

LICENSING SUB-COMMITTEE 2

Tuesday 28th February, 2012 at 2.30 pm
in The Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Ryder (Chairman)
Councillors Mrs Aston and Woodall

Officers

Mr R Clark (Legal Advisor), Mrs J Elliott (Licensing Officer) and Mrs K Taylor (Directorate of Corporate Resources)

13 APOLOGY FOR ABSENCE

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

14 APPOINTMENT OF SUBSTITUTE MEMBER

It was noted that Councillor Ryder had been appointed as a substitute member for Councillor Mrs Ameson, for this meeting of the Sub-Committee only.

15 DECLARATIONS OF INTEREST

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

16 MINUTES

RESOLVED

That the Minutes of the Meeting of the Sub-Committee held on 26th July, 2011, be approved as a correct record and signed.

17 APPLICATION FOR REVIEW OF PREMISES LICENCE – MURCO COSTCUTTER, STOURBRIDGE SERVICE STATION, 193 HAGLEY ROAD, STOURBRIDGE

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Murco Costcutter, Stourbridge Service Station, 193 Hagley Road, Stourbridge.

Mr R Light, representative for Murco Petroleum Limited, Mr C Mitchener, Licensing Solutions, Mr P Jones, Area Manager, Murco Petroleum Limited, Mr A Edwards, Murco Petroleum Limited, Mr H Samaraweera, Designated Premises Supervisor and Mr J Indrajith, Business Partner were in attendance at the meeting.

Also in attendance were Mr C King, Principal Trading Standards Officer and Ms L Ingram, Enforcement Officer, both from 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 the review had been based on the 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 29th September, 2011, a fifteen year old child test purchaser had been sold alcohol from the premises by a Mr Suresh Welikumburlage, contrary to section 146 (1) and section 153 of the Licensing Act. It was stated that section 153 should be amended to section 161.

On 23rd September, 2011, an officer from Trading Standards carried out a site visit to the premises and spoke to Mr Indrajith, the manager and business partner of Mr Samaraweera. The purpose of the visit was to provide advice in relation to preventing underage sales of age restricted products, including alcohol and provided him with an information pack which included an advice booklet, a Challenge 25 poster, a refusals register, a poster about proof of age and a sample Proof of Age Standards Scheme card. He was also informed that test purchasing was carried out at premises that sell age restricted products and the possible consequences for underage sales. It was reported that during the course of this visit, Mr Indrajith signed a form to confirm that he understood the age restrictions for products including alcohol and to acknowledge receipt of the information pack.

Mr King further stated that on 29th September, 2011, following a request by the West Midlands Police, Trading Standards 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 purchase volunteer purchased a four pint can pack of Fosters Lager, 4% alcohol by volume.

Following the sale, officers visited the premises and discovered that the individual who sold the alcohol to the test purchase volunteer had been a Mr Suresh Welikumburlage. When questioned about the underage sale, Mr Welikumburlage had difficulty responding due to his apparent poor English. He advised that the Designated Premises Supervisor was not present, and stated that he had been left alone in charge of the premises to work a twelve hour shift from 7.00pm to 7.00am.

West Midlands Police were unable to issue Mr Welikumburlage with a Fixed Penalty Notice due to concerns that he was working longer hours than those permitted by his visa, and therefore working illegally.

Mr King stated that following the incident, officers from Trading Standard wrote to Mr Samaraweera on 7th October, 2011 requesting his attendance for an interview on 24th October, 2011. Mr Samaraweera telephoned Trading Standards on 12th October, 2011 to cancel the appointment, as he was out of the country.

Following correspondence sent to Mr Samaraweera inviting him to a rescheduled interview on 4th November, 2011, Mr C Mitchener, Licensing Solutions, telephoned Trading Standards on 3rd November, 2011 to cancel the interview on behalf of Mr Samaraweera.

On 7th November, 2011, Trading Standards received an e-mail from Mr Michener with a formal request to conduct the interview by letter with written questions from Trading Standards. This request was refused.

On 21st November, 2011 Trading Standards wrote again to Mr Samaraweera to offer him a final opportunity to attend a formal interview, on 5th December, 2011 Mr Samaraweera attended the Trading Standards office for the purpose of a formal interview under the provisions of the Police and Criminal Evidence Act. He was accompanied by an officer of Murco Petroleum Ltd, who stated that he wished to attend the interview as Mr Samaraweera's representative. This request was refused.

Whilst under caution, Mr Samaraweera confirmed that he was the Designated Premises Supervisor of Murco Costcutter, and that he operated the franchise with his business partner Mr J Indrajith. He stated that the seller, Mr Welikumburlage, had been interviewed and appointed by himself and his business partner, and denied that Mr Welikumburlage worked a twelve-hour overnight shift.

It was noted that Mr Welikumburlage had received a final written warning following the incident on 29th September, 2011, but had not been sacked and continued to work unsupervised at the premises.

At the conclusion of the interview Mr Samaraweera was requested to provide copies of documents including a copy of the refusals register, the sellers visa, the pay records relating to the seller and a copy of a 'guide to selling alcohol' which had been mentioned by Mr Samaraweera in the interview. Mr King confirmed that these documents had been received on 10th January, 2012.

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

In responding to a question by Mr Light in relation to condition 12, as outlined in the submissions of Trading Standards, Mr King stated that his concerns were based on the evidence, which he believed contravene the licensing objectives. He also stated that test-purchasing exercises were not carried out after midnight.

Mr Light stated that Murco Petroleum Ltd were content to ensure that Mr Welikumburlage does not work after 22.00hrs.

Mr Light then presented the case on behalf of Murco Petroleum Ltd and in doing so highlighted that there had been no objections or representations submitted by local residents or West Midlands Police.

He made reference to the incident on 29th September, 2011 and stated that Murco and those present had taken the matter seriously, and considered all the conditions submitted by Trading Standards, however it was considered that condition 12 would not address the issue and would not be proportionate.

Mr Light informed the Sub-Committee that a new training programme had been introduced and training records for Mr Welikumburlage had been retained.

Mr Light reported that Murco Petroleum Ltd were content to attach conditions numbered 1 – 11 as submitted by Trading Standards, and to attach the following additional conditions:

- (12) The designated premises supervisor, Mr Hendanitharanage Samaraweera, will undertake the BIIAB National Certificate for Designated Premises Supervisors within three months of today's hearing.
- (13) The holder of the premises licence will ensure that:
 - (a) the Portman Group's Retailer alert Bulletins are compiled with;
 - (b) no advertising is displayed, and no stocks are replenished, of any product in breach of the Portman Group's Code of Practice concerning the naming, packaging and promotion of alcoholic drinks.

Mr Light stated that the Company accepted that a genuine mistake had been made on 29th September, 2011, and that a new system of training that had been produced by Mr Mitchener, had been introduced.

He asked that the Sub-Committee attach the additional conditions to the licence, as set out in the representations from Trading Standards and as discussed at the meeting, and not revoke the licence or reduce the licensing hours.

In responding to a question by the Legal Advisor, Mr Mitchener confirmed that Mr Welikumburlage last received training on 27th October, 2011, and that refresher training were carried out on a six monthly basis by Mr Samaraweera.

In responding to a question, Mr Light confirmed that should the Sub-Committee deem appropriate, an additional condition could be attached to the licence to state that Mr Suresh Welikumburlage would not work at the premises after 22.00hrs and before 08.00hrs.

Following comments from all parties, 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 the response should be 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 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 Murco Costcutter, Stourbridge Service Station, 193 Hagley Road, Stourbridge:-

REASON FOR DECISION

Having heard evidence and submissions by both parties, it is clear that there is a large measure of agreement in terms of the fact of an underage sale on 29th September, 2011, and the steps proposed by Trading Standards, and largely accepted by Murco Costcutter. The Sub-Committee is satisfied with the actions taken by Murco, and the conditions that it is willing to accept to address the concerns of Trading Standards. The remaining issue for Trading Standards was the continued employment of Mr Welikumburlage. Whilst the Sub-Committee accepts that his employment conditions are a matter for Murco Costcutter alone, it acknowledges the proposed condition in regard to his employment hours, and finds this helpful in addressing the concerns of Trading Standards.

The Sub-Committee accepts and imposes conditions 1 – 11 on the Agenda, plus 12 – 13 from the submissions of Murco, and a new condition, numbered 14 in relation to the employment hours of Mr Welikumburlage.

The Sub-Committee believes that in this application a reduction of late night hours is disproportionate to the issue identified and the inclusion of condition 14 does address this specific concern.

The following conditions to be applied to the premises licence are as follows: -

- (1) A Challenge 25 policy will be operated at the premises whereby any individual attempting to purchase alcohol who appears to be under 25 years of age will be asked to provide valid identification to prove they are 18 years or older. All staff must be made aware of this policy.
- (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) 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 (PLH) shall check the book once a week ensuring it is completed and up-to-date. The PLH will sign the book each time it is checked. This book shall be made available for inspection by an officer of the Trading Standards Department and/or 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' CCTV shall be viewed 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 the Trading Standards Department and/or Police.
- (8) No sale of alcohol may be made under the premises licence at a time when the Designated Premises Supervisor does not hold the Level 2 Award for Designated Premises Supervisors. Proof of qualification shall be provided to the Police and/or an officer of the Trading Standards Department upon request.
- (9) All persons engaged to sell alcohol will have completed a training programme which includes a written test to verify the competency of that person prior to them being authorised to sell alcohol.
- (10) 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.
- (11) A file shall be maintained at the premises for each person authorised to sell alcohol. This file shall contain all training records for each person along with copies of monthly reviews as stated in point 10. This file shall be available for inspection by an officer of the Trading Standards Department and/or Police upon request.

- (12) The designated premises supervisor, Mr Hendanitharanage Samaraweera, will undertake the BIIAB National Certificate for Designated Premises Supervisors within three months of today's hearing.
 - (13) The holder of the premises licence will ensure that:
 - (a) the Portman Group's Retailer alert Bulletins are compiled with;
 - (b) no advertising is displayed, and no stocks are replenished, of any product in breach of the Portman Group's Code of Practice concerning the naming, packaging and promotion of alcoholic drinks.
 - (14) That Mr Suresh Welikumburlage would not work at the premises after 22.00hrs and before 08.00hrs.
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18 APPLICATION FOR REVIEW OF A PREMISES LICENCE – 7 TILL LATE CONVENIENCE STORE, BUSH ROAD, NETHERTON, DUDLEY

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of 7 Till Late Convenience Store, Bush Road, Netherton, Dudley.

Mr Mandeep Singh Virdee, Designated Premises Supervisor was in attendance.

Also in attendance were Mr C King, Principal Trading Standards Officer and Ms L Ingram, Enforcement Officer, both from the Directorate of the Urban Environment.

It was noted that Mrs A K Virdee, Premises Licence Holder, was not in attendance at the meeting.

In responding to a question by the Chairman, Mr M Virdee confirmed that Mrs Virdee was his mother, and that she was currently in Sri Lanka and would not return until 17th March, 2012.

In view of this, the Legal Advisor informed the Sub-Committee that they could decide to hear the matter in Mrs Virdee's absence, or defer consideration of the matter upon the return of Mrs Virdee, as she was the Premises Licence Holder.

Following a brief discussion in relation to the requirement of an interpreter for Mrs Virdee it was

RESOLVED

That the application for the review of the premises licence in respect of 7 Till Late Convenience Store, Bush Road, Netherton, Dudley be deferred to a future meeting of the Sub-Committee following Mrs Virdee's return from Sri Lanka.

19 APPLICATION FOR HOUSE TO HOUSE COLLECTIONS LICENCE –
CANCER RESEARCH AND GENETICS UK

A report of the Director of Corporate Resources was submitted on an application for the grant of a House-to-House Collections Licence in respect of Cancer Research and Genetics UK.

The Licensing Officer informed the Sub-Committee that she had received notification from the applicant requesting that the matter be deferred to allow for the submission of audited accounts.

RESOLVED

That, in view of the applicant's non-attendance, the application received for the grant of a House-to-House Collections Licence in respect of Cancer Research and Genetics UK, be deferred to a future meeting of the Sub-Committee.

20 APPLICATION FOR HOUSE TO HOUSE COLLECTIONS LICENCE –
CHILDREN'S HEARTS

A report of the Director of Corporate Resources was submitted on an application for the grant of a House-to-House Collections Licence in respect of Children's Hearts.

The Licensing Officer informed the Sub-Committee that she had received notification from the applicant requesting that the matter be deferred to allow for the submission of audited accounts.

RESOLVED

That, in view of the applicant's non-attendance, the application received for the grant of a House-to-House Collections Licence in respect of Children's Hearts, be deferred to a future meeting of the Sub-Committee.

The meeting ended at 3.35pm

CHAIRMAN