

Minutes of the Licensing Sub-Committee 2

Tuesday 26th September, 2017 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor A Goddard (Chair)
Councillors K Finch and E Taylor

Officers:-

B Hughes – Assistant Team Manager (Licensing and Waste Enforcement)
(Place Directorate), N Bangar – Solicitor and L Jury – Democratic Services
Officer (both Chief Executive's Directorate).

Also in attendance: Two Environmental Students as observers only.

4. **Declarations of Interest**

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

5 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 22nd
August, 2017, be approved as a correct record and signed.

6. **Application for Review of a Premises Licence – Malcolm's
Newsagents 91-93 Watsons Green Road, Dudley**

A report of the Strategic Director Place was submitted on an application for
the review of a premises licence in respect of premises known as 91-93
Watsons Green Road, Dudley.

The following persons attended the meeting in respect of this application:-

Mr C Thevar – Applicant and Premises Licence Holder

Two friends of the Applicant

The applicant's Representative

Mr G Wintrip, Mr C King and Mr R Jones – Trading Standards

T Glews – Public Protection Manager (Licensing and Waste Enforcement)

K Turley - West Midlands Police (Licensing)

Following introductions, Mr Hughes (Licensing and Waste Enforcement) presented the report on behalf of the Council. It was noted that on advertisement of the application for review of the premises licence, representations had been received from The Office of Public Health and Wellbeing and West Midlands Police.

Trading Standards Officers referred to the grounds for the review relating to the prevention of crime and disorder and the protection of children from harm under the Licensing Act 2003. The Premises Licence holder had not met the two licensing objectives due to poor management of the premises following the sale of alcohol to a person under the age of 18 years.

Trading Standards then reported that they had attended the premises on 26th February 2016 and conducted an advisory visit where they spoke to a Mr Mani, who described himself as the manager, who was given detailed advice relating to information about acceptable proof of age, the importance of keeping a Refusals Register and a proof of age poster to be displayed on the premises.

Previous test purchases that had been carried out on the premises were then referred to, noting that no sales had been made. However, the test purchase carried out on 5th July 2017 by a 15 year old female test purchase volunteer, had resulted in her being sold a bottle of Caribbean Twist drink with 4% alcohol volume and the seller had made no attempt to ask for proof of age. On returning to the premises, the individual who had sold the alcohol to the test purchaser was cautioned but made no reply.

On further investigation, the individual was identified by the Licence Holder as his cousin who was staying in this country for a few weeks and he knew that he had no visa to allow him to work whilst he was staying here. It was noted that no Age Restricted Product literature was displayed on the premises and no Refusal Register was produced but a Fixed Penalty Notice was not issued at this time as there were no Police Officers available to issue one.

West Midlands Police and the Immigration Service attended the premises on 7th July 2017, following a request from Trading Standards, and it was reported that Mr C was no longer present at this address so he could not be issued with a Fixed Penalty Notice, however, another male, who had entered the country on a student visa which did not allow him to work, was found to be working at the premises. Therefore, Mr Thevar was issued with a Notice of Potential Liability by Immigration Officers who were in attendance.

Concluding, Trading Standards, referred to the recommended additional conditions as set out in the report submitted for the Committee to consider when making their decision.

West Midlands Police then stated their concerns relating to the premises confirming that 5 calls for police service had been carried out in July 2017, three relating to the test purchase carried out on 5th July, one relating to a shoplifter and one relating to youths hanging around outside the premises. It was noted that although the local Neighbourhood Team had not raised any concerns with the premises, the sale of alcohol made to a 15 year old test purchaser was in direct contravention of the Licensing objectives and was of great concern to them. Furthermore, concerns were noted in relation to the sale of alcohol made by an individual who had no visa to allow him to work in the UK.

Concluding, it was noted that should the Committee be minded not to suspend or revoke the premises licence, the West Midlands Police fully support Trading Standard's recommendation of additional conditions placed on the premises licence as set out in the report.

Mr Hughes reported that representation had been made by Public Health, however, they were unable to attend this meeting but the representation had been shared with all parties and related to general wellbeing and the effects of alcohol on young children.

The applicant's representative then made representation on behalf of the applicant stating that the applicant accepted that he had made a mistake and wanted to assure members that if he was allowed to keep his licence, this incident would not be repeated. It was noted that this was a family run business with two permanent employees in addition to Mr Thevar (the License Holder) and his wife. He then referred to the circumstances leading up to the incident, stating that on 5th July 2017, the Licence Holder's wife rang to say that their daughter was having an asthma attack and Mr Thevar was needed at home. The person who sold the alcohol was a visitor and was in the shop at this time with a member of staff and on leaving the shop, Mr Thevar asked them to keep an eye on the shop while he was away. On reflection, Mr Thevar now realises that this was a mistake and he should have shut the shop but he was not in the right state of mind at the time.

It was noted that since this incident, which he regrets occurred, Mr Thevar has installed a new electronic register which reminds staff to ask for proof of age when alcohol is scanned. A new CCTV system had also been installed and Mr Thevar was happy to provide recordings to the authorities when required; posters referring to the Challenge 25 policy were now in use along with the Refusal Register and all staff have been trained. It was reported that Mr Thevar was now taking extra care with the day-to-day activities and management of the business and he would like to remind the Sub-Committee that he had invested a lot of money in to the premises since he took over as Licence Holder and now runs a good business. Reference was then made to test purchases that had been carried out previously, noting that these had resulted in no sales and no complaints had been received from the Police or local residents until the incident occurred.

The applicant's representative then made reference to the nine conditions recommended by Trading Standards, as set out in the report, and stated that should the Committee be minded not to suspend or revoke the premises licence, Mr Thevar had already addressed most of the conditions and he would be happy to except any further recommendations. However, referring to the condition in relation to CCTV footage and that the hard drive be locked but readily accessible to staff should Trading Standards require access at anytime, Mr Thevar requested that this condition be amended so that the hard drive was locked at all times so that nobody could tamper with the footage for whatever reason, as Mr Thevar would then be in breach of his licensing conditions, but he would make the footage available to the authorities within 24 hours.

With reference to the immigration issues, as set out in the report, it was reported that a further male found on the premises was not a member of staff but an asylum seeker living on the first floor while his papers were being sorted out and subsequently, Immigration have closed the case as no further action was required.

Concluding, the applicant's representative commented that Mr Thevar had invested a lot of money in to the premises, and although not a lot of alcohol was sold, if his licence was revoked, this would have an impact on the family run business. He stressed that Mr Thevar was very sorry that the incident had occurred and reassured the Sub-Committee that this would not be repeated.

In reply, Trading Standards commented that they could not recollect being informed about Mr Thevar's daughter having an asthma attack when they spoke to him on the night of the test purchase. They continued by asking Mr Thevar about the relationship of the two men that accompanied him when he return to the shop on the night of the test purchase as they had behaved in quite an intimidating manner towards the officers.

In response, Mr Thevar commented that they were nothing to do with the shop and were regular customers who were waiting to come into the shop to purchase alcohol. He stated that they did not like authority figures and always challenged them and he apologised for their behaviour towards the officers.

In reply to a question by Trading Standings to Mr Thevar as to the whereabouts of Mr C, the person who had sold alcohol to the test purchaser, after the incident had occurred, Mr Thevar stated that he had panicked and shut the shop and the following day Mr C had moved to London and had now returned to Sri Lanka. In response to a question asked in relation to the premises in Oldbury where Mr C had been staying, Mr Thevar confirmed that this was another family run business, run by his wife and staff and he just helped out with cash and carry runs only and the person staying on the premises was just visiting for the holidays. The man found at the back of the shop was using the kitchen as he rented the flat above and was just a friend.

In reply to a question raised by Trading Standards in relation to whether Mr Thevar had instructed Mr C to serve any customer whilst he was away from the shop, Mr Thevar stated that when he had received the call from his wife, he had said 'keep an eye on the shop' but had told Mr C not to sell any alcohol or tobacco products but now realises that this was a mistake and that he should have shut the shop. In response to a question put to the Mr Thevar from Trading Standards as to whether as Licensee and DPS, he felt any responsibility to co-operate with the authorities as to the whereabouts of Mr C who had committed a criminal offence, Mr Thevar stated that he had informed the Police and Immigration Services that Mr C had moved to London and then gone back to Sri Lanka.

Referring to Trading Standard's recommended CCTV conditions and the Licence Holder's amendment request, Trading Standards commented that if Mr Thevar could not guarantee immediate access to CCTV footage when requested, they would wish to remove the CCTV hard drive from the premises to prevent the footage from being tampered with in the 24 hours before the footage would be available. In reply, Mr Thevar reported that he would be happy to comply with this request if he was not in the shop when the request for the footage was made.

In reply to a question from a Member regarding the man found at the back of the premises and whether he was employed at the shop, Mr Thevar confirmed that he cleaned and cooked in the kitchen but was not employed to work in the shop.

Referring to the night of the test purchase, Members questioned why the Licence Holder had left Mr C in charge of the shop when he had stated that another staff member had also been on the premises, Mr Thevar stated that he had not authorised Mr C to serve and had not left him to stand behind the counter, he had just said 'keep an eye on the shop' when he had left and as the man was a family member he didn't know why he had left him behind.

Referring to the Refusals Register, and the fact that the register had not been available to view on the night of the test purchase, Trading Standards requested to see the up-to-date Refusal Register.

Mr Thevar produced a register but on investigation, it was noted that the refusals were only dated after the test purchase and were completed on Sandwell MBC's proof of age scheme sheets and not the bound Dudley MBC booklet that had been issued. In reply, Mr Thevar stated that Dudley's booklet had been filled and it was not until the night of the test purchase that he had realised that staff had not been recording proof of age and as the booklet was full, they now used the Sandwell sheets. In reply, Trading Standards commented on the importance of filling in an appropriate Refusal Register to provide evidence of asking for proof of age when selling alcohol.

In summing up, Trading Standards commented that they wished to see in future that the Licence Holder was implementing the licensing conditions and that the premises were being managed correctly and safely and that in future, proper refusal records and proper records of people employed on the premises were being kept along with records of staff training to ensure that the premises did not pose a future risk to children.

The applicant's representative then summed up on behalf of the Licence Holder, stating that Mr Thevar had admitted that he had made a mistake and accepted responsibility but wished to remind the Sub-Committee that when previous test purchases had been conducted at the premises, no sales had been made. He had already put measures in place to address some of the recommendations that Trading Standards had made and asked that he be given another opportunity. If he was to lose his licence, this would affect his sales, therefore having a serious affect on his business and livelihood.

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

Resolved

That following consideration of the information contained in the report submitted and presented at the meeting, the Committee has decided to impose the following conditions: 1-9 as recommended by trading standards detailed in the report.

Reasons for decision:

This is an application by Dudley Trading Standards dated 1st August 2017 for a review of the premises licence in respect of Malcolm's Newsagents.

Premises and personal License Holder Mr Chandran Thevar attended along with his Licensing Agent and two friends.

Licensing Review brought further to a 15 year old child test purchaser being sold a bottle of Caribbean Twist drink with 4% alcohol by volume. No attempt to ascertain the buyers age was made.

The premises had previously passed 2 alcohol test purchases. Representations have been received by Trading Standards and the Police relating to concerns about the failure to comply with the two licensing objectives relating to the prevention of crime and disorder and the protection of children from harm due to the poor management of the premises following the sale of alcohol to a person under the age of 18. The Committee view this as a very serious matter and there are some concerns about the management of the premises in particular poor staff management however, the committee are prepared to give you an opportunity to address these concerns with the imposition of the detailed conditions in order to ensure that the licensing objectives are complied with.

The Committee has considered the request to amend the condition relating to CCTV however, they do not think it appropriate to leave the premises unmonitored by CCTV in the event that the recording device is taken away by officers for viewing.

7. **Application to Vary a Premises Licence – The Black Horse, 52 Delph Road, Brierley Hill.**

A report of the Strategic Director Place was submitted on an application for variation of the premises licence in respect of the premises known as the Black Horse, 52 Delph Road, Brierley Hill, West Midlands, DY5 2TP.

The following persons attended the meeting in respect of this application:

Mr R Bayley – the License Holder and his daughter.

Mr T Glews – Public Protection Manager (Environmental Health and Trading Standards)

Following introductions, the Assistant Team Manager (Licensing and Waste Enforcement) presented the report on behalf of the Council.

Mr Glews then reported that three noise complaints had been received in respect of the premises, prior to and during Mr Bayley's time as License Holder. Two complaints related to noise from the public house and most recently, a complaint related to noise associated with patrons congregating on the car park attached to the premises once the public house had been closed. These related to the playing of music from car stereos and talking and shouting. Therefore, as the request was to extend the recorded music time, the application had been carefully reviewed and Environmental Services were happy to agree to a variation to the premises licence if the Committee were minded to impose the following conditions:

- To allow an extension to the hours for recorded music until 00:00 on Fridays and Saturdays only
- To allow patrons to use the covered outside eating area to the front of the premises as a smoking area after 23:00 on the understanding that patrons do not consume drinks in the area and the area is regularly monitored by staff to ensure outside noise is kept to a minimum.

Further conditions, as stated at a previous Licensing meeting, and which Environmental Services felt were important to the application, were then presented which related to the need to keep all doors and windows closed; all doors to the premises should have signage requesting that patrons leave the premises quietly in respect to local residents and signage on the car park stating no sounding of horns was permitted and to leave the car park quietly. All of these issues needed to be rigorously enforced by the Licence Holder to ensure the additional hours did not present any opportunity for further complaints. Relating to the issue of cars congregating on the car park after the premises was closed, Environmental Services requested that Mr Bayley do all he could to control this use and if evidence of the perpetrators could be gathered, the information should be forwarded to the Police who would contact Environmental Services so that appropriate action could be taken against them. Similar situations to this have been addressed when a barrier had been installed across the car park to prevent access out of hours and Mr Bayley was requested to consider this. No objections were submitted with regards to the extension to the hours for recorded music and the amendments to condition 3, as stated in the report, providing that door staff monitor that no drinks were being taken outside to be consumed.

In response to a question raised by a Member in relation to the noise complaints that had been received, it was confirmed that most of them related to the weekend.

In response, the Licence Holder referred to incidents where people had used the car park to turn round and had 'wheel-spun' on the car park in the early hours of the morning and he was happy to install a chain across the entrance of the car park once the premises were closed to address this issue. In reply, as the car park featured heavily in the noise complaints, the Licensing and Enforcement Officer strongly agreed with the suggestion of shutting off access to the car park once the public house was closed.

The Licence Holder then made a representation specifically referring to the smoking area at the front of the premises where people were allowed out to smoke but only till 11.00pm and he requested that this be extended to 12.00 but with no drinks being allowed outside which would be monitored by door staff.

In reply to a question raised by a Member relating to the extension to the time that music could be played, Mr Bayley referred to the need to keep the windows closed to keep noise to a minimum and stated that they were looking to install air-conditioning to address this issue, especially during the summer months.

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

Reasons for the decision

Decision:

That following consideration of the information contained in the report submitted and presented at the meeting, the application for variation of hours in respect of recorded music and variation to layout and conditions of licence in relation to be granted in the following terms:

To extend the licensing hours for recorded music Friday and Saturday from 23.00 to 00.00.

To amend plans to include a wooden built structure adjacent to the main building containing a kitchen and bar.

To amend condition number 3 so as to allow patrons to use the covered outside seating area to the front of the premises as a smoking area after 23.00 to 00.00 on the understanding that patrons do not consume drinks in the area and the area is regularly monitored by staff to ensure outside noise is kept to a minimum.

A further 3 conditions to be imposed to deal with the impact of the later opening hours, in particular;

1. Signage on the doors to leave the premises quietly.
2. Doors and windows to be kept closed to cover the extended hour of playing of recorded music.
3. Signage on the car park to respect the residents and to leave the premises quietly.

Recommendation

The Licence Holder consider placing a lockable chain at the entrance to the car park to prevent unauthorised access to the car park after closure of the premises.

8. Application for Grant of Consent to Engage in Street Trading

A report of the Strategic Director Place was submitted on an application for the grant of a consent to engage in street trading at a site in King Street, Dudley, to sell Pet Food, Tuesday to Saturday inclusive, between the hours of 9.00am and 4.00pm.

The following persons attended the meeting in respect of the application:

Mr Skidmore – the applicant

Mr Hughes – Team Manger (Licensing and Waste Enforcement)

Mr Connelly – Head of Visitor, Economy and Cultural Services

Mr Wilkinson – Senior Directorate Support (Markets) - Visitor, Economy and Cultural Services

Mr Butler – Group Engineer for Highways

Following introductions, the Team Manger (Licensing and Waste Enforcement) presented the report on behalf of the Council.

It was noted that representations had been received from Building Control, the Highway Department, the Communications Department and Visitor Economy and Culture Department.

Mr Connelly then referred to the major improvements that had been made to the market place. It was noted that a new market provider, Tudor Markets, had been engaged on 1st July who had been making significant improvements in order to increase footfall into the town centre and the concern that if traders were allowed to start to trade outside the market footprint, other traders may wish to follow and that this would be detrimental to the overall vision the Authority and Tudor Markets wished for the town centre.

Mr Butler then reported that from a Highway perspective, that the area that Mr Skidmore wished to set up his trailer was part of the public highway, including the carriage way and footway to the entrance to the Churchill Precinct with the vehicle and the trailer being parked for sometime on the public highway. He referred to three Traffic Regulation Orders within the vicinity which would directly impact on this area: firstly being the Prohibition of Driving – (The Borough of Dudley (King Street, Birmingham Street and Fisher Street, Dudley) (Traffic Regulation) Order 2000) and a car and trailer parked on the pedestrian footway in this location would be in contravention of this order and which was likely to be enforceable by the Police. There was also a 24 hour prohibition of waiting in King Street going into Birmingham Street and a 24 hour prohibition of loading and unloading that affected this area. Any vehicle entering this area would do so without a vehicle crossing and would be therefore, in contravention of Section 184 of the Highways Act 1980. Concern was also raised in relation to the construction of this area which may not be suitable to maintain the weight of the vehicle and trailer and over a long period of time, may damage the footway. Manoeuvring the vehicle and trailer onto the site could also be detrimental to the safety and management of the site in relation to pedestrian safety. Therefore, it was felt that trading from this area would be unsuitable from a highway safety perspective and maintenance of the highway.

Mr Connelly stated that the only consenting area they wished to have in the town centre was outside Greggs, which had already been allocated, and the aim was to turn the majority of the town centre into a non-consenting area.

In reply, Mr Skidmore commented that the reason for the submission of this application was that he currently attends car boot markets and it was easier for him to pull up with his trailer and set up as this saved him time loading and unloading each time as this was also becoming detrimental to his health. He believed that the area in question was a big area and he believed that the trailer would not be an obstruction to anyone and the trailer was not heavy. He commented that once the trailer had been parked, his business partner would remove the vehicle and that he believed there was ample room on the site.

In response to a question raised by a Member relating to the continuation of his business in Dudley town centre if the application was not granted, Mr Skidmore replied as he had now had the trailer fitted out at some considerable expense, his overall ambition was now to sell from the trailer.

In response, Mr Butler replied that he believed the trailer to be approximately 5 metres long and with the vehicle, it was felt that this would obstruct the movement of pedestrians trying to gain access to Churchill Precinct, the bus stop and pedestrian crossing facilities.

At this juncture, Mr Butler then referred to the Legal representative to enquire whether consent could be granted if the whole of the area in question was controlled by three Traffic Regulation Orders; therefore, any trailer parked there would be in contravention of Highways law, Road Traffic Regulations Act and the Highways Act.

In reply, Ms Bangar, having established that there were no exemptions to the orders, stated that the granting of the application would be in contravention of the orders as stated by Mr Butler, and she would therefore, be advising the Sub-Committee to take this into consideration when making their decision.

In reply, Mr Skidmore advised that the vehicle would be removed once the trailer had been parked and he felt that as there was ample space, it would not cause any pedestrian obstruction. In reply to a question raised by Mr Butler, Mr Skidway then confirmed he would be using ramps to get his vehicle and trailer on to the pavement. Mr Butler then informed the Committee that the use of ramps in this area would be in contravention of Section 184 of the Highways Act 1980.

Mr Connelly then stated that Tudor Markets had agreed to allow Mr Skidmore to gain access to his stall to load and unload with the help of a Market Assistance to reduce his workload as Tudor Markets were concerned that if this consent was granted, it may set a precedent with other traders wishing to follow, and this would seriously affect the look of the market.

Resolved

Decision:

That following consideration of the information contained in the report, submitted and presented at the meeting, the application for grant of a street traders consent to sell pet food in King Street, Dudley by Mr Stephen Skidmore be refused.

Reasons for the decision:

On the basis that the movement of the vehicle and trailer to gain access to the location and the presence of the vehicle and trailer at the location would be in breach of the three Traffic Regulation Orders as detailed by Mr Butler at the hearing and as detailed below:

Prohibition of Driving – The Borough of Dudley (King Street, Birmingham Street and Fisher Street, Dudley) (Traffic Regulation) Order 2000

Bus Lane / Waiting / Loading prohibitions and restrictions – The Borough Council of Dudley (Prohibition and Restriction of Waiting and Loading and Parking Places) (Consolidation) (Number 5 type) (Central Dudley Area) Order 2008. So9490se (L8).

The meeting ended at 12.45pm

CHAIR