

Minutes of Licensing Sub-Committee 4

Tuesday 2nd September, 2014 at 10.15 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor M Roberts (Chair)
Councillors D Hemingsley and H Turner

Officers:-

R Clark (Legal Advisor), T Parkes (Licensing Enforcement Officer)
and K Taylor (Democratic Services Officer) – All Directorate of
Corporate Resources.

10 **Declarations of Interest**

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

11 **Minutes**

Resolved

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

12 **Application for Review of Premises Licence – The Lake
Discount Stores, 18 Lake Street, Lower Gornal, Dudley**

A report of the Director of Corporate Resources was submitted on
an application for the review of the premises licence in respect of
Lake Discount Stores, 18 Lake Street, Lower Gornal, Dudley.

Mr S Bahia and Mrs K Bahia (Joint Premises Licence Holders) were
in attendance, together with Mr Bretts (Barrister).

Also in attendance were C King, Principal Trading Standards Officer,
Directorate of the Urban Environment; J Annakin, Programme
Manager Substance Misuse, Office of Public Health; Mr R Fryer and
Mrs E Fryer, Complainants; PC A Baldwin, Sergeant Cruickshank,
Sergeant Simpson and PCSO Plumb, all from West Midlands Police;
and B Hughes, Licensing Enforcement Officer, Directorate of
Corporate Resources.

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

Mr C King then presented the representations of Trading Standards and in doing so highlighted that the grounds of the review had been based on the serious undermining of the two licensing objectives, namely, the prevention of crime and disorder and the protection of children from harm due to the poor management of the premises following alleged sales of cigarettes to persons under the age of eighteen in December, 2013 and February, 2014, and the sale of vodka to a thirteen year old girl in February, 2014.

It was noted that the Designated Premises Supervisor was a Mr N Hussain, however Trading Standards had been notified that the licence had since been transferred to a Mr Khan.

It was further noted that Mr and Mrs Bahia had appealed a decision of a Sub-Committee taken on 5th November, 2013, following the sale of alcohol to a sixteen year old test purchase volunteer on 14th August, 2013, where it was resolved that the premises licence be suspended and additional conditions attached to the licence. The hearing date had been scheduled to take place on 10th April, 2014.

On 9th December, 2013, a complaint was received that a sixteen year old girl had been sold cigarettes by Mr Bahia on a Friday evening at the beginning of December, 2013. It was alleged by the complainant, that Mr Bahia had sold the cigarettes, despite having been warned not to by the complainant a week previous. It was noted that the complainant, Mr Fryer, who was in attendance at the hearing, was taking his daughter to a cadet camp on the Friday evening when they stopped at the premises to purchase sweets. When his daughter returned, it was discovered that she had purchased sweets together with a packet of 10 Benson and Hedges cigarettes, which had been sold by Mr Bahia.

Mr King further stated that on 12th February, 2014, a complaint had been received by a local resident that cigarettes had been sold to a fourteen year old boy who had visited the premises. The resident requested the allegation be recorded but declined to make a statement in fear of reprisals.

It was noted that on 26th February, 2014, a further complaint had been received from another local resident that a half bottle of vodka had been sold to a thirteen year old girl from the premises. The resident also declined to make a statement as they lived locally and feared reprisals.

Mr King then referred to a statement submitted by a Ms T Kaur, stating that she had been in a business arrangement with Mr Bahia, that caused her to visit the premises on a number of occasions, and alleged that she had witnessed on at least six occasions Mr Bahia selling cigarettes, and alcohol on one occasion, to children that appeared to be between thirteen and fourteen years old.

Mr J Annakin then presented the representations of Public Health, which had been circulated to all parties in accordance with the Licensing Act 2003. He made particular reference to the number of well-documented impacts on the health of adolescents as a consequence of alcohol consumption.

Mr Annakin stated that the sale of alcohol to underage young people was considered to be very serious and supported the recommendation to revoke or suspend the premises licence on the grounds of protecting children from harm.

Mrs E Fryer, complainant, then presented her representations based on a statement submitted by the Police, which had been circulated to all parties in accordance with the Licensing Act 2003. She confirmed that she had visited the premises and spoke to Mr Bahia requesting him not to sell tobacco to her daughter, who would be wearing either her school or cadets uniform. It was noted that on the night her daughter had purchased cigarettes from Mr Bahia in December, 2013, she was wearing her cadet's uniform.

In responding to a question by Mr Bretts, Mrs Fryer confirmed that she was confident that it was Mr Bahia who had sold the cigarettes as she had known him for twenty years, and that it would have been impossible for her daughter to have stolen the cigarettes as they were positioned behind the counter.

Following a description of the evening when his daughter purchased the cigarettes, Mr and Mrs Fryer withdrew from the meeting.

PC Baldwin then presented the representations of West Midlands Police, which had been circulated to all parties in accordance with the Licensing Act 2003, and in doing so informed the Sub-Committee that a number of statements had been provided in regard to the allegations highlighted in the report submitted, and from the local Neighbourhood Team regarding the premises failure to provide police officers with CCTV evidence following an alleged sale of alcohol to a fourteen year old child. It was also noted that a number of police logs to the premises had been circulated to all parties.

In responding to a question by Mr Bretts, PC Baldwin confirmed that the grounds for their representations had been based on the protection of children from harm.

Mr B Hughes then presented the representations on behalf of the Assistant Director of Law and Governance, which had been circulated to all parties in accordance with the Licensing Act 2003. Following a discussion, Mr Bretts suggested that previous offences and matters that did not specifically relate to the licensing objectives should be omitted from the hearing, however it was confirmed that the majority of the representation submitted made particular reference to the poor management of the premises.

Mr Hughes continued with his representations, and in doing so stated that a number of enforcement officers had been involved with the premises, and that the mitigation given in previous prosecutions, in particular the unlicensed sale of alcohol and exposing alcohol for sale without a licence, which related to Mr Bahia not paying the licence fee and making a sale of alcohol whilst his licence was suspended, was due to the poor communication between himself and his wife as co-holder of the premises licence.

It was noted that the appeal lodged by Mr and Mrs Bahia, following the decision of the Sub-Committee on 5th November, 2013, had been withdrawn on 10th April, 2014, therefore the suspension of the premises licence commenced on 10th April, 2014 and was re-instated on 24th April, 2014.

Following the suspension, Mr Hughes visited the premises on a number of occasions and discovered that a number of conditions applied to the premises licence had not been complied with. Particular reference was made to the CCTV system, and Mr Hughes reported that in May, 2014, officers of West Midlands Police alleged that they had witnessed a fourteen year old leaving the premises hiding alcohol under their jacket. When questioned, Mr Bahia claimed that the alcohol had been stolen and that he was unable to provide CCTV evidence to assist the officer with the investigation.

Mr Hughes further reported that there were no training records at the premises; the refusals register was not correct, and although the CCTV was now working, a till prompt had not been installed in the register, despite it being a condition of licence. He stated that he had spoken to Mr R Bahia on more occasions than Mr S Bahia, as it was difficult communicating with Mr S Bahia over the phone.

Police Sergeant Cruickshank then presented his representations as the Neighbourhood Police Sergeant with responsibility for Neighbourhood Policing in the Sedgley and Gornal area, which had been circulated to all parties in accordance with the Licensing Act 2003. He stated that since November, 2013 there continued to be a high demand of work, including thirteen police logs, in respect of anti-social behaviour connected to the premises.

He further stated that although the number of calls to the service had decreased, there were various avenues where incidents and complaints could be submitted and therefore not all calls were logged. It was reported that local officers regularly attended the location and patrolled the area responding to calls, and requests had been received for Police officers to attend the premises with other officers for support due to the way they had previously been treated by Mr S Bahia.

It was also noted that Sergeant Simpson was in attendance at the hearing, as Mr Bahia had commented on his working relationship with Sergeant Simpson at a previous Sub-Committee hearing held on 5th November, 2013.

Following comments made in respect of officers of West Midlands Police alleged to have witnessed a fourteen year old leaving the premises hiding alcohol under their jacket, the Legal Advisor informed the Sub-Committee that they should not put any weight on ongoing investigations as the matter could be disputed.

Sergeant Cruickshank stated that the majority of work in the area was connected to the premises and that Mr Bahia was not supportive of West Midlands Police and regularly complained of the daily visits by officers to the premises. Sergeant Cruickshank confirmed that the patrols were preventative and the result of demands to the service. He also referred to the statement submitted by a Ms Y Botfield that confirmed she no longer wished to remain as Designated Premises Supervisor, and had not been for a number of years due to ill-health.

In responding to a question by Mr Bretts, Sergeant Cruickshank confirmed that he had been a Sergeant for West Midlands Police for five years and that Police officers attended the premises with Enforcement officers when requested. Mr Bretts made reference to the number of calls to the Police by Mr Bahia and suggested that they could have been attributed to their complaint; Sergeant Cruickshank confirmed that when officers attended the premises following the calls, Mr Bahia was not co-operative.

In responding to a question by Mr Bretts as to whether the Police logs was directly associated to the premises in relation to crime and disorder; Sergeant Cruikshank reported that the disorder related predominately to streets in the surrounding area following consumption of alcohol.

Following comments made by Mr Bretts, in particular, that there was no evidence to suggest that alcohol had been purchased at the premises; Sergeant Cruikshank stated that the issue was that thirteen and fourteen year olds would not be prepared to come forward in fear of reprisals.

Sergeant Simpson then reported that he was the Neighbourhood Police Sergeant in the Sedgley and Gornal area prior to Sergeant Cruikshank, and that he had undertaken regular visits to the premises. It was noted that Mr Bahia would contact Police on a number of occasions, but would not be cooperative with officers.

Reference was made to the large number of calls received in the area, and Sergeant Cruikshank confirmed that there were no problems with other premises in the area.

In responding to a question by Mr Bretts; Sergeant Simpson confirmed that he had suggested to Mr Bahia to contact West Midlands Police if there were any problems, and that information received assisted with some investigations.

Mr Bretts then presented the case on behalf of Mr and Mrs Bahia, and in doing so stated that the Sub-Committee was considering a second review of the premises licence, which Mr and Mrs Bahia was aware of the serious actions that could be taken, and that they had been at the premises for over twenty years.

He stated that it was important to be clear on what should be considered and any determination should not involve any punishment of the Premises Licence Holders for any previous offences or breaches of conditions, but should be related to the Licensing Objectives. He stated that there should be a proportionate and appropriate response and made particular reference to the potential action taken as highlighted in the Licensing Act 2003.

It was noted that Mr Bahia understood the seriousness of the allegations made, but suggested that the cigarettes and alcohol were stolen.

Mr Bretts reported that the evidence in relation to disorder related to the surrounding areas and not the premises directly, and made reference to a Dudley MBC policy that stated that any anti-social behaviour outside premises' was not a matter for the Sub-Committee.

Following comments made by Mr Hughes that Mr Bahia had failed to comply with the conditions attached to the premises licence; Mr Bretts stated that Mr Bahia understood that his actions were not appropriate and that he had failed to adhere to the conditions, however he wished to move forward and suggested that the Sub-Committee may be minded to suspend the premises licence for a period of time to allow Mr and Mrs Bahia to implement the conditions and any additional conditions that may be necessary. It was reported that it was Mr Bahia's failure to understand the consequences that had led to his current situation and that he would be willing to undertake steps such as re-locating the alcohol to behind the counter to prevent thefts, and joining the cost-cutter franchise.

It was further reported that Mr Bahia recently implemented a policy in which children were no longer able to enter the premises after 7.30pm unless accompanied with an adult, which he was willing to attach as a condition to his licence. Mr Bretts stated that following this move, there had been a significant decrease in calls to the Police.

Reference was made to the statement submitted by Ms T Kaur, and Mr Bretts confirmed that Mr Bahia was involved in a business relationship with Ms Kaur, however there was currently a dispute between the parties, and Mr Bahia suggested that Ms Kaur wanted to 'tarnish' his reputation.

In concluding, Mr Bretts stated that Mr and Mrs Bahia was committed to the business, and suggested that it would not be proportionate to revoke the premises licence.

At this juncture, Mr Annakin withdrew from the meeting.

It was noted that Mr Bretts had requested the submission of further information, specifically four character references for Mr Bahia. All parties agreed to the request made.

Following a request by Mr King, Mr Bahia circulated the refusals register to the Sub-Committee. It was noted that the entries on the register were dated from 17th June 2014 to the end of July 2014, and Mr Bahia informed the Sub-Committee that previous records, together with other records, had been destroyed by a van fire.

In responding to a question by Mr King, Mr Bahia reported that the duties of a Designated Premises Supervisor was to be on site, monitor the premises and ensure that alcohol was sold correctly.

Following comments made in relation to the statement submitted by Ms Botfield, the previous Designated Premises Supervisor, Mr Bahia reported that she had been paid as Designated Premises Supervisor until May 2013 and had continued as unpaid Designated Premises Supervisor since that point. It was noted that Mr Khan was now in place and it was intended to appoint Mr R Bahia as Designated Premises Supervisor soon in the near future.

Further to comments made in respect of the number of calls to the Police, Mr Bahia stated that he had been instructed to contact the Police if there was any difficulty removing youths from the front of the premises that would generally congregate, as there were no other recreational spaces in the Lower Gornal area.

Mr Bahia stated that he had a good relationship with the local community, having started a local Football team and purchased the kits, and that the youths congregating outside the premises occurred regularly during weekends.

Reference was made to the conditions attached to Mr and Mrs Bahia's Premises Licence in November, 2013; Mr Bahia stated that the majority of the conditions had been complied with, however he had been unable to implement a till prompt due to the expense and loss of profits. He agreed that this was not appropriate and that he would be prepared to arrange a loan to purchase a till prompt if necessary, and stated that he did not fully understand the conditions following the hearing on 5th November, 2013, and that he had since employed an independent licensing consultant Mike Pearce for assistance.

Following comments made by Mr Hughes, Mr Bahia responded that that he had been trained recently, but could not produce a training record today.

In responding to a question by PC Baldwin, Mr Bahia stated that he would be willing to attach an additional condition to the premises licence that would refuse children from entering the premises after 7.30pm unless they were accompanied by an adult.

At this juncture, Mr Bretts circulated a training folder; however it was a blank record and more of a statement of intent as to future management. In responding to a question by a member in relation to the records that had been stored in Mr Bahia's vehicle which was then stolen; Mr Bahia confirmed that he had requested copies of the records, however there were none taken.

Mr Bretts stated that there was insufficient evidence to confirm that the disorder in the area was associated to the premises, and that disorder outside of the premises was not in the jurisdiction of the Sub-Committee.

In responding to a question by the Legal Advisor in relation to CCTV; Mr Bahia responded that the hard-drive to the CCTV was locked inside a cabinet underneath the monitor.

Following comments made in relation to Mr Bahia's misinterpretation of the conditions attached to the premises licence; Mr Bahia stated that he had decided to take guidance from his Barrister, and therefore did not realise the seriousness of the consequences.

In summing up, Mr King, on behalf of Trading Standards, stated that the review of the premises licence was based on the grounds of protecting children from harm and the referrals received in relation to crime and disorder, in particular the supply of cigarettes and alcohol to under aged persons, was a criminal offence. He stated that there was sufficient evidence that the Licensing Objectives had not been adopted and of the poor management of the premises, and asked that any measures taken by the Sub-Committee should address the concerns raised.

In summing up, Mr Bretts, on behalf of Mr and Mrs Bahia, suggested that the prevention of crime and disorder should not be considered by the Sub-Committee as it would be inappropriate to be taken into account when there was no evidence to suggest that the disorder was directly linked to the premises. He stated that there was not enough evidence to justify the revocation of the premises licence, as it would affect the business significantly.

In responding to a question by Mr Hughes; Mr Bahia confirmed that he had sold his other premises' in order to concentrate fully on the Lake Discount Stores.

Following all comments made, the Legal Advisor referred to the number of steps the Sub-Committee could take, however these must be directed to remedy the failings of the two Licensing Objectives, namely, the Protection of Children from Harm and the Prevention of Crime and Disorder. He further stated that the response should be proportionate and reasonable, and that it was not a court of law and the actions should not be to punish the premises licence holders.

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 Legal Advisor then outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted, the premises licence in respect of Lake Discount Stores, 18 Lake Street, Lower Gornal, Dudley be revoked

Reasons for Decision

This is a review of a premises licence brought by Trading Regulation and Enforcement in relation to alleged sales of age restricted products.

The joint premises licence holders are Mr Santok Singh Bahia and Mrs Kulwint Kaur Bahia and they have held the licence since 26th September, 2005. Today, Mr and Mrs Bahia attended represented by Mr Bretts, Barrister.

On 5th November, 2013, the premises licence had comprehensive additional conditions placed on it and was suspended for 14 days, following a review relating to a sale of alcohol (one can of Becks lager) to a 16 year old test purchaser on 14th August, 2013. At that review, evidence was put before the Sub-Committee that on 2nd November, 2012, 29 bottles of vodka had been seized at the premises that had counterfeit duty labels. These had therefore not been bought from a reputable trade supplier. The conditions and short suspension were to achieve an improvement in the management of the premises in order particularly to protect the safety of children.

Mr Bahia was prosecuted in Dudley Magistrates Court and on 20th March, 2014, Mr Bahia pleaded guilty to the unlicensed sale of alcohol and exposing alcohol for sale without a licence. This related to him not paying the licence fee and making a sale of alcohol whilst his licence was suspended. He was given a 12 month conditional discharge. In mitigation, Mr Bahia cited poor communication between himself and his wife as co-holder of the premises licence.

On 9th December, 2013, a complaint was received from the parents of a 16 year old girl (Mr and Mrs Fryer) that their daughter had been sold cigarettes (ten Benson and Hedges) by Mr Bahia at Lake Discount Stores on a Friday evening in early December. Mrs Fryer stated that she had complained previously directly to Mr Bahia and asked Mr Bahia not to sell tobacco to their daughter. However, on the night in question, Mr Fryer gave his daughter two £10 notes and she bought a pack of ten cigarettes with this for about £5. Initially his daughter denied buying them, but did then admit the purchase. Mr Bahia today stated that she stole the cigarettes. Mr Fryer stated that she did not as the money was gone from her possession. Mr Bahia also stated that another 13 year old girl who allegedly hid a bottle of alcohol under her jacket as she left the shop, stole it and had not bought it.

On 12th February 2014, a further complaint was received by Trading Standards from a local resident that cigarettes had been sold to a 14 year old boy but the complainant was not prepared to make a statement. However, a different resident made a complaint on 26th February 2014 that a 13 year old girl had been sold a half bottle of vodka. Again, the resident did not make a written statement; it is said, for fear of reprisals.

The Designated Premises Supervisor Mrs. Botfield is alleged to have removed herself as the Designated Premises Supervisor for Lake Discount Stores in February 2014, but enquiries made by the Licensing Authority revealed that her ill-health had meant that she had not been able to fulfil the role of Designated Premises Supervisor for some years. Mr. Bahia stated that she had been paid as Designated Premises Supervisor until May/June 2013 and had continued as unpaid Designated Premises Supervisor since that point. Therefore he submitted that the store has had a Designated Premises Supervisor, that a new Designated Premises Supervisor Mr. Khan is now in place and Mr. Bahia's intention is to appoint his brother as Designated Premises Supervisor soon.

Mr. Bahia accepted today that he understood that the ten previous conditions imposed were to assist him to avoid underage sales in the future. He also stated that he did not really appreciate the significance of all of them when imposed.

Mr. Bahia stated that the till prompt (condition 10) was too expensive to provide upon investigation.

The refusals registers provided today ran from 17th June 2014 to the end of July 2014.

With regard to training, and specifically the training of Ranjit Bahia (conditions 6-8) Mr. Bahia stated that he had been trained recently, but he could not produce a training record today. A training folder was handed up but was blank at this point and more of a statement of intent as to future management, along with a new training regime by an independent licensing consultant Mike Pearce. Previous records had allegedly been destroyed in a van fire in April/May 2014.

In terms of additional conditions, Mr. Bahia stated that he had already imposed a ban on children after 7.30pm unless accompanied. He would be prepared to accept this as an additional condition.

The Sub-Committee accepts that the critical licensing objective today is the protection of young persons rather than the prevention of crime and disorder. The Sub-Committee is concerned that good management of the premises could ensure that children and young persons are protected and considers the ten conditions imposed in November 2013 particularly.

Mr. Bahia has not implemented a till prompt (condition 10) because of the cost of this. Despite the Sub-Committee emphasising the serious nature of the conditions when imposed, Mr. Bahia stated today that he relied upon his barrister at the time to advise him, and that initial investigations had lead him to believe that a till prompt system would not be too expensive. The Sub-Committee finds that Mr. Bahia did not act responsibly in considering and accepting this condition, and that he has not implemented it over 10 months.

Mr. Bahia was not able to produce a refusals registers today except since 17th June 2014. The June register has not been countersigned by a manager and there is no evidence of a weekly review. The July register has entries countersigned only and there is still no evidence of a weekly review. Other registers were allegedly burned in a van fire in April/May 2014. Therefore there are no other examples of refusal registers available. The Sub-Committee is therefore not satisfied with the compliance of condition 3 even after training by Michael Pearce.

Conditions 6-8 also give cause for concern. No training records are available to the Sub-Committee from November 2013 onwards. A blank training folder has been created, and Mr. Bahia has stated that he and his wife and brother have all undergone training in the last few weeks. The past records were also apparently lost in the van fire.

The Sub-Committee finds evidence that Mr. and Mrs Bahia were not communicating appropriately in early 2014 when they failed to respond to the potential revocation of their licence due to non-payment of fees. The failure to manage the premises was a feature in November 2013 and continues today. The Sub-Committee finds that Mr and Mrs Bahia have not treated the previous license conditions seriously, and that as a result, the premises have not been managed in a way that protects children and young persons from harm. The failure to comply with conditions has been ongoing. In the light of this ongoing mismanagement, the Sub-Committee is not convinced that the refusals registers and training records were destroyed in a fire, but finds that it is more likely that the relevant conditions were never complied with.

In the light of this ongoing mismanagement, the Sub-Committee has no confidence that further conditions will be complied with, or the premises managed more effectively.

The Sub-Committee therefore takes the step of revoking the premises licence in the names of both Mr and Mrs Bahia.

Mr and Mrs Bahia were informed of their right to appeal the decision of the Sub-Committee.

The meeting ended at 1.35pm.