

**Minutes of the Licensing Sub-Committee 1
Tuesday, 28th June 2022 at 10.25 am
In the Council Chamber, Council House, Dudley**

Present:

Councillor J Clinton (Chair)
Councillors J Cowell and P Miller

Officers: -

N Slym – Assistant Team Manager - Licensing and Waste Enforcement (Directorate of Public Realm), R Clark – Principal Solicitor and H Mills - Democratic Services Officer (Directorate of Finance and Legal).

1. **Declarations of Interest**

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

2. **Minutes**

Resolved

That the minutes of the meetings held on 25th January, 2022, be approved as a correct record and signed.

3. **Application for Review of a Premises Licence – Meadowlark Express, 115-116 Dibdale Road, Milking Bank**

A report of the Interim Director of Public Realm was submitted for the review of the premises licence in respect of Meadowlark Express (formerly Bargain Booze/Costcutter) 115-116 Dibdale Road, Milking Bank, Dudley.

The following persons were in attendance at the meeting:-

K Turley – West Midlands Police
PC S Berry – West Midlands Police (Observing)
K Mullings – Enforcement Officer (Licensing and Waste Enforcement)
W Hillary-Patten – Senior Health Improvement Practitioner (Public Health)
L Reuben - Public Protection Manager (Observing)
R Jones – Enforcement Officer (Trading Standards)

Following introductions, the Assistant Team Manager - Licensing and Waste Enforcement presented the report on behalf of the Council, advising that the premises licence was transferred to K Balendran on 5th April, 2022, although it was effective from 16th March, 2022. An application for review of the premises licence was received from Environmental Health and Trading Standards on 10th May, 2022, on the grounds of breaches to the licensing objectives in relation to the prevention of crime and disorder and the protection of children from harm.

It was confirmed that K Balendran, Premises Licence Holder (PLH), was not in attendance at the meeting. It was reported that several attempts had been made to contact him by telephone and voicemail messages had been left for him to make contact. It was noted that a response from K Balendran had been received via text message confirming that he would 'call back later'.

The Assistant Team Manager - Licensing and Waste Enforcement confirmed that confirmation of the meeting date had been sent by email to K Balendran on 10th June, 2022 and a subsequent email was sent on 20th June, 2022 attaching the relevant paperwork. On neither occasion had an undeliverable message been received.

Having consulted with the Relevant Authorities present at the meeting and in light of the information presented, the Sub-Committee were of the view that the Premises Licence Holder had had sufficient opportunity to attend the meeting and agreed to proceed with the hearing, in the absence of the Premises Licence Holder, K Balendran.

R Jones then presented the facts of the case relating to breaches in relation to the prevention of crime and disorder and the protection of children from harm, under the Licensing Act 2003, that had resulted in the application being made for the review of the premises licence.

It was reported that K Balendran was the Premises Licence Holder and the Designated Premises Supervisor (DPS) at the premises.

It was noted that on 31st March, 2022, a 14-year-old was sold alcohol, namely a four pack of Bud Light lager with 3.5% ABV from the premises, contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.



LSBC1/2

The Sub-Committee were informed of the circumstances surrounding the underage sale, in particular that the seller had not requested identification and did not respond to Officers following notification that they had sold alcohol to an underage person. It was reported that K Balendran had not been present at the premises at the time of the underage sale, however attended approximately 10 minutes later, at which K Balendran confirmed that the premises licence was in the process of being transferred to himself. K Balendran was unable to produce a Refusals Register or any training records for staff.

The Sub-Committee were also informed that whilst dealing with the underage sale, 107 disposable vape devices were seized under the Consumer Rights Act 2015, due to them being in excess of the legal limit and in breach of the Tobacco and Related Products Regulations 2016. Trading Standards therefore recommended that the Premises Licence be suspended for a period of up to three months to enable the Premises Licence Holder opportunity to provide evidence of compliance with the conditions attached to the premises licence.

K Turley then presented the representations on behalf of West Midlands Police and in doing so expressed their concern with regard to the overall control and day to day management of the premises and fully supported the review of the premises licence following the sale of alcohol to an underage person and the seizure of illegal disposable vaping devices.

W Hillary-Patten reported on the impact and risks to an adolescent's development as a consequence of alcohol, nicotine and nicotine inhaling production consumption. The act of underage sale to a minor and the seizure of a high quantity of disposable vape devices was considered a serious breach of the Licensing Act 2003 and Public Health fully supported the findings and recommendation proposed by Trading Standards.

K Mullings presented the representations of Dudley Licensing Authority, and in doing so confirmed that this was the second review called for in respect of this property, the first being under the previous management. It was reported that compliance visits were undertaken on 10th May, 2022, 17th May, 2022 and 20th May, 2022, on all occasions K Balendran was in attendance.

It was reported that during the first compliance visit, the conditions attached to the premises licence were discussed and it was identified that conditions 1 to 3 were not being complied with. K Balendran was unaware that the premises operated a Challenge 25 policy, even though posters were displayed on the premises and was unable to provide training records for any staff members employed at the premises. Following the visit, an advisory letter was sent to the Premises Licence Holder, making him aware of his responsibilities and the importance of complying with the conditions attached to his licence.



The Sub-Committee were informed that further compliance visits were undertaken and subsequent follow up advice letters sent. K Balendran confirmed that the employee who had committed the offence/sale, no longer worked at the premises, however K Balendran continued to fail to comply with the conditions attached to the premises licence. The Licensing Authority therefore fully supported Trading Standards and the recommendation that had been proposed.

In response to a question raised by Councillor J Cowell, all relevant authorities present at the meeting unanimously agreed that they were of the view, that with support, the Premises Licence Holder would be able to adhere with the recommendation.

Arising from questions raised by R Clark, Principal Solicitor, it was confirmed that whilst the Premises Licence Holder's registered address was not within close proximity to the premises, he had been present at all pre-arranged visits and that although a number of wholesalers within the region had been identified as selling illegal vapes, all sellers had received correspondence from the Local Authority with regard to the legality of nicotine inhaling productions and the Tobacco Regulation Law, which had been effective from 2016.

R Clark provided a legal summary in relation to the case and the steps available to the Sub-Committee, following which all parties withdrew from the meeting to enable the Sub-Committee to determine the review.

The Sub-Committee having made their decision invited the parties to return and the Principal Solicitor outlined the decision.

Resolved

- (1.) That following careful consideration of the information contained in the report submitted and presented at the meeting, the premises licence in respect of the premises known as Meadowlark Express, 115-116 Dibdale Road, Milking Bank, be suspended for a period of three months.
- (2.) That the Designated Premises Supervisor be removed as he had not fulfilled his duties in order to prevent breaches of the crime and disorder and the protection of young people from harm licensing objectives.

Reasons for the Decision

The Sub-Committee, having considered all of the evidence available to them at the meeting, were of the view that the Designated Premises Supervisor (DPS) had not fulfilled his duties in order to prevent breaches of the crime and disorder and the protection of young people from harm licensing objectives. It therefore took the step to remove the DPS for the premises.



LSBC1/4

The Sub-Committee considered the application to revoke the premises licence, however concluded that it would suspend the premises licence for a period of three months to enable the new Designated Premises Supervisor to read and understand the conditions on the premises licence, and to put procedures in place to ensure that they were complied with, and the licencing objectives upheld. Specifically, staff must be trained in the sale of alcohol and the challenge 25 policy, staff records and training records must be created and maintained by regular evidenced reviews and a refusals register properly maintained at all times.

3. **Application for Review of a Premises Licence – News Express (the Wine Cellar), 15-17 Abbey Road, Gornal, Dudley**

A report of the Interim Director of Public Realm was submitted to consider an application for the review of a premises licence in respect of News Express (The Wine Cellar), 15-17 Abbey Road, Gornal Dudley.

The following persons were in attendance at the meeting:-

F Humphreys – Barrister, Kings Chambers, together with a colleague observing the proceedings

A Singh – Premises Licence Holder

K Turley – West Midlands Police

PC S Berry – West Midlands Police

W Hillary-Patten – Senior Health Improvement Practitioner (Public Health)

L Reuben - Public Protection Manager

R Jones – Enforcement Officer (Trading Standards)

Following introductions, the Assistant Team Manager - Licensing and Waste Enforcement presented the report on behalf of the Council, and in doing so advised that the premises licence had transferred to A Singh on 29th July, 2021, who was also the Designated Premises Supervisor. The current operating times at the premises were Monday to Sunday (inclusive), 7am to 11pm. An application for review of the premises licence was received on 5th May, 2022, from Environmental Health and Trading Standards on the grounds of breaches to the licensing objectives in relation to the prevention of crime and disorder and the protection of children from harm.

The Sub-Committee were informed that whilst representations in support of the review had been received from three Ward Councillors, confirmation of their attendance at the meeting had not been received.

R Jones then presented the facts of the case relating to the prevention of crime and disorder and the protection of children from harm under the Licensing Act 2003 and outlined the reasons that had resulted in the application being made for the review of the premises licence.



It was noted that on 31st January, 2022, a 15 year old test purchaser was sold a disposable vaping device, namely a Geek Bar, containing 2% nicotine, from the premises, contrary to The Nicotine Inhaling Products (age of Sale and Proxy Purchasing) Regulations 2015. It was further noted that on 31st March, 2022, a 14 year old test purchaser was sold alcohol, namely 4 cans of Carling with a 4% ABV, contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

The Sub-Committee were informed of the circumstances surrounding both incidents, in particular that the same sales assistant had been involved in both incidents, and on neither occasion had the sales assistant requested identification or responded to Officers following notification of the offences. It was further reported that immediately following the underage sale on 31st January, 2022, a large quantity of disposable vape devices were seized, which exceeded the legal limit of 2ml and in direct contravention of the Tobacco and Related Products Regulations 2016. The Premises Licence Holder was advised at the time not to sell or stock devices in excess of 2ml capacity, however, on the 2nd March, 2022, further illegal disposable vape devices were seized from the premises.

It was reported that the Premises Licence Holder had not been forthcoming with providing Closed Circuit Television footage for the requested period of 3pm on 30th March, 2022 to 3pm on 1st April, 2022. It was also reported that on 31st March, 2022, following the test purchase, the seller demonstrated that the Electronic Point of Sale (EPOS) system on the shops till was operating correctly and displayed a clear 'Challenge 25' warning.

In light of the two separate underage sales within a period of three months, Trading Standards recommended that the Sub-Committee considered the revocation of the premises Licence.

PC Berry then presented the representations on behalf of West Midlands Police and in doing so confirmed that they fully supported the review of the premises licence as both incidents reported, were in direct contravention of the licensing objectives.

PC Berry further stated that between 23rd November 2021 and 12th January, 2022 several calls had been made to West Midlands Police from a neighbouring store to The Wine Cellar, reporting incidents of anti-social behaviour by local youths. Following further investigation, it was established that youths had congregated outside The Wine Cellar, entering and remaining in the store for a significant period of time. The intelligence of which was then shared with Trading Standards.



LSBC1/6

W Hillary-Patten, on behalf of Public Health reported on the effects of nicotine and nicotine inhaling products to a minor, as well as the risks to an adolescents development as a consequence of alcohol consumption and the detrimental effect it may have to their learning and achievements. The act of underage sales to minors on two separate occasions was considered a serious breach of the Licensing Act 2003. The premises was an area that experienced an increased level of anti-social behaviour and therefore Public Health fully supported the findings and recommendation proposed by Trading Standards.

Arising from questions raised by F Humphreys, R Jones confirmed that the review had been requested following the two sales of age restricted products to minors, and the aggravated factors and health implications caused as a result of those sales. The store selling illegal vape devices was also seen to demonstrate poor management and that the store was not achieving the licensing objectives.

Following further questions, R Jones confirmed that he had undertaken a number of routine visits to the premises following the two incidents and although had not identified any issues, he had experienced a lack of co-operation from the Premises Licence Holder and the employees at the store.

In referring to the request for CCTV footage which had not been complied with, through F Humphries it was asserted that the initial request had been unlawful and would have been in breach of the General Data Protection Regulation (GDPR). As the revised request was received 30 days after the requested period, the footage had subsequently been deleted and therefore could not be provided.

Following further questions and responses, F Humphries then presented the case on behalf the Premises Licence Holder and in doing so stated that the revocation of the premises licence was not a proportionate decision in the circumstances of the case and that the attachment of conditions, as proposed by the Premises Licence Holder, was an appropriate response to the issues raised.

It was reported that the Premises Licence Holder was experienced in the sale of alcohol and age restricted products and had had no previous issues. The current premises licence had no conditions attached, however the Premises Licence Holder had, on his own accord, installed a Close Circuit Television (CCTV) system at the premises, which included nine cameras and which recorded for a period of 30 days to assist with the management of the premises.



LSBC1/7

In referring to the two incidents, it was stated that on neither occasion had the Premises Licence Holder been present and the employee involved had been trained on numerous occasions. The till had an EPOS system in place to prompt staff and which created a refusal log. It was reported that as a result of the 1st incident, the premises now operated a challenge 25 policy and training had been provided to all staff. The Premises Licence Holder had taken steps to address the issues and had increased his time spent at the store. It was also confirmed that the employee that had committed the two offences, although continued to work at the store, no longer worked behind the till.

In referring to the concerns made by West Midlands Police in relation to anti-social behaviour, it was stated that there was no evidence to link the anti-social behaviour (ASB) to the Wine Cellar, in fact the premises had experienced its own issues with ASB and shoplifting which had been reported to the authorities.

F Humphreys referred to the seizure of vaping products on 2nd March, 2022, which it was reported were products that had been omitted to be collected from first occasion and there was no evidence to confirm that any of these products had been sold since advised that it was illegal to do so.

All parties were then given the opportunity to ask questions of the Premises Licence Holder's case. It was reiterated that the vaping devices seized on 2nd March were remnants of stock that had been missed from the first confiscation and had been stored underneath the counter by a staff member for the Premises Licence Holder to dispose of following his return from holiday and that the initial request for CCTV footage would have breached GDPR and the Premises Licence Holder had complied with the Law and was entitled to seek legal advice on the matter.

All parties were given the opportunity to sum-up their cases. The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application for review.

The Sub-Committee having made their decision invited the parties to return and the Solicitor then outlined the decision.

Resolved

That following careful consideration of the information contained in the report submitted and the information presented at the meeting, the following conditions be applied to the premises licence in respect of the premises known as News Express (The Wine Cellar), 15-17 Abbey Road, Gornal:-



LSBC1/8

- (1) CCTV is to be installed at the premises. This shall be capable of retaining images for 30 days. CCTV images must be made available for playback in store to the Police or Council Licensing Officers at any time the store is open. CCTV images must be provided to the Police or Council Licensing Officers within 48 hours of a GDPR compliant request.
- (2) A member of staff capable of operating the CCTV and downloading and/or playing images shall be present at the premises at all times when it is open.
- (3) A challenge 25 policy shall be operated at the premises.
- (4) All staff selling age restricted products shall be given training in the promotion of the licencing objectives and the challenge 25 policy. Refresher training shall be provided at least every six months. A record of training shall be maintained and retained for a period of at least three years. Copies of training records shall be provided to Council Licensing Officers within 48 hours of a request being made for them.
- (5) A log shall be kept detailing all refused sales of alcohol. The log must include the date and the time of the refused sale and the name of the member of staff who refused the sale. The log shall be retained for a period of three years. Copy of the refusal log shall be provided to Council Licensing Officers within 48 hours of a request being made for it.

The meeting ended at 1.45pm

CHAIR