

LICENSING SUB-COMMITTEE 4

TUESDAY 6th NOVEMBER, 2012

AT 10.00 AM
COUNCIL CHAMBER
COUNCIL HOUSE
PRIORY ROAD
DUDLEY

If you (or anyone you know) is attending the meeting and requires assistance to access the venue and/or its facilities, could you please contact Democratic Services in advance and we will do our best to help you

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www.dudley.gov.uk


Dudley
Metropolitan Borough Council

IMPORTANT NOTICE

MEETINGS IN DUDLEY COUNCIL HOUSE

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Your ref:

Our ref:
KT

Please ask for:
Karen Taylor

Telephone No.
01384 818116

25th October, 2012

Dear Member

Meeting of Licensing Sub-Committee 4 – Tuesday 6th November, 2012

You are requested to attend a meeting of Licensing Sub-Committee 4 to be held on Tuesday 6th November, 2012 at 10.00 am in the Council Chamber at the Council House, Priory Road, Dudley, West Midlands, DY1 1HF to consider the business set out in the Agenda below.

The agenda and reports for this meeting can be viewed on the Council's internet site www.dudley.gov.uk and follow the links to Meetings and Decisions.

Yours sincerely



Director of Corporate Resources

A G E N D A

1. APOLOGIES FOR ABSENCE

To receive apologies for absence from the meeting.

2. APPOINTMENT OF SUBSTITUTE MEMBERS

To report the appointment of any substitutes for this meeting of the Committee.

3. DECLARATIONS OF INTEREST

To receive declarations of interest in accordance with the Members' code of conduct.

4. MINUTES

To approve as a correct record and sign the minutes of the meeting held on 2nd October, 2012 (copy attached).

5. APPLICATION TO VARY A PREMISES LICENCE – HOPE TAVERN, 50 CINDER BANK, NETHERTON (PAGES 1 – 4)

To consider a report of the Director of Corporate Resources.

6. TO ANSWER QUESTIONS UNDER COUNCIL PROCEDURE RULE 11.8 (IF ANY).

Distribution

Councillors: Roberts (Chair) Herbert Taylor

LICENSING SUB-COMMITTEE 4

Tuesday 2nd October, 2012 at 10.10 am
in the Council Chamber, The Council House, Dudley

PRESENT:-

Councillor Roberts (Chair)
Councillors Cowell and Taylor

Officers: -

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

23 APOLOGY FOR ABSENCE

An apology for absence from the meeting was received on behalf of Councillor Hanif.

24 APPOINTMENT OF SUBSTITUTE MEMBER

It was reported that Councillor Cowell had been appointed as a substitute Member for Councillor Hanif for this meeting of the Sub-Committee only.

25 DECLARATIONS OF INTEREST

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

26 MINUTES

RESOLVED

That the minutes of the meeting of the Sub-Committee held on 28th August, 2012, be approved as a correct record and signed.

27 APPLICATION FOR CONSENT TO ENGAGE IN STREET TRADING – MS S SINNETT

A report of the Director of Corporate Resources was submitted on an application made by Ms S Sinnett for the grant of consent to engage in street trading at Gornal Crematorium, Chase Road, Gornal Wood, Dudley.

Mr I Bailey, Principal Bereavement Services Officer, was in attendance at the meeting.

Also in attendance at the meeting were Ms S Sinnett and her partner, Mr T Wesson.

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

Ms Sinnett then presented her case, and in doing so informed the Sub-Committee that she had a personal interest in selling flowers at the Crematorium as she regularly visited the site, and would like the opportunity to advise customers in respect of purchasing flowers.

In responding to a question by the Legal Advisor, Ms Sinnett stated that she had no previous business experience and outlined her proposals in order to register and set up the business as soon as possible.

Following a brief discussion it was

RESOLVED

That the application made by Ms S Sinnett for the grant of consent to engage in street trading at Gornal Crematorium, Chase Road, Gornal Wood, Dudley be approved.

28

APPLICATION FOR CONSENT TO ENGAGE IN STREET TRADING – MR AND MRS BRIDGEWATER – HIGH STREET / PECKINGHAM STREET, HALESOWEN

A report of the Director of Corporate Resources was submitted on an application made by Mr and Mrs Bridgewater for the grant of a consent to engage in street trading in High Street / Peckingham Street, Halesowen.

It was noted that the applicants were not in attendance at the meeting.

The Licensing Officer confirmed that the applicants had requested a deferment.

RESOLVED

That the application made by Mr and Mrs Bridgewater for the grant of a consent to engage in street trading in High Street / Peckingham Street be deferred to a future Sub-Committee meeting.

APPLICATION FOR HOUSE TO HOUSE COLLECTIONS LICENCE –
RAINBOW DOG RESCUE

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 Rainbow Dog Rescue.

Mrs A Patel, Applicant and Trustee of Rainbow Dog Rescue and Mr Patel, Volunteer, were in attendance at the meeting.

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

It was noted that as the company had recently registered as a charity, the Applicant was unable to supply annual accounts since the current year-end was not until February 2013.

Mrs Patel then explained the background to the charity and in doing so stated that the main focus of the charity was to find a 'forever home' for unloved dogs.

It was noted that all dogs received medical treatment if necessary and once a dog had been re-homed, a number of follow-up visits and calls would be arranged.

Mrs Patel further stated that it was intended in the long-term to obtain a shop in the Dudley area to sell donated products in order to produce revenue to support the charity.

In responding to a question by a member in regard to the number of volunteers, Mrs Patel responded by stating that there were four volunteers who fostered the dogs until they were re-homed, and that further information on how to apply to be a volunteer was available on the website.

Clarification was sought with regard to the requirement for a licence to collect donated items from members of the public via e-mail or telephone, the Licensing Officer responded by stating that a licence for donated items was not required.

In responding to a question by the Legal Advisor, Mrs Patel informed the Sub-Committee that Rainbow Dog Rescue was a local charity only.

Following a brief discussion it was

RESOLVED

That, following careful consideration of the application for the grant of a House to House Collections Licence in respect of Rainbow Dog Rescue be deferred for consideration at a future meeting of the Sub-Committee pending submission of the financial accounts.

30

APPLICATION FOR REVIEW OF PREMISES LICENCE – KAL AND BROTHERS NEWS, 35 CHURCH STREET, PENNETT, BRIERLEY HILL

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Kal and Brothers News, 35 Church Street, Pensnett, Brierley Hill.

Mr N Hussain, Premises Licence Holder was in attendance together with his Solicitor, Mr A Ubi.

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

Following introductions, Mrs J Elliott, Licensing Officer, Directorate of Corporate Resources, presented the report on behalf of the Council.

The Legal Advisor informed the Sub-Committee that since the writing of the report, further information had been received but as it was not relevant to the review he would be advising the Sub-Committee not to consider the additional information. All parties agreed to this proposal.

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 that the sale of alcohol to underage young people to be very serious and supported the recommendation to revoke or suspend the premises licence.

Arising from comments made, it was noted that the representations made by Dudley PCT were general comments and not directly linked to the premises.

Mr King then 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 18th May 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

It was further noted that on 3rd August, 2012, two underaged females had also been sold alcohol from the premises.

On 24th August, 2011, an officer from Trading Standards carried out a visit to the premises and spoke to a Mr R Khan, who informed that he was the owner of the premises and that the premises was being renovated and due to re-open on 26th August, 2011. 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 how to check it and the benefits of keeping a refusals register. Mr Khan was provided with an information pack that 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 Khan 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 18th May, 2012, following a complaint received by Trading Standards from a consumer stating that alcohol and cigarettes had been sold to her underaged daughter, Trading Standings 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 female test purchaser volunteer purchased a 750ml bottle of Jacques Cider with Fruit, 5.5% alcohol by volume. The seller made no attempt to ask the age of the volunteer, and did not ask for identification.

It was noted that Mr King was present in the premises at the same time that the volunteer had purchased the age-restricted items.

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 Mr A Qayuum, also present was Mr R Khan. When questioned Mr Qayuum stated his date of birth and that he was currently living at the premises.

During the questioning of Mr Qayuum in respect of the sale, he had some difficulty in responding due to his apparent poor English, but did admit selling the alcohol therefore he was issued with a Fixed Penalty Notice. It was noted that the Police Officer could not issue Mr Qayuum with the Fixed Penalty Notice as Mr Qayuum vacated the premises through a side door, and could not be located.

Mr Khan was then questioned by officers', where he challenged the sale and stated that he had not been present to witness the sale, and that he did not believe that the sale had taken place suggesting that the volunteer had stolen the alcohol.

Mr Khan was requested to contact Mr Hussain, Premises Licence Holder, but was unable to do so.

It was noted that there were no CCTV in the premises and no information displayed in relation to age restricted sales which had been previously provided to Mr Khan. Mr Khan also could not produce a Refusals Register.

Mr King further stated that on 3rd August, 2012, a further test purchasing exercise took place to determine compliance with the sale of alcohol to an under aged volunteer. On that occasion, a sixteen year old female test purchaser volunteer purchased a bottle of Mad Frog Vodka Mix drink, 5% alcohol by volume, which was witnessed by a Trading Standards Age Restricted Products Officer.

Following the sale, Trading Standards personnel and a Police Officer, accompanied by a BBC TV film crew, returned to the premises and discovered that the individual who sold the alcohol to the test purchaser had been a Mr A Qayuum, the same individual who had sold alcohol to a test purchase volunteer on 18th May, 2012. Also present was Mr F Khan and Mr M Qayoom who was uncooperative and obstructive, and advised that Mr Hussain, Premises Licence Holder, was not available and could not be contacted.

Mr A Qayuum was then issued with two Fixed Penalty Notices, one of these being for the offence committed on 18th May, 2012.

On 6th August, 2012 Trading Standards visited the premises and served a Voluntary Closure Notice for Persistently Selling Alcohol to Children under section 169A(2) of the Licensing Act 2003, at this time Mr Khan was present at the premises. Mr Khan advised the officers that Mr Hussain had left the premises, however the officers were able to speak with him on the telephone and advised that the closure notice would be left at the premises with a copy sent to his home address.

Following the delivery of the closure notice, officers from Trading Standards visited the premises on 10th August, 2012 to query whether Mr Hussain had received the notice. The officers were advised that Mr Hussain was not at the premises but that he had received the notice and would be 'taking it to trial'.

On 16th August, 2012 Trading Standards visited the premises for a pre-arranged appointment with Mr Hussain, who stated that he would not be accepting the voluntary closure notice.

On Saturday 18th August, 2012 the Police attended the premises following the sale of alcohol to two underage females which resulted in an anti social behaviour incident. It was noted that the females alleged that they were knowingly sold alcohol from the premises by Mr Khan.

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

In responding to a question by Mr Ubi in relation to the visit to the premises on 24th August, 2011 and whether any effort was made to contact Mr Hussain, and that the information pack should have only been presented to the Premises Licence Holder, Mr King advised that he would be unable to respond as he was not present at that visit, however the procedure was correctly followed in that the officer had presented the information pack to the person in charge who at that time was Mr Khan.

In responding to a question by the Legal Advisor, Mr King stated that there had been no changes made to the premises between the first sale on 18th May, 2012 and 3rd August, 2012. It was noted that Mr Wintrip had witnessed the sale on 3rd August, 2012 and confirmed that there was no information displayed in respect of no point of sale and that Mr Khan was unable to produce a Refusals Register.

PC Taylor then presented the representations of the West Midlands Police and in doing so informed the Sub-Committee that both of the Fixed Penalty Notices issued to Mr Qayuum had not been paid.

Following agreement by all parties, PC Taylor then proceeded to read out the statements provided by the two underage females who had been sold alcohol on 18th August, 2012 which resulted in them becoming extremely inebriated.

PC Tallis referred to the incident on 18th August, 2012 and stated that the concerned parents of the underage females had visited the premises after contacting West Midlands Police and were very distressed. Mr Ubi acknowledged that it was understandable for the parents to be irate.

Mr Ubi then presented the case on behalf of Mr Hussain, and in doing so stated that Mr Hussain was unwell and would not be participating in the meeting, and that the evidence presented would not be challenged. He stated that on both occasions, Mr Hussain was not present at the premises therefore he did not sell the alcohol to children, and that Trading Standards stated that the main cause for the failures was due to the poor management of the premises.

Mr Ubi stated that Mr Hussain had been the Premises Licence Holder since 2005, and that there had been no incidents or complaints prior to May, 2012.

Reference was made to the voluntary closure notice that was served on 6th August, 2012, which Mr Ubi suggested that Mr Hussain should have accepted the notice then the issue may have been resolved beforehand.

Reference was also made to the proposed additional conditions that had been submitted by Trading Standards, where Mr Ubi suggested that by implementing the conditions it would address the concerns expressed by Trading Standards in replacement of revoking the premises licence issued to Mr Hussain.

Mr Ubi then addressed all of the eleven conditions listed and confirmed that Mr Hussain was in agreement with the proposals.

In responding to a question by the Legal Advisor in relation to the number of conditions that were already in place, Mr Ubi confirmed that CCTV had been installed but that it had not been approved by West Midlands Police, and that Mr Hussain had installed a Refusals Register.

It was noted that there were three members of staff at the premises, including Mr Hussain and although no training had been given Mr Ubi assured the Sub-Committee that all employees would be trained.

In responding to a question by the Legal Advisor, Mr Ubi stated that in order for Mr Hussain to implement all conditions, a period of eight to twelve weeks should be sufficient.

In responding to a question by a member, Mr Ubi confirmed that Mr Hussain had not received any training since obtaining his licence and that Mr Hussain would be present at the premises between 08:00 and 23:00 hours.

In responding to a question by a member in relation to the reasons why the management structure had fragmented within a year, Mr Ubi suggested that it might have been due to Mr Hussain's health difficulties.

In responding to a question by a member in relation to employees not complying with the information presented to Mr Khan on 24th August, 2011, Mr Ubi confirmed this was the result of a poor management structure.

Mr King referred to the voluntary closure notice that was served on 6th August, 2012, which Mr Ubi stated that Mr Hussain should have accepted the notice in order to resolve any concerns beforehand. Mr King stated that the notice had no bearing on the review and that it had been issued due to concerns of poor management at the premises and to protect children who were at risk.

It was noted that the percentage of stock that was sold which related to an age restricted product was 66%.

PC Taylor referred to the CCTV which had been installed and stated that he had not been contacted to seek advice and asked the Sub-Committee that if the conditions were imposed then the CCTV must be working, maintained, be available for twenty-eight days and all staff must be trained to use the system.

In summing up, Mr King emphasised his concerns in relation to the poor management of the premises, and stated that the representations made did not reassure him that the premises would change.

In summing up, Mr Ubi confirmed that there was a significant package of concern for children and that the sale of alcohol to children was not permitted. He stated that Mr Hussain was aware and accepted all the conditions submitted by Trading Standards in order to protect children as far as they can be protected.

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.

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

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

Following careful consideration of the information contained within the report and as reported at the meeting, the premises licence in respect of Kal and Brothers News, 35 Church Street, Pensnett, Brierley Hill be revoked.

REASON FOR DECISION

In reviewing this premises licence, the Sub-Committee has carefully listened to the information put before them from Public Health, Trading Standards and the Police.

We have also listened to the information put forward by the premises licence holder through his solicitor.

Having considered everything, we have heard this morning, the Sub-Committee has decided to revoke the premises licence in respect of Kal and Brothers News, 35 Church Street, Pensnett, Brierley Hill for the following reasons :-

- 1) The Prevention of Crime and Disorder
- 2) The Protection of Children from Harm

We, the Sub-Committee feel, there have been three known incidents where alcohol has been sold to minors and that the premises licence holder had done nothing to prevent or discourage these sales.

During the seven years he has held the licence, he has not had any training nor have his staff and there is no evidence of any of the policies that he suggested he puts in place. He has not co-operated or taken on the advice of Trading Standards and we feel it unlikely that the conditions suggested, in conjunction with a suspension would be sufficient to fulfil the licensing objectives.

Therefore we feel we have no choice but to revoke this licence.

The meeting ended at 1.00 pm

CHAIR

Licensing Sub-Committee 4 – 6th November 2012

Report of the Director of Corporate Resources

Application to Vary a Premises Licence –

Hope Tavern, 50 Cinder Bank, Netherton, Dudley

Purpose of Report

1. To consider the application for variation of the premises licence in respect of the premises known as Hope Tavern, 50 Cinder Bank, Netherton, Dudley, West Midlands, DY2 9BB.

Background

2. The Hope Tavern was first issued with a premises licence on the 19th September 2005. That licence was subsequently transferred on the 11th April 2006 and again on the 27th April 2006, 16th August 2006, 5th September 2006, 26th April 2007, 30th December 2009 and again on the 7th December 2011.
3. The current premises licence is issued as follows:-

Sale of Alcohol and Regulated Entertainment

Mondays – Saturday	10.00 – 00.00
Sundays	12.00 – 00.00

Late Night Refreshment

Monday – Sunday	23.00 – 00.00
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When hours for sale of alcohol are extended hereunder the hours for regulated entertainment/late night refreshment are also extended.

New Years Eve 10.00 to New Years Day terminal hour as proposed.

To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours such opening times for this purpose to be confirmed 14 days prior notice in writing to the police before the premises intend to open such

notification to include the opening times and the sporting event which is to be shown.

4. The current premises licence holder is Mr D S Sangha.
5. On the 21st September 2012, Mr Sangha made application for the variation of the premises licence. A copy of that application has been circulated to the Committee Members and interested parties in accordance with the Licensing Act 2003.
6. The application had the following documents enclosed:-
 - Correct fee of £190.00
 - Plan of the premises
7. The application is as follows:-

Sale of Alcohol/Recorded Music/Performance of Dance

Monday – Thursday	10.00 – 00.00
Friday – Sunday	10.00 – 02.00
8. Confirmation that copies of the application form and supporting documentation have been served on the relevant authorities has been received.
9. Representations have been received from Councillor Zada, Councillor Duckworth and Councillor Wood on behalf of local residents. A copy of those representations have been served on the applicant, Committee Members and all interested parties in accordance with the Licensing Act 2003.
10. It should be noted however that the Licensing Sub-Committee cannot under the Licensing Act 2003 consider parking as a relevant issue to this variation application.
11. The Licensing Enforcement Officer, Mr Brian Hughes visited the premises on Wednesday 3rd October 2012. Mr Hughes spoke with the Designated Premises Supervisor regarding a complaint of music being heard well into the early hours on the previous Sunday morning. It transpired however that the premises had in force a temporary event notice (TENS) on that particular night which allowed music to be played until 2.00am
12. Temporary Event Notices can only be objected to by the West Midlands Police or the Environmental Health Department. In this case neither agency made any objection and therefore notices were issued for the 29th and 30th September and the 12th, 13th and 14th October 2012. A late Temporary Event Notice was received for the 20th October 2012, representations were received from the West Midlands Police and as a consequence the Temporary Event Notice was refused.
13. Representations have been received from a number of local residents including a petition. A copy of those representations have been served on the applicant, Committee Members and all interested parties.

14. Representations were also received from the West Midlands Police and Food and Occupational Safety. Those representations were also forwarded to the applicant, Committee Members and interested parties in accordance with the Licensing Act 2003.
15. This application falls within the Council's recent responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

Finance

16. There are no financial implications.

Law

17. The law relating to the granting of applications to vary premises licences is governed by the Licensing Act 2003, part 3, section 34.
18. Pursuant to section 35(3)(a) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
 - Hold a hearing to consider item, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and,
 - Having regard to the representations, take such of steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
 - The steps are:-
 - To modify the conditions of licence;
 - To reject the whole or part of the application.
19. Pursuant to Section 36(1) and (4) of the Licensing Act 2003 where an application (or any part of an application) is granted or rejected under Section 35 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to :-
 - the applicant;
 - any person who made relevant representations in respect of the application and
 - the Chief Officer of Police for the police area in which the premises are situated.
20. In pursuance of regulation 26(1) of the Licensing Act 2003 (Hearing Regulations 2005), the licensing authority must make its determination at the conclusion of the hearing.

21. In pursuance of schedule 5, section 4 if the Licensing Authority refuse to grant the application vary the premises licence, there is a right of appeal to the Magistrates' Court.
22. In pursuance of schedule 5, section 4(2) where the Licensing Authority grant an application to vary a premises licence in whole or in part. The applicant may appeal against any decision to modify the conditions of the licence under subsection 4(a) of section 35 of the Licensing Act 2003.
23. In pursuance of schedule 5 section 4(3) where a person who made relevant representations to the application desires to contend:-
 - a) that any variation made ought not to have been made, or
 - b) that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified item in a different way, under subsection 4(a) of section 35 of the Licensing Act.

They have the right of appeal to the Magistrates' Court.

Equality Impact

24. This report takes into account the Council's policy on equal opportunities.
25. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
26. There has been no consultation or involvement of children and young people in developing these proposals.

Recommendation

27. That the Sub-Committee determine the application.



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DIRECTOR OF CORPORATE RESOURCES

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List of Background Papers

None