

Minutes of the Licensing Sub-Committee 2

Tuesday 19th April, 2016 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor K Finch (Chair)
Councillors M Evans and D Perks

Officers:-

R Clarke – Solicitor (Resources and Transformation Directorate), S Smith – Interim Licensing Manager (Place Directorate) and M Johal, Democratic Services Officer (Resources and Transformation Directorate).

15 **Apology for absence**

An apology for absence from the meeting was submitted on behalf of Councillor S Henley.

16 **Appointment of Substitute Member**

It was noted that Councillor D Perks had been appointed as a substitute member for Councillor S Henley for this meeting of the Committee only.

17 **Declarations of Interest**

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

18 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 1st December, 2015, be approved as a correct record and signed.

Application for the Grant of a Street Collection Permit – CAPLL Ltd (PDSA)

A report of the Strategic Director Place was submitted on an application for the grant of a Street Collection Permit from CAPLL Ltd on behalf of the PDSA.

Miss Cristina Wyatt – CAPLL Ltd was in attendance at the meeting.

Following introductions the Interim Licensing Manager presented the report on behalf of the Council.

Miss Wyatt responded to queries from Members and in doing so stated that a gazebo would be set up in the Town Centre and professional trained fund raisers would be used to encourage donors to complete direct debit mandate forms. Forms would be completed via an electronic system with a view to making monthly donations which were paid direct to the charity PDSA. It was explained that CAPLL currently fund-raised for a number of other charities, primarily animal based charities, and that they collected from across the West Midlands.

Arising from further discussions Members expressed concerns about security of data and whether the organisation had a policy that guaranteed the security of details and personal information provided by donors. It was also queried whether personal details were passed to other charities or organisations. Miss Wyatt stated that donors were covered by the direct debit guarantee scheme and Members were assured that personal information was not shared or passed to other organisations.

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 the application for a street collection permit made by CAPLL Ltd on behalf of the PDSA be granted subject to a copy of the organisation's policy guaranteeing the security of bank details and personal information provided by donors being submitted to the Licensing Section for satisfactory inspection.

Application for Review of a Premises Licence

A report of the Strategic Director Place was submitted on an application for a review of the premises licence in respect of SSK Convenience Store, 35 Church Street, Pensnett, Brierley Hill.

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

Mr P Thangarasa – Designated Premises Supervisor
Mr Kasinthan – Premises Manager
Mr C King – Trading Standards
Mr G Wintrip – Trading Standards
Ms D McNulty – Public Health

The Interim Licensing Manager reported that the Licensing Section had received a request seeking deferment of the application as the applicant's representative was unable to attend the hearing due to prior commitments. Mr Thangarasa stated that Mr Packiyathan (Premises Licence Holder) had also informed him that he was unable to attend the meeting as he was unwell and an adjournment was therefore sought.

Mr King informed the meeting that both the Premises Licence Holder and the Designated Premises Supervisor had been invited to attend a voluntary interview on 11th April, 2016 and both had failed to attend and had given no explanation for absence.

The Sub-Committee considered the request for the adjournment and agreed to continue in the absence of the Premises Licence Holder.

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

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 purchaser volunteers were sold alcohol, namely four cans of Carlsberg Lager from the premises, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives. Further detailed background information was given in that the seller was on his mobile telephone at the time of the sale, his English was very poor and there were discrepancies with his training record and personal information as he was later found to be working illegally. Concerns were expressed about validation of appropriate documentation when employing staff, the lack of management by the Designated Premises Supervisor and non-compliance of conditions.

The Licensing Enforcement Officer also gave detailed evidence in that he rarely met the Premises Licence Holder as he resided out of the Borough. When conducting unarranged visits the Designated Premises Supervisor and the Manager had not been present. It was further stated that the employee that he had encountered during one of the visits had stated that he had not received any training in the sale of age restricted products and he was unable to produce a training record.

Ms McNulty 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.

The Designated Premises Supervisor responded to queries from Members and Trading Standards and in doing so stated that he was responsible for conducting all staff training, that only management were able to access and provide Closed Circuit Television (CCTV) footage to relevant bodies and that the Premises Licence Holder was responsible for checking documentation and identity of employees prior to recruiting. It was stated that the letter to produce appropriate registers to the hearing today had been passed to their advocate.

Upon further questioning the Designated Premises Supervisor confirmed that the store opened seven days a week and he attended the premises two to three times a week to purchase stock. He also worked at another store in Longbridge for the same Premises Licence Holder.

The Sub-Committee then adjourned at 11.45 am and reconvened the meeting at 12.20 pm to enable copies of the part of the minutes relating to these premises considered at the meeting of the Sub-Committee held on 3rd June, 2014 to be circulated to all parties. The information contained in the minutes was referred to and Members and other parties were reminded of assurances given at that meeting where a commitment was given to abide by conditions and comments made that the Designated Premises Supervisor would ensure that any staff involved in the sale of alcohol and the operation of CCTV would have fully recorded and documented training, including undertaking six monthly refresher courses. Reference was also made to an assurance given that at least two members of staff would be present at the premises at all times given the age of the Designated Premises Supervisor. Copies of training records dated 16th July, 2014 and 18th September, 2015 were also circulated to all parties confirming that the seller that had failed the test purchase had undertaken training in 2014.

The Designated Premises Supervisor responded to further queries from Members and Trading Standards and in doing so confirmed that he conducted training including six monthly refresher sessions for all employees. He stated that he had probably carried out the training sessions in 2014 and 2015 as referred to in the documents that had been circulated. The Designated Premises Supervisor explained that there had initially been two members of staff present at the shop but as the store was not as busy as had been envisaged it had not been financially viable to maintain this provision.

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 as presented at the meeting the premises licence in respect of SSK Convenience Store, 35 Church Street, Pensnett, Brierley Hill, be revoked for reasons given below.

Mr T Packiyathan would be informed of his right of appeal.

Reasons for Decision

This is an application for a review of the premises licence of SSK Convenience Store, brought by Dudley Trading Standards on the 2nd March 2016.

The Premises Licence holder Mr. Thanikan Packiyathan did not attend the Sub-Committee meeting today. He instructed Mr. Burke, to represent him but on 12th April 2016, Mr. Burke wrote to the licensing authority to ask that the application be adjourned from today's date, due to the fact that Mr. Burke was not available today. Mr. Burke was informed that this was a matter for the Sub-Committee on the day.

Mr. Pirashanthakumar Thangarasa, Designated Premises Supervisor (DPS) attended. The manager of the store also attended with him. They asked for the matter to be adjourned today. The Premises Licence Holder (PLH) had telephoned the DPS on Sunday 17th April to state that he was sick and would not be able to attend today. The nature of the illness was not revealed to the DPS. Trading standards explained to the Sub-Committee that on 11th April, 2016 the DPS and the PLH did not attend for interview, as requested, and did not give any reason or notice that they were not going to attend.

The Sub-Committee decided to proceed with the review today, on the basis that the PLH and DPS had been notified of the date on 28 days notice, the PLH had not informed the licensing authority that he was unwell, and that the Sub-Committee had not made a decision to adjourn this matter in advance of today. The PLH had not arranged for alternative representation but had simply assumed that the Sub-Committee would adjourn today. The Sub-Committee was however so concerned about the alleged mismanagement of the premises, as set out in the review application, that it determined to proceed today, in order to ensure that the licensing objectives of preventing crime and disorder and the protection of young persons were upheld.

On 29th January, 2016 two teenage test purchasers were sold four cans of larger at the premises. The seller (Mr. Kasavan (also known by other names)) was on the mobile phone at the time and made no attempt to ask for identification. An age restricted poster was displayed but the refusals register was under the till and unused. The seller readily produced it from beneath the till, upon request. Mr. Wintrip stated that on 29th January, 2016 the refusals register that was produced had no entries and was found very readily under the counter. The register produced subsequently had entries from 4th December, 2014 onwards only.

On 29th July, 2014 an advisory visit was made to the premises and detailed advice and an advice pack regarding the sale of age restricted products were given. A further advice visit was made later in 2015 and further advice and a new advice and resource pack were provided.

On 29th August, 2014 a tobacco test purchase was conducted and no sale was made.

On 28th February, 2015 an alcohol test purchase was conducted and no sale made.

Upon a further visit to the premises on 3rd February, 2016 by officers the seller and DPS were present. The training record of the seller was found to be in a different name to that provided on earlier visits. His passport revealed a different date of birth and name to that given previously. His English language was very poor. His training record was produced with a copy passport and it was clear that he had no right to remain in the country or work here.

On 16th February, 2016 Mr. Hughes returned to the premises with police to serve a fixed penalty notice on the seller, Mr. Kasavan, to be told that the seller had “packed his bags” and left.

Mr. Hughes recalled that he met the seller first on 16th July, 2014 despite being told by the DPS that he had only worked in the store from December 2015.

Mr. Hughes' evidence was that he hardly ever met the PLH who lived out of the Borough, and that he rarely met the DPS or the manager. On all of his unarranged visits, he had only ever met Mr. Kasavan or another staff member. That other staff member had confirmed to him that he had undergone no training in the sale of age restricted products and could not produce a training record. However, he did produce a training record a week later. Closed Circuit Television (CCTV) was downloaded with some days delay. Mr. Hughes's main concern was the lack of training records and register.

The DPS stated that he trained all staff personally, and conducts a concluding test, that they were trained to operate CCTV but not to download a disk. Staff had read a training book, and staff were asked to read it and sign to state that they understood it.

The DPS stated that he worked at the shop 2 to 3 days a week (for 3 to 4 hours), despite the fact that Trading Standards had never met him in the premises except by pre-arranged visits. The PLH owns the business and employs the DPS, who also works in Longbridge in another premises owned by the PLH.

The DPS also stated that the man, who made the under-age sale, was employed by the PLH but was trained by him. He stated that this was from December 2015. He had no recollection that he was in the premises before that date, despite officers stating that they had seen him since 2014 in the premises.

At the application hearing on 3rd June, 2014, it was asserted that the DPS would ensure that all staff in the shop would be trained and have 6 monthly refresher courses. Two forms signed by Mr. Kasavan dated 16th July, 2014 and 18th September, 2015 were presented to the Sub-Committee. The DPS confirmed that he did the training, and had to admit that Mr. Kasavan must have been working there in 2014, despite previous assertions to the contrary today.

It was also asserted at that application date that two persons would be working in the shop at all times, given the history of the premises, but that shortly after that date, the DPS stated that they were unable to finance this and that it became one staff member except at busy times. He stated that he had to be in the shop now, since these problems had arisen, but that two staff had not been present for some time.

When asked, the DPS stated that he did not feel that he had had a fair hearing because he did not understand the Sub-Committee process. The Sub-Committee's Legal Advisor had previously outlined the steps that the Sub-Committee could take and that he would be expected to demonstrate that he understood the role of a DPS and had fulfilled this role competently.

The Sub-Committee is very concerned that the PLH did not attend today and that a request to adjourn the matter had only been made on 12th April 2016. It was concerned that the PLH had not notified the licensing authority that he was ill and relied upon the DPS informing the Sub-Committee today that he had received a telephone call from him on Sunday 17th April. No reason for illness was communicated and no apology passed to the Sub-Committee. The Sub-Committee notes that the PLH and DPS did not attend for interviews on 11th April, 2016, and gave no reasons or notice of their non-attendance. Finally, the DPS did not bring materials referred to in the letter from the licensing authority to the Sub-Committee today. He was not able to produce the refusals register for example, but acknowledged that he had received the letter. He appeared to have transferred all responsibility for the demonstration of his competence as a DPS to the PLH or Mr. Burke.

The Sub-Committee understands that the DPS is not a trained advocate, but does expect him to be able to demonstrate his competence as a DPS and to show that he has upheld the licensing objectives.

Today, the DPS asserted that he had trained the man who made the underage sale on 29th January 2016 from December 2015, and that he had not been in the store before that. Trading standards was able to show that he was in the premises in July 2014. The DPS had to admit that this was so. The seller had completed two signed forms to indicate that he had received *limited* training in the sale of age restricted products, despite the DPS stating that he had trained him fully, and conducted refresher training. There is clearly a conflict in information.

The seller has now been identified as holding a false passport and should not be in the country or working, and there was clearly some discrepancy with his name in the stores own records. However, the DPS had not investigated this, and simply tried to state that the employment was the responsibility of the PLH and not him. This is not the case.

The Sub-Committee therefore concludes that despite assurances given by this PLH and DPS on 3rd June, 2014 the premises has not maintained a refusals register regularly and that staff were not able to locate one that was being used. Training records have not been maintained and employees' records not checked in accordance with the law. The DPS was not truthful with the Sub-Committee about the length of time the seller was employed in the store. Despite the employment of this member of staff since 2014, he made a sale to a test purchaser on 29th January 2016 without asking for any ID or completing a register and whilst on a mobile telephone.

The DPS admitted that he was only in the store 3 times a week, for 3 to 4 hours, although even this was unclear evidence. However, the assurance given on 3rd June, 2014 by the DPS and PLH that there would always be two members of staff on duty in the store was patently not abided by quite quickly after the grant of the license, and not abided by until the recent test purchase.

On this evidence the Sub-Committee is satisfied that the DPS has been untruthful today, did not attend for a PACE interview and failed to manage the store in accordance with the conditions of the license. He actually spends inadequate time in the premises himself to manage them in accordance with the licensing objectives. He has attempted to pass responsibility to the PLH.

The Sub-Committee is also extremely concerned that the PLH has not attended today, on very little notice, and without full reasons. He did not attend for a PACE interview on 11th April 2016 without giving any notice. He was aware that his advocate could not attend today, but made no steps within the 28 day period to appoint an alternative advocate. He appears to have assumed that the matter would be adjourned today. The Sub-Committee has determined that this is a serious matter that demands to be considered today.

The PLH attended upon the application on 3rd June, 2014 and gave assurances that the premises, which had a very concerning history, would be managed with extra vigilance including two staff in the premises at all times. Thereafter, he appears to have given little time to managing the premises, the legality of staff employed or the quality of the DPS managing staff, training records or refusals registers. This lack of vigilance has resulted in a failed test purchase.

The Sub-Committee considered removal of the DPS on this evidence, but was so concerned with the broken assurances given by the PLH on 3rd June, 2014 and the subsequent failure to be extra vigilant with these premises, that it takes the step of revoking the premises license today. It cannot attach further conditions to any effect, given that very strong conditions were imposed in 2014, and these have not been complied with.

The meeting ended at 1.45 pm

CHAIR