

Minutes of the Licensing Sub-Committee 1

Tuesday 25th November, 2014 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor D Russell (Chair)
Councillors D Blood and C Perks

Officers:-

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

8 **Declarations of Interest**

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

9 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 16th September, 2014, be approved as a correct record and signed.

10 **Application for review of Premises Licence – Days Newsagents and Stores, 32 Madeley 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 Days Newsagents and Stores, 32 Madeley Road, Kingswinford.

Mr N J Patel, Premises Licence Holder and Designated Premises Supervisor was in attendance at the meeting.

Also in attendance were Mr C King, Trading Standards Officer, and Mr G Wintrip, Age Restricted Products Enforcement Officer, both from the Directorate of the Urban Environment.

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

Mr King outlined the representations received from Trading Standards. He highlighted that the grounds for the review were based on the licensing objective concerning the prevention of crime and disorder due to the poor management of the premises, following the discovery of counterfeit alcohol for sale, on three separate occasions, and in direct contravention of the licensing objectives.

It was reported that the current premises licence was granted to Mr Patel on 19th December, 2005. It was also reported that he was the Designated Premises Supervisor and held a personal licence issued by Dudley Metropolitan Borough Council.

It was noted that on 7th October, 2011, during a routine inspection, an officer had found a bottle of Glens Vodka offered for sale at the premises. The bottle was seized as it had a counterfeit duty paid label on the rear.

On 18th August, 2012 during a subsequent routine inspection, an officer found 3 x 1 litre bottles and 1 70cl bottle of Glens Vodka for sale at the premises. It was reported that the bottles had been seized as it was suspected that they too had been displaying counterfeit duty paid labels on the rear.

It was noted that the manufacturer of the spirits, Glen Catrine, later confirmed that the bottles had been made for the export market without the payment of excise duty.

On 27th June, 2013, Mr Patel was informed that the bottles had been displaying counterfeit labels and had been signed over for destruction.

It was reported that on 11th July, 2014 during a further inspection, an officer had found 6 x 1 litre and 2 x 70cl bottles of High Commissioner Whiskey and 6 x 1 litre bottles of Glens Vodka on the premises. It was noted that some of the bottles had been displayed on the shelving, the others had been discovered in the rear stock room. Again, the bottles had been seized as they had been displaying suspected counterfeit duty paid labels on the rear.

Mr King then reported that the manufacturers of the spirits, the Loch Lomond Group (formerly Glen Catrine) stated that "all of the bottles were genuine but had been produced with export back labels attached, i.e. the labels did not incorporate a UK Duty Stamp, as per the customer's instruction. The back labels on the bottles that had been seized were therefore counterfeit and had not been supplied by our company.

The bottles came from batches that had been despatched “under bond” i.e. without payment of excise duty and with the required HMRC removal warrants to our customer’s bonded warehouse. The export labels had therefore been removed at some point by the counterfeiters and counterfeit UK Duty Stamp back labels applied to avoid payment of excise duty.

The bottles would not be available through the normal secure supply chain and reputable Cash and Carry outlets and would have been obtained on the black market.”

In concluding, Mr King stated that should the Sub-Committee be minded not to revoke or suspend the premises licence, they consider including additional conditions to the licence. A list of proposed additional conditions had been circulated to all parties prior to the meeting.

Mr Patel then stated his case and in doing so indicated that he had 30 years experience in operating well managed establishments. He stated that he operated his current business in partnership with his brother, Mr Prakash Patel and that his brother had the responsibility of purchasing supplies for the premises. He indicated that he was very disappointed with his brother’s actions and that he had warned him not to purchase alcohol illegally in future. He apologised for his brother’s conduct and assured the Sub-Committee that it would not happen again.

In responding to a number of questions by the Sub-Committee, Mr Patel confirmed that it was Mr Prakash Patel that had purchased the illicit alcohol on three separate occasions, with no receipts being issued and indicated that he had prevented his brother from purchasing alcohol in future.

Mr Patel confirmed that he had reduced the hours he spent working at the premises and in responding to a question from a Member, indicated that it was very difficult to recognise counterfeit bottles on display.

Members expressed concern that, following the first incident on 7th October, 2011, when Trading Standards had issued a warning, two further incident had occurred on 18th August, 2012 and 27th June, 2014. In responding to a question from a Member in relation to the reason Mr Prakash Patel had continued purchasing counterfeit alcohol, despite his warning, Mr Patel indicated that his brother was probably “pocketing” the profit.

In view of the seriousness of the incidents, Members expressed concern that Mr Prakash Patel was not in attendance at the meeting. In responding, Mr Patel stated that he was the Licence Premises Holder and thought that he should attend alone.

Mr King indicated that during each seizure, Mr Patel had not been present at the premises. In responding to questions from Trading Standards, Mr Patel confirmed that he visited the wholesalers in the morning and worked between 4 and 5 hours per day during the afternoon. Mr Patel indicated that individuals did enter the premises attempting to sell products, however, his policy had always been to refuse any attempted sales.

In responding, Mr King indicated that he found it difficult to believe that Mr Patel had been ignorant to the fact that his brother had been purchasing and selling counterfeit alcohol at the premises.

Members expressed concern that Mr Patel had been unaware of his brother's conduct and queried whether there had been any discrepancies in the day to day accounts. The Sub-Committee was concerned that Mr Patel did not have adequate procedures in place for monitoring stock levels. In responding, Mr Patel confirmed that, although he had an accountant, he carried out the day to day accounts. He indicated that no discrepancies had been identified, however he did confirm that only a limited number of spirits were sold at the premises.

Responding to a question from Trading Standards, Mr Patel confirmed that Mr Prakash Patel did work at the premises unsupervised, however he no longer had the authority to purchase alcohol. In responding to a further question, Mr Patel confirmed the three named reputable suppliers he purchased stock from.

In responding to a further question from Trading Standards in relation to the second seizure which had occurred on 18th August, 2012, Mr Patel indicated that Mr Prakash Patel had informed him regarding the incident and action taken and again had warned him not to purchase alcohol in that manner. It was noted that only on the third occasion had Mr Patel taken the decision to prohibit Mr Prakash Patel from purchasing alcohol.

In responding to a question from the Legal representative, Mr Patel admitted that an employee rather than his brother would have been dismissed following the second incident.

Following further questions, the Sub-Committee was not confident that the premises would be managed differently in the future. It was reported that Mr Patel had persistently failed to manage the stock purchase in his store and suggested that Mr Patel be removed as Designated Premises Supervisor.

Mr Patel indicated that following the third incident, his son helped out at the premises and assured the Sub-Committee that he would do everything possible to avoid a similar incident occurring in future. Mr Patel reported that he owned the premises and stated that if Mr Prakash Patel was involved in a further incident, he would be dismissed.

In summing up, Mr King indicated that despite a warning being issued on 7th October, 2011, a further two seizures involving Mr Prakash Patel had occurred. He reported that he was very concerned that robust measures had not been put in place to prevent a further incident occurring and stated that if the issue was not tackled, it encouraged other establishments to conduct their business in that manner.

Mr Patel had no further comments.

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 presented at the meeting, the premises licence in respect of Days Newsagents and Stores, 32 Madeley Road, Kingswinford, be suspended for a period of two months.

Reasons for Decision

This is an application for a review of a premises license for Days Newsagent brought by Dudley Trading Standards under the ground of an alleged breach of the licensing objective to prevent crime and disorder.

The premises license holder is a Mr. Narendra Jerambhai Patel. He is also the Designated Premises Supervisor. Mr Patel attended today and confirmed that he was also the owner of the business. He has held the premises license since 19th December 2005.

The facts are that on 7th October 2011, a bottle of counterfeit vodka was seized from the store because the duty paid label was counterfeit.

On 18th August 2012, Trading Standards found 4 further bottles of Vodka with counterfeit duty labels and these were seized from the store. Mr Patel was informed on 27th June 2013 that the bottles were counterfeit and were to be destroyed.

On 11th July 2014, Trading Standards found a further 8 bottles of Whisky and 6 bottles of Vodka on the premises, all of which had counterfeit duty labels.

The evidence of Trading Standards is that the bottles could not have been bought through a secure supply chain and reputable cash and carry outlet. Mr Patel stated that he only became aware that his brother Mr Prakash Patel was buying this counterfeit alcohol from a van, when Trading Standards informed him in 2011. He spoke to his brother and told him that he should not purchase alcohol in this manner. Trading Standards then found further counterfeit alcohol in 2012, and again, he stated that he had strong words with him. Only on the third occasion did he prevent his brother buying alcohol, but he did not explain exactly how he was preventing his brother buying alcohol since his purchasing of the counterfeit alcohol was always covert, and Prakash Patel was probably "pocketing" the profit. He did state in his evidence that had this been an employee rather than his brother, he would probably have dismissed him on the second occasion. However, even after this third incident, his brother was still working in the shop. Mr Patel stated that he would now be making a careful check of stock in and out of the store.

The Sub-Committee finds that Mr Patel has not managed the sale of alcohol in a competent manner from his shop. After the first identification of counterfeit alcohol, he should have put in place far more robust procedures for managing the purchase and sale of alcohol. However the action he took did not prevent a second incident, and he apparently took no strong action to manage his brother, or monitor his stock purchase. Only on the third occasion had he stated that his brother would no longer have authority to buy alcohol, but since he was always buying it covertly, Mr. Patel's assertions did not give the Sub-Committee any confidence that the shop will be managed differently in this respect. He was still employing his brother despite three incidents. The Sub-Committee finds that Mr Patel has persistently failed to manage the stock purchase in his store over at least 3-4 years and therefore takes the step of removing him as the Designated Premises Supervisor for the premises.

Further the Sub-Committee is not satisfied that the store is currently being managed appropriately, or that the concerns of Trading Standards have been taken seriously and acted upon. The Sub-Committee therefore suspends the premises license for a period of 2 months in order to ensure that the premises are managed appropriately in the future, and that Mr Patel recognises the seriousness of purchasing counterfeit alcohol for sale in the shop. The Sub-Committee also takes the step of attaching the two conditions below recommended by Trading Standards which will ensure alcohol is purchased from a legitimate source and receipts are retained.

Conditions

- (1) All alcohol purchased for sale on the premises must only be purchased from a recognised, reputable and traceable wholesaler.
- (2) All alcohol purchased for sale on the premises must be covered by a receipt. The receipt will be on headed notepaper bearing the name, address and contact number of the supplier together with their VAT and company registration number where appropriate. These receipts will be kept in a file for a minimum of 2 years and must be made available for inspection, on demand, by an officer of a responsible authority.

Mr Patel was informed of his right to appeal the decision of the Sub-Committee

11 **Application for House to House Collections Licence – Action for Blind People / National Deaf Children’s Society / Action for Hearing Loss – Personal Fundraising Services**

A report of the Director of Corporate Resources was submitted on an application for the grant of a House to House Collection Licence made by Mr Thomas Vaughan, of Personal Fundraising Services on behalf of the charities known as Action for Blind People / National Deaf Children’s Society / Action for Hearing Loss.

Mr Vaughan, applicant, was not in attendance at the meeting and reasons for his non-attendance had not been given.

Arising from consideration of the information submitted, the Sub-Committee decided to proceed in the applicant’s absence.

Resolved

That, following consideration of the information, the application submitted for the grant of a House to House Collection Licence made by Mr Thomas Vaughan, of Personal Fundraising Services on behalf of the charities known as Action for Blind People / National Deaf Children's Society / Action for Hearing Loss, be refused on the grounds that insufficient information had been provided under paragraph 10f of the report submitted, to enable the Sub-Committee to determine whether the proportion of money to be applied for charitable purposes was adequate.

The meeting ended at 11.30am.

CHAIR