

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, PENSNETT, 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 Qayyum, also present was Mr R Khan. When questioned Mr Qayyum 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 underaged 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 underaged 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