

## LICENSING SUB-COMMITTEE 4

Tuesday 26<sup>th</sup> February, 2013 at 10.10 am  
in the Council Chamber, The Council House, Dudley

### PRESENT:-

Councillor Roberts (Chair)  
Councillors Perks and Taylor

### Officers: -

Mr R Clark (Legal Advisor), Mrs L Rouse (Licensing Clerk), Mrs K Taylor  
and Miss L Mason (Observer) – All Directorate of Corporate Resources.

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37            DECLARATIONS OF INTEREST

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

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38            MINUTES

### RESOLVED

That the minutes of the meeting of the Sub-Committee held on  
22<sup>nd</sup> January, 2013, be approved as a correct record and signed.

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39            APPLICATION FOR REVIEW OF PREMISES LICENCE – SHELL  
CORNER OFF LICENCE AND NEWSAGENTS, 307-308 LONG LANE,  
HALESOWEN

A report of the Director of Corporate Resources was submitted on an  
application for the review of the premises licence in respect of Shell  
Corner Off Licence and Newsagents, 307-308 Long Lane, Halesowen.

Mr S Balaghan, Designated Premises Supervisor was in attendance at  
the meeting.

Also in attendance were Mr C King, Principal Trading Standards Officer  
and Mr G Wintrip, Age Restricted Products Enforcement Officer, both from  
the Directorate of the Urban Environment, Ms D McNulty, Dudley Primary  
Care Trust (PCT); and PC A Taylor and WPC N Lees from West Midlands  
Police.

Following introductions by the Chair, the Licensing Clerk 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 5<sup>th</sup> December, 2012, 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 13<sup>th</sup> September, 2012, an officer from Trading Standards carried out a visit to the premises and spoke to Mr Balaghan. 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 benefits of keeping a refusals register. Mr Balaghan was provided with an information pack that included an advice booklet, a Challenge 25 poster, a refusals register, which had been signed and dated before handing over, a poster about proof of age and a sample Proof of Age Standards Scheme card. He was also informed that test purchasing was carried out at premises that sell age restricted products and was requested to ensure that all staff were aware of their obligations under the Licensing Act 2003. It was reported that during the course of this visit, Mr Balaghan signed a form to acknowledge receipt of the information pack.

Mr King further stated that on 5<sup>th</sup> December, 2012, Trading Standards together with West Midlands Police, carried out a test purchasing exercise to determine compliance with the law on the sale of alcohol to children. On that occasion, a sixteen year old male test purchaser volunteer purchased a bottle of Stella Artois Cidre with 4.5% 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 Mr Balaghan. When questioned Mr Balaghan admitted making the sale claiming that he had been busy with customers and had been distracted, and explained that he had always requested identification before making a sale.

On inspection of the premises, it was noted that there were Age Restricted Products posters displayed and a challenge 21 policy in place. Following a request by officers Mr Balaghan was able to produce a refusals register, which included a number of entries. Mr Balaghan was then issued with a Fixed Penalty Notice.

A full list of proposed additional conditions, which had been suggested by Trading Standards, had been circulated to all parties prior to the meeting.

Ms McNulty then presented the representations on behalf of Ms V Little, Director of Public Health, Dudley PCT, 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 Little, she considered the sale of alcohol to underage young people to be very serious and supported the recommendation to revoke or suspend the premises licence.

PC Taylor then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Police had carried out regular patrols in the vicinity and had not received any feedback from the public or local businesses to indicate any problems with the premises such as anti-social behaviour or incidents of crime.

PC Taylor informed the Sub-Committee that the Fixed Penalty Notice issued to Mr Balaghan had been paid the following day.

A full list of proposed additional conditions, which had been suggested by West Midlands Police, had been circulated to all parties prior to the meeting.

Mr Balaghan then presented his case and in doing so stated that the sale of alcohol on 5<sup>th</sup> December, 2012 had been a result of him being distracted by a number of customers who were in the premises at that time, and that he considered that the test purchaser appeared to be over the age of eighteen.

Mr Balaghan further stated that he was very regretful that the sale had been made and that he did not dispute the facts surrounding the incident.

In responding to a question by a member in respect of items sold at the premises, Mr Wintrip informed the Sub-Committee that Mr Balaghan sold a number of Age Restricted Products, however these did not include solvents and DVDs.

In responding to a question by a member in respect of CCTV, Mr Balaghan confirmed that CCTV had been installed at the premises and currently retained footage for fourteen days, however it was his intention to extend this to twenty-eight days.

Reference was made to the proposed additional conditions that had been submitted by Trading Standards and West Midlands Police, where Mr Balaghan confirmed that he was in agreement with the proposals.

In responding to a question by the Legal Advisor, Mr Balaghan informed the Sub-Committee that he would make some amendments to the premises in particular, to change the positioning of the shelves to enable staff to have improved visibility of customers.

It was noted that a number of alcohol products had been stolen previously, which resulted in Mr Balaghan re-positioning expensive alcohol to behind the counter.

In responding to a question by the Chair, Mr Balaghan confirmed that the premises' peak periods were predominately on Friday and Saturday evenings, and that there were four members of staff altogether.

In responding to a question by the Chair, all parties confirmed that they had a fair hearing.

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 must be reasonable and proportionate.

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 Shell Corner Off Licence and Newsagents, 307-08 Long Lane, 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 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 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' 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

The Sub-Committee has heard evidence from Trading Standards, the Police and Mr Balaghan, the Premises Licence Holder. Mr Balaghan does not dispute that he sold alcohol to an underage test purchaser on 5<sup>th</sup> December, 2012, and states that he believed he looked eighteen, did not ask his age and was distracted due to the business of the shop. He paid the fixed penalty notice the next day.

Mr Balaghan has discussed the proposed conditions recommended by Trading Standards and the Police and accepts them all; and has agreed to make some amendments to the premises and his administration to achieve the new conditions. The Sub-Committee has considered all of the options and finds that imposition of these significant conditions do address the concerns raised by this under age sale and are a proportionate response to the child protection concerns raised by the sale. The Sub-Committee therefore imposes the nine conditions as recorded in this decision.

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### APPLICATION FOR REVIEW OF PREMISES LICENCE – SPAR, 115A BRETTELL LANE, AMBLECOTE, STOURBRIDGE

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Spar, 115A Brettell Lane, Amblecote, Stourbridge.

Mr P Kettle, Solicitor was in attendance at the meeting on behalf of Mr Jacques, Designated Premises Supervisor due to Mr Jacques recovering from an operation.

Also in attendance were Mr C King, Principal Trading Standards Officer and Mr G Wintrip, Age Restricted Products Enforcement Officer, both from the Directorate of the Urban Environment; and PC A Taylor and WPC N Lees from West Midlands Police.

Following introductions by the Chair, the Licensing Clerk 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 12<sup>th</sup> December, 2012, a fifteen 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 10<sup>th</sup> October, 2012, an officer from Trading Standards carried out a visit to the premises and spoke to Mr Jacques, who stated that he was a joint partner in the business. 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 benefits of keeping a refusals register. Mr Jacques was provided with an information pack that included an advice booklet, a Challenge 25 poster, a refusals register, which had been signed and dated before handing over, a poster about proof of age and a sample Proof of Age Standards Scheme card. He was also informed that test purchasing was carried out at premises that sell age restricted products and was requested to ensure that all staff were aware of their obligations under the Licensing Act 2003. It was reported that during the course of this visit, Mr Jacques signed a form to acknowledge receipt of the information pack.

Mr King further stated that on 12<sup>th</sup> December, 2012, Trading Standards together with West Midlands Police, carried out a test purchasing exercise to determine compliance with the law on the sale of alcohol to children. On that occasion, a fifteen year old male test purchaser volunteer purchased a 500ml can of Strongbow Cider with 4.8% alcohol by volume. The seller made no attempt to ask the age of the volunteer, and did not ask for identification, however he did ask whether the volunteer required a bag for his purchase.

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 a Ms R Bingham. It was noted that the Designated Premises Supervisor was not present on the premises at the time of the sale.

Following enquiries it was discovered that Ms Bingham had received training relating to the sale of age restricted products when she commenced her employment at the premises six months previously.

On inspection of the premises, it was noted that there were Age Restricted Products posters displayed; a challenge 25 policy in place and an electronic till prompt at the point of the sale, however the refusals register could not be located. Ms Bingham was then issued with a Fixed Penalty Notice.

A full list of proposed additional conditions, which had been suggested by Trading Standards, had been circulated to all parties prior to the meeting.

PC Taylor then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Police had carried out regular patrols in the vicinity and had not received any feedback from the public or local businesses to indicate any problems with the premises such as anti-social behaviour or incidents of crime.

PC Taylor informed the Sub-Committee that the Fixed Penalty Notice issued to Ms Bingham had been paid.

Mr Kettle then presented the case on behalf of Mr Jacques, and in doing so stated that Mr Jacques had been involved in the business for a long period of time, and there had been no incidents or concerns received. He stated that Mr Jacques understood his role as a Premises Licence Holder in particular the need for every effort to be made to comply with the requirements of the Licensing Act 2003 and the Licensing Objectives.

It was further noted that there were three members of staff employed at the premises that were also Personal Licence Holders.

Mr Kettle stated that Mr Jacques did not dispute the facts surrounding the incident, but that he was saddened that the sale had been made as every effort had been made to ensure that an incident would not occur.

Reference was made in relation to the refusals register not being located at the time of the sale on 12<sup>th</sup> December, 2012, and Mr Kettle stated that Ms Bingham had since been retrained and was currently unable to sell alcohol unsupervised.

Reference was made to the proposed additional conditions that had been submitted by Trading Standards and West Midlands Police, where Mr Kettle confirmed that Mr Jacques was in agreement with the proposals, however he did request that the condition requiring Mr Jacques to review the CCTV footage on a weekly basis, should be amended to include 'in conjunction with the refusals register', in order to allow Mr Jacques to view refusals only.

In responding to a question by a member who suggested placing the refusals register by the till register in order to act as a reminder to staff, Mr Kettle stated that the refusals register could be located by the till register and it was Mr Jacques intention that the register would be countersigned.

In responding to a question by the Chair, all parties confirmed that they had a fair hearing.

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 must be reasonable and proportionate.



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 Spar, 115A Brettell Lane, Amblecote, Stourbridge : -

### 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 at the premises and to be recording at all times when the premises 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 conjunction with the refusals register, 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 an application for a premises review of the licence at Spar, Brettell Lane, Amblecote. The review is brought by Trading Standards and relates to an underage sale to a test purchaser on 12<sup>th</sup> December, 2012. The purchase has been admitted by Mr Jacques, the Premises Licence Holder. The sale was made by a 19 year old member of staff, who made no attempt to ask for proof of age or identity, but had been trained on sale of age restricted products six months earlier, she could not locate the refusals register. A Fixed Penalty Notice was issued to Ms Bingham and has been paid. The police have put forward no recent concerns of an alcohol related nature in or around the premises.

Mr Jacques profoundly regrets the sale, despite his best efforts to avoid such an incident. Mr Jacques did not attend the Sub-Committee as he has recently undergone a quadruple heart bypass but is legally represented by Talbots Solicitors today.

The parties have agreed that the imposition of conditions to the licence will address the concerns relating to crime and disorder and child protection and have also agreed the terms of the conditions.

The Sub-Committee agrees that these conditions are appropriate and address the concerns raised, and having considered all of the options, imposes the agreed conditions upon the premises licence.

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VARIATION OF DESIGNATED PREMISES SUPERVISOR – HARE AND HOUNDS, WYNALL LANE, STOURBRIDGE

It was noted that this item had been withdrawn.

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The meeting ended at 12.05 pm

CHAIR