

In responding to a further question in relation to training, the Licensing Officer confirmed that the training of staff was the responsibility of the designated premises supervisor.

In responding to a question in relation to the consequences of her actions, Ms Allport acknowledged that she had made a mistake and assured the Sub-Committee that it would never happen again.

In responding to a question asked in relation to the witness statements signed by Mr Riar and Ms Allport, the legal representative confirmed that she had completed the witness statements on behalf of her clients based on the information she had been provided with and that they had been signed and dated at the same time by each person but on different dates.

In responding to a question raised, Mr Riar confirmed that 30-40% of sales at the premises were related to alcohol.

In summing up, Mr King, requested that all information submitted and the comments made at the meeting be considered.

In summing up, Mr Riar indicated that he had three young children to support and stated that he had successfully operated the premises for a number of years adhering to the licensing objectives and conditions of his licence.

Prior to the withdrawal of parties, the Council's legal representative reported that the purpose of the meeting was for the Sub-Committee to consider the premises licence and not Mr Riar, as a Licence Holder.

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 Chairman 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 Larch Road News and General Store, Larch Road, Kingswinford:-

- (1) The Premises Licence Holder to operate at all times where alcohol is requested a minimum age verification policy of "Challenge 25". All staff must be made aware of the policy and trained to check identification of all persons who appear to be under the age of 25 years old by asking them to provide a valid proof of identification that they are 18 years old or above.
- (2) Valid proof of identification only to 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.
- (3) Publicity materials notifying customers of the operation of the "Challenge 25" Scheme shall be displayed at the premises, including a "Challenge 25" sign of at least A4 size at each point of sale.

- (4) 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.
- (5) The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, which indicates the date, time and reason for refusal. The Premises Licence Holder shall check 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. The book shall be made available for inspection by an officer of Trading Standards and/or the Police.
- (6) CCTV to be in place at the premises 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 within 24 hours.
- (7) The Premises Licence Holder shall ensure that the Designated Premises Supervisor 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 Trading Standards and/or the Police.
- (8) The Premises Licence Holder shall ensure that the Designated Premises Supervisor attend and complete the Level 2 Award for Designated Premises Supervisors, and shall provide proof of qualification to the Police and/or an officer of Trading Standards upon request.
- (9) The Premises Licence Holder shall ensure that the Designated Premises Supervisor make sure that all persons authorised to sell alcohol have completed a training programme, which includes a written test to verify the competency of that person.
- (10) The Premises Licence Holder shall ensure that the Designated Premises Supervisor conduct monthly reviews with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy.

- (11) The Premises Licence Holder shall ensure that the Designated Premises Supervisor maintain a file at the shop premise for each person authorised to sell alcohol. The file shall contain all training records for each person along with copies of monthly reviews as stated in (10) above. The file shall be available for inspection by an officer of the Trading Standards and/or the Police upon request.
- (12) All alcohol sold must be clearly labelled with the name of the premises.

REASONS FOR DECISION:-

The reason for the decision is that this is the first time the Premises Licence Holder has been brought before the Sub-Committee and hope that lessons have been learned from the mistake.

However, the Sub-Committee must emphasise the importance of regular training and maintenance of records in terms of training and refusals because if the Premises Licence Holder appears before the Sub-Committee facing similar allegations, then the consequences will be much greater.

8. APPLICATION FOR REVIEW OF PREMISES LICENCE – NEWSAGENTS AND OFF LICENCE, 14 WOLVERHAMPTON ROAD, KINGSWINFORD

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Newsagents and Off Licence, 14 Wolverhampton Road, Kingswinford

Mr G Patel, Premises Licence Holder and Designated Premises Supervisor and a supporter were in attendance at the meeting.

Also in attendance were Mr C King, Principal Trading Standards Officer and Ms J Morris, Age Restricted Products Enforcement Officer, both of the Directorate of the Urban Environment.

Following introductions, the Chairman outlined the procedure to be followed.

Mrs J Elliott, Licensing 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 review had been based on the serious undermining of the four licensing objectives by allowing a sixteen year old test purchaser to buy alcohol from the premises, contrary to section 146(1) of the Licensing Act 2003 and in direct contradiction of the licensing objectives.

Mr King informed the Sub-Committee that Mr Patel became the Premises Licence Holder of the Newsagents and Off-Licence on 9th July 2007. Since that time three complaints from members of the public had been received regarding underage sales of alcohol from the premises, two received in September 2008 and the third in June 2009. On 31st July 2008, a child test purchaser, as part of a test purchase exercise, had visited the premises in an attempt to buy alcohol and on that occasion, the sale had been refused.

On the 14th January 2009, Mr King indicated that Mr Patel had signed up to a Social Responsibility Scheme, a multi-agency initiative led by Trading Standards and Community Renewal in partnership with West Midlands Police and local businesses, designed to tackle underage drinking and its associated community issues. The Scheme was based on a code of good practice, introduced amongst off-licences in areas considered to have a reputation of underage binge drinking and anti-social behaviour related issues.

On 10th March 2009, an officer from Trading Standards had visited the premises and spoke with Mr Patel to offer him advice and guidance in relation to preventing underage sales of age restricted products, including alcohol and supplied him with an information pack. This included, a Challenge 25 poster, refusals register and a poster listing acceptable forms of identification.

On 16th April and 18th August 2009, a child test purchaser, as part of a test purchase exercise, had visited the premises in an attempt to buy alcohol and on these occasions, the sales had been refused.

On 17th January, 2011, an officer from Trading Standards carried out a visit to the premises and spoke with Mrs Patel to provide advice and issued her with a further information pack containing the same items as the previous pack, to present to Mr Patel. Also during the visit, Mrs Patel had been asked to confirm details in relation to staff training. In responding, she stated that she and her husband, Mr Patel, owned the premises and were the only people at present working at the establishment. She was also informed that Trading Standards carried out, from time to time, test purchase exercises and of the potential consequences of underage sales.

Mr King stated that Trading Standards together with West Midlands Police carried out a test purchasing exercise on 22nd January, 2011 to determine compliance with the law on the sale of alcohol to children, and on that occasion, Mr Patel sold alcohol to a sixteen year old child volunteer without requesting sight of any form of identification or proof of age. Following the sale, Mr Patel was confronted by representatives from Trading Standards and the Police and a Fixed Penalty Notice was issued. A copy of a photograph of the child volunteer was circulated at the meeting.

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 to prevent a similar incident re-occurring in the future. A full list of the proposed additional conditions had been circulated to all parties prior to the meeting.

Mr Patel then presented his case and whilst acknowledging the offence committed, he indicated he had been a premises licence holder for seven years and had always adhered to the licensing objectives and the conditions of his licence. He proceeded to explain the reasons for his lapse of judgement, with particular reference to the very cold weather at the time of the offence, the fact that he had been the only person working at the premises, as his wife had popped out to the Post Office and that he had had to start work early that morning to prepare newspapers and deliver them himself. He indicated that on the 21st January 2011, he had made an appointment to visit the doctor as he had been having problems with his ears and found it difficult to hear. While Mr Patel did not name the condition with which he had been suffering, he reported to the Sub-Committee that, on examination, the existence of the condition had been confirmed by the doctor, who had then prescribed antibiotics to resolve the problem. It was also noted that blood tests were ongoing. Mr Patel provided documentary evidence confirming his prescription to the Sub-Committee prior to the meeting.

Mr Patel also indicated that he had recently been elected Vice President of the National Federation of Retail Newsagents (NFRN) and confirmed that following the incident, he had declared the offence, which would be published in the next issue of the NFRN newsletter.

In responding to a question raised, Mr Patel confirmed that he did maintain a record of refusals of the sale of alcohol and circulated a copy of the refusals register along with photocopies of various forms of identification or proof of age of customers attempting to buy alcohol to the Sub-Committee for their perusal.

A question was raised querying the reason why the dates recorded in the evidence presented by the representative of Trading Standards did not coincide with the dates recorded in the register of refusals book. In responding, Mr Patel confirmed that he had a second book in which he recorded alcohol refusals, which he had left at the premises. Mr Patel reported that, on average, refusals for the sale of alcohol occurred at least once a week. In response, the Chairman emphasised the importance of maintaining an up-to-date register of refusals.

In responding to a question raised, Mr Patel confirmed that he had not asked the child volunteer his age and the reason he gave was that he had not been fit for work due to his illness, however, he accepted the consequences of his action and assured the Sub-Committee that it would never happen again. In responding, the Council's legal representative, indicated that if Mr Patel had been unfit for work, he should not have been working at the premises.

In responding to a question raised, Mr Patel confirmed that he did not employ any staff and that only himself and Mrs Patel operated the establishment. The Sub-Committee expressed extreme concerns that Mr Patel was not devoting sufficient resources to the running of the business.

In responding to a further question raised, Mr Patel stated that the newsagents mainly sold newspapers and confirmed that he had previously won an award for the biggest paper round in the West Midlands and further stated that only 10% of sales at the premises were related to alcohol.

In summing up, Mr King, requested that all information submitted and the comments made at the meeting be considered.

Prior to the withdrawal of parties, the Council's legal representative reported that the purpose of the meeting was for the Sub-Committee to consider the premises licence and not Mr Patel, as a Licence Holder.

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 Chairman 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 Newsagents and Off Licence, 14 Wolverhampton Road, Kingswinford:-

- (1) The Premises Licence Holder to operate at all times where alcohol is requested a minimum age verification policy of "Challenge 25". All staff must be made aware of the policy and trained to check identification of all persons who appear to be under the age of 25 years old by asking them to provide a valid proof of identification that they are 18 years old or above.
- (2) Valid proof of identification only to 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.
- (3) Publicity materials notifying customers of the operation of the "Challenge 25" Scheme shall be displayed at the premises, including a "Challenge 25" sign of at least A4 size at each point of sale.
- (4) 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.
- (5) The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, which indicates the date, time and reason for refusal. The Premises Licence Holder shall check 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. The book shall be made available for inspection by an officer of Trading Standards and/or the Police.
- (6) CCTV to be in place at the premises 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 within 24 hours.
- (7) The Premises Licence Holder shall ensure that the Designated Premises Supervisor 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 Trading Standards and/or the Police.

- (8) The Premises Licence Holder shall ensure that the Designated Premises Supervisor attend and complete the Level 2 Award for Designated Premises Supervisors, and shall provide proof of qualification to the Police and/or an officer of Trading Standards upon request.
- (9) The Premises Licence Holder shall ensure that the Designated Premises Supervisor make sure that all persons authorised to sell alcohol have completed a training programme, which includes a written test to verify the competency of that person.
- (10) The Premises Licence Holder shall ensure that the Designated Premises Supervisor conduct monthly reviews with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy.
- (11) The Premises Licence Holder shall ensure that the Designated Premises Supervisor maintain a file at the shop premise for each person authorised to sell alcohol. The file shall contain all training records for each person along with copies of monthly reviews as stated in (10) above. The file shall be available for inspection by an officer of Trading Standards and/or the Police upon request.
- (12) All alcohol sold must be clearly labelled with the name of the premises.

REASONS FOR DECISION:-

The reason for the decision is that this is the first time the Premises Licence Holder has been brought before the Sub-Committee and hope that lessons have been learned from the mistake.

However, the Sub-Committee must emphasise the importance of regular training and maintenance of records in terms of training and refusals because if the Premises Licence Holder appears before the Sub-Committee facing similar allegations, then the consequences will be much greater.

The meeting ended at 12.35pm.

CHAIRMAN

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