

Minutes of the Licensing Sub-Committee 1

Tuesday 12th April, 2016 at 10.20 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor D Russell (Chair)
Councillors P Miller and C Perks

Officers:-

R Clark (Solicitor – Resources and Transformation Directorate),
L Rouse (Licensing Clerk – Place Directorate) and K Taylor (Democratic
Services Officer – Resources and Transformation Directorate).

31 **Apology for Absence**

An apology for absence from the meeting was submitted on behalf of
Councillor C Elcock.

32 **Appointment of Substitute Member**

It was noted that Councillor P Miller had been appointed to serve as a
substitute member for Councillor C Elcock for this meeting of the
Committee only.

33 **Declarations of Interest**

There were no declarations of interests from Members, in accordance with
the Member's Code of Conduct.

34 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 8th
March, 2016, be approved as a correct record and signed.

35 **Application for a Licensed Premises Gaming Machine Permit – The
Old White Horse Inn, South Road, Stourbridge**

A report of the Strategic Director Place was submitted on an application for the grant of a Licensed Premise Gaming Machine Permit for two Category C machines and one Category D machine in respect of the premises known as The Old White Horse Inn, South Road, Stourbridge.

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

Mr B Haywood – Regal Gaming
Mr J Douty – Mitchells and Butler Retail Limited

Following introductions, the Licensing Clerk presented the report on behalf of the Council.

Following a brief discussion in relation to the layout of the premises and the positioning of the machines, the parties withdrew from the meeting 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

That, following consideration of the information contained in the report submitted and as presented at the meeting, a Licensed Premise Gaming Machine Permit for two Category C machines and one Category D machine in respect of the premises known as The Old White Horse Inn, South Road, Stourbridge, be granted.

36 **Application for a Licensed Premises Gaming Machine Permit – The Meadow Lark, Dibdale Road, Dudley**

A report of the Strategic Director Place was submitted on an application for the grant of a Licensed Premise Gaming Machine Permit for four Category C machines and one Category D machine in respect of the premises known as The Meadow Lark, Dibdale Road, Dudley.

Mr B Haywood, Regal Gaming, attended the meeting in respect of this application.

Following introductions, the Licensing Clerk presented the report on behalf of the Council.

Following a brief discussion in relation to the layout of the premises and the positioning of the machines, the parties withdrew from the meeting 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

That, following consideration of the information contained in the report submitted and as presented at the meeting, a Licensed Premise Gaming Machine Permit for four Category C machines and one Category D machine in respect of the premises known as The Meadow Lark, Dibdale Road, Dudley, be granted.

37

Application for Review of Premises Licence – Premier (AKA Brockmoor Convenience Store), 49 High Street, Brockmoor, Brierley Hill

A report of the Strategic Director Place was submitted on an application for a review of the premises licence in respect of Premier (AKA Brockmoor Convenience Store), 49 High Street, Brockmoor, Brierley Hill.

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

Mr J Chand – Premises Licence Holder
Mr C King – Trading Standards
Mr G Wintrip – Trading Standards
Mr J Annakin – Public Health
PC K Turley – West Midlands Police

Following introductions, the Licensing Clerk presented the report on behalf of the Council. It was noted that on 11th February, 2016, Mr B Hughes, Licensing Officer, visited the premises to determine compliance of a number of conditions that had been placed on the premises licence following a review of the premises in January, 2014. A number of conditions on the licence were not being complied with and Mr Chand was notified of the recommendations. A follow-up visit was undertaken on 23rd March, 2016, and it was identified that Mr Chand had acted positively and all of the conditions and recommendations were now being complied with.

Mr King 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, which had resulted in the application being made for a review of the premises. It was explained that on 29th January, 2016, two fifteen year old male child test purchasers were sold alcohol, namely four cans of Kronenberg Lager from the premises, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

Mr Annakin commented on the impact on health in adolescents as a consequence of alcohol consumption and it was considered that the sale of alcohol to young people was a serious matter. Any actions to prevent the sale of alcohol to a young person on the grounds of protecting children from harm were entirely supported.

PC K Turley then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that there had not been any recent reported issues at the premises, however the sale of alcohol to a child was in direct contravention of the licensing objectives and supported the recommendations submitted by Trading Standards.

Mr Chand then presented his case and in doing so stated that although he accepted that the sale of alcohol had taken place, he believed that one of the test purchase volunteer appeared older in view of his clothing and height. He also stated that youngsters attempted to purchase alcohol on a weekly basis but that they were asked to leave the premises.

Mr Chand further reported that he had installed an electronic point of sale register, and then proceeded to circulate the refusals register and CCTV images recorded on the date of the sale of alcohol as he considered that the volunteer appeared significantly older, than he did on the Trading Standards photo taken on the same day. Copies of the photographs taken by Trading Standards prior to the exercise were also circulated.

In responding to a question by the Legal Advisor, Mr Chand confirmed that he operated a 'Challenge 25' policy and that he did not request identification as he believed that the test purchase volunteer was in his 'mid-twenties', and that he had made a 'snap judgement' as he was also working long hours due to staff shortages.

It was noted that there were two other staff members employed at the premises and fully trained, and Mr Chand stated that he believed the test purchase exercise to be an 'entrapment' as the volunteer looked over the age of eighteen, and therefore he was not prepared to sign the Traders Notice which outlined the allegation. In responding to comments made, Mr King informed the Sub-Committee that the volunteer in question had visited seventy-eight premises, seven of which had failed and sold alcohol to the volunteer.

Mr Chand referred to the failed test purchase exercise undertaken in 2013 in particular stating that since then, there had been a number of exercises undertaken where age restricted products were not sold to under aged persons.

In responding to a question by Mr King, Mr Chand confirmed that he worked at the premises on a daily basis, and that a Ms Skidmore supervised the premises in his absence.

Following all comments made, Mr King requested the removal of Mr Chand as Designated Premises Supervisor should the Sub-Committee be minded not to revoke or suspend the premises licence.

In summing up, Mr Chand stated that there had been no malice in failing the test purchase exercise as the business was his livelihood, and that his premises was community focused. He referred to his meeting with Mr Hughes and that he had reacted positively to the recommendations made, and requested that no further action be taken to his premises licence.

In summing up, Mr King stated that he was satisfied that the test purchase exercise was operated correctly, and that he did not receive any reassurance from the representations today that an incident would not re-occur.

The parties then withdrew from the meeting 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

That, following consideration of the information contained in the report submitted and presented at the meeting the premises licence in respect of Premier (AKA Brockmoor Convenience Store), 49 High Street, Brockmoor, Brierley Hill, be suspended for a period of two weeks.

Mr Chand was informed of his right of appeal.

Reasons for Decision

This review has been brought by Dudley Trading Standards on 17th February, 2016 after a test purchase was conducted on 29th January, 2016 which resulted in a sale of a pack of four cans of lager to two 15 year old test purchasers.

Mr J P Chand is the Premises License Holder and the Designated Premises Supervisor, has held the premises licence since 20th March, 2013. Mr John Chand attended the review today.

The Sub-Committee had previously considered a review application relating to this premises licence on 7th January, 2014, which was brought as a result of a sale of alcohol to a fifteen year old test purchaser. Mr Chand accepted responsibility for the sale, which was made by a trainee who he had subsequently been dismissed for not following the correct procedures. The Sub-Committee took the step of imposing a number of conditions onto the premises licence in order to address the concerns raised by the sale.

PC Turley West Midlands Police supported the application to remove the Designated Premises Supervisor, if the Sub-Committee did not suspend or revoke the premises license.

On 11th February 2016, Mr Hughes, Licensing officer, made a visit to the premises. A number of conditions on the licence were not being complied with, but on a visit on 23rd March 2016, all of the conditions were being complied with, including an electronic till prompt.

Mr Chand accepted that he made the sale. He stated that he had 15 -20 children a week attempting to buy alcohol, and that they were asked to leave the premises before they even approached the till, if they approached the area in the shop with alcohol.

When subsequently challenged (and today before the committee) he stated that the test purchaser looked in his mid 20's, and that the exercise amounted to entrapment. He also stated that he was wearing a leather jacket, which was zipped up concealing a T shirt beneath, which made him appear older. He asserted that the test purchaser looked too old to be challenged under the challenge 25 policy, and appeared significantly older in his own CCTV footage of the day, than he did on the trading standards photo taken on the same day. The Sub-Committee was shown the CCTV images of the test purchaser and the photograph taken by Trading Standards. Finally, Mr Chand stated that he had been working all day, and that he was tired by 7.00pm and made a "snap judgment" on this particular sale.

On 18th February, 2015, the premises passed an alcohol test purchase and on 16th April, 2014, it passed a tobacco test purchase.

On 3rd July, 2015, a further information pack including posters and advice relating to the sale of age restricted products was delivered to the premises and signed for. Advice was given to the sales assistant present at the time.

Having heard all of the evidence, the issue in this case is that Mr Chand did not ask for identity of this purchaser because he believed that he was in his mid 20's. However, he operates a challenge 25 policy and has challenge 25 posters in his shop. His defence was that at 7.00pm, he was tired and made a "snap decision" to make a sale without checking ID. This behaviour clearly poses a risk to the health and safety of children and young persons. He has however passed test purchase exercises in 2014 and 2015. Generally he appears to be compliant with the conditions of his license, albeit that in February 2016 he was not maintaining his records properly and had to be reminded to do so.

The Sub-Committee takes the step to suspend the premises license for two weeks. This period will enable Mr Chand to consider and address the working hours that led to his tiredness on the day of the sale, and to him making a wrong snap decision not to ask for ID on a purchaser he admitted was in his mid twenties. The Sub-Committee cannot condone a Designated Premises Supervisor being so tired that his judgment is impaired in making such important decisions as this. The Sub-Committee does not expect to see Mr Chand before the committee again in respect of underage sales.

The meeting ended at 12.35 pm

CHAIR