

Minutes of the Licensing Sub-Committee 2

Tuesday 14th February, 2017 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor E Taylor (Chair)
Councillors C Bayton and A Taylor

Officers:-

R Clark – Solicitor (Chief Executive Directorate), L Rouse – Licensing Clerk, S Smith – Interim Licensing Manager (Place Directorate) and K Taylor - Democratic Services Officer (Chief Executive's Directorate).

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 20th September, 2016, be approved as a correct record and signed.

19. **Application for a Licensed Premises Gaming Machine Permit – The Clifton, Bull Ring, Sedgley**

A report of the Strategic Director Place was submitted on an application for a Licensed Premises Gaming Machine Permit for six Category C machines in respect of the premises known as The Clifton, Bull Ring, Sedgley.

Mr J Taylor – Area Manager (Wetherspoons Ltd) was in attendance at the meeting.

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

Mr Taylor responded to queries from Members and in doing so confirmed that the purpose of the application was to trial a digital Amusement with Prize machine(s), and that all gaming machines were clearly visible by members of staff.

Resolved

That, following consideration of the information contained in the report submitted, the grant of a Licensed Premises Gaming Machine Permit for six Category C machines in respect of the premises known as The Clifton, Bull Ring, Sedgley, be approved.

20. **Application for a Licensed Premises Gaming Machine Permit – The Chequers Inn, 96 High Street, Stourbridge**

A report of the Strategic Director Place was submitted on an application for a Licensed Premises Gaming Machine Permit for five Category C machines in respect of the premises known as The Chequers Inn, 96 High Street, Stourbridge.

Mr J Taylor – Area Manager (Wetherspoons Ltd) was in attendance at the meeting.

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

Mr Taylor responded to queries from Members and again confirmed that the purpose of the application was to trial a digital Amusement with Prize machine(s), and that all gaming machines were clearly visible to members of staff.

Resolved

That, following consideration of the information contained in the report submitted, the grant of a Licensed Premises Gaming Machine Permit for five Category C machines in respect of the premises known as The Chequers Inn, 96 High Street, Stourbridge, be approved.

21. **Application for a Licensed Premises Gaming Machine Permit – The Saracens Head, Stone Street, Dudley**

A report of the Strategic Director Place was submitted on an application for a Licensed Premises Gaming Machine Permit for four Category C machines in respect of the premises known as The Saracens Head, Stone Street, Dudley.

Mr S Robinson (Amber Taverns Ltd) was in attendance at the meeting.

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

Mr Robinson responded to queries from Members and in doing so outlined the layout of the premises and the positioning of the machines, and confirmed that all machines were clearly visible to staff.

Resolved

That, following consideration of the information contained in the report submitted, the grant of a Licensed Premises Gaming Machine Permit for four Category C machines in respect of the premises known as The Saracens Head, Stone Street, Dudley, be approved.

22. **Application for a Licensed Premises Gaming Machine Permit – The Stourbridge Lion, 77-78 High Street, Stourbridge**

A report of the Strategic Director Place was submitted on an application for a Licensed Premises Gaming Machine Permit for four Category C machines in respect of the premises known as The Stourbridge lion, 77-78 High Street, Stourbridge.

Mr S Robinson (Amber Taverns Ltd) was in attendance at the meeting.

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

Mr Robinson responded to queries from Members and in doing so outlined the layout of the premises and the positioning of the machines, and confirmed that all machines were clearly visible to staff.

Resolved

That, following consideration of the information contained in the report submitted, the grant of a Licensed Premises Gaming Machine Permit for four Category C machines in respect of the premises known as The Stourbridge Lion, 77-78 High Street, Stourbridge, be approved.

23. **Application for Review of Premises Licence – Wall Heath Wine Lodge (AKA 1st Stop), 16A Albion Parade, Enville Road, Wall Heath**

A report of the Strategic Director Place was submitted on an application for a review of the premises licence in respect of Wall Heath Wine Lodge (AKA 1st Stop), 16A Albion Parade, Enville Road, Wall Heath.

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

C King – Trading Standards
G Wintrip – Trading Standards
J Annakin – Public Health
K Turley – West Midlands Police
Mr L Charalambides – Barrister
Mr C Lockett – Licensing Agent
Mr T Singh – Premises Licence Holder
Mrs H K Pawar – Designated Premises Supervisor

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, and outlined the reasons that had resulted in the application being made for a review of the premises licence.

It was explained that on 14th October, 2016, a child test purchaser was sold alcohol, namely a bottle of Frosty Jack Cider from the premises, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

The Sub-Committee were informed that Dudley Trading Standards had visited the premises on 3rd July, 2012, 11th July, 2014 and 4th September, 2015, providing advice in relation to the prevention of underage sales of age restricted products, acceptable proof of age and the importance of keeping a Refusals Register. Advice packs were given to ensure that all staff were aware of their obligations under the Licensing Act 2003.

Details were provided on the test purchases that had been conducted by Dudley Trading Standards between May, 2012 and June, 2015, and although these resulted in no underage sales of age restricted products, on two occasions the employee had asked the customer their age and not requested identification. It was noted however, that on 7th February, 2014, a 16 year old test purchase volunteer had been sold alcohol, which was reviewed by a Licensing Sub-Committee on 22nd April, 2014, where it was resolved that additional conditions were applied to the premises licence.

Following the sale of alcohol to the test purchaser on 14th October, 2016, the individual who had sold the alcohol had been identified as Mr P Hussain, shop assistant. Upon questioning, Mr Hussain made no reply and was issued with a Fixed Penalty Notice. An inspection of the premises identified Challenge 25 posters displayed, and a Refusals Register with the last entry dated 16th June, 2016.

In concluding, it was suggested that if the Sub-Committee was minded not to suspend or revoke the premises licence that consideration be given to the removal of Mrs Pawar as the Designated Premises Supervisor.

J 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.

K Turley then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Neighbourhood Team visited the premises on 3rd December, 2016, regarding youths gathering in the area and reinforced the issue of proxy sales. It was also noted that a member of the public had reported that an intoxicated elderly man regularly sat outside the premises and purchased alcohol for youths. In responding to a question by Mr Charalambides, K Turley reported that she had no further details regarding the intoxicated man.

In concluding, K Turley supported the recommendations submitted by Trading Standards.

Mr Charalambides referred to the representations submitted by Public Health, in particular, queried how these related to the local area. In responding, J Annakin confirmed that the representations were evidence based on health implications and therefore supported any action that was deemed appropriate to prevent the sale of alcohol to underage persons.

In responding to a question by the Chair regarding the number of advisory visits and test purchase exercises undertaken at the premises, Mr Wintrip stated that this was a direct result from having a pro-active team and that during visits the Refusals Register and appropriate documentation would be viewed by Officers. Mr Wintrip also confirmed that he had not previously encountered Mr Singh or Mrs Pawar during visits to the premises.

Mr Charalambides then presented the case on behalf of Mr T Singh and Mrs Pawar, and in doing so stated that they supported the review by Trading Standards as it was important to be pro-active and review management practices. He confirmed that Mr Singh, together with his family, owned twenty businesses throughout the West Midlands, and that this premises had been the only one that had been reviewed. Reference was made to the number of test purchase exercises that resulted in no sale being made to underage persons, and suggested that the main issue was the need for further training.

Mr Charalambides further commented that appropriate steps should be taken on the protection of children from harm only, as there had been no evidence to suggest that Mr Singh had failed to prevent crime and disorder in accordance with the Licensing Objectives.

Reference was made to the comments made by K Turley in relation to the purported intoxicated man purchasing alcohol for youths; in particular that Mr Singh would be willing to work together with West Midlands Police and prohibit the gentleman from entering the premises if further details were provided to identify the man, as he had not been informed of the issue previously.

It was noted that following the sale on 14th October, 2016, Mr Hussain had been issued with a warning and all three employees had been re-trained, and Mr Lockett had been instructed by Mr Singh to undertake a review of procedures implemented and training, which resulted in updating the age restricted literature and cards that would be issued to customers outlining reasons as to the refusal of sale.

At this juncture, Mr Charalambides suggested that additional conditions could be applied to the premises licence to include external training to be provided on a three monthly basis, and that a personal licence holder remain at the premises at all times.

In concluding, Mr Charalambides referred to the possible removal of Mrs Pawar as the Designated Premises Supervisor, in particular that if the Sub-Committee were minded to take this step that a suitable and qualified replacement would be presented to the Licensing Authority.

In responding to a question by Mr King, Mrs Pawar confirmed that she attended the premises between two and three hours per day, however, these varied as she was also required to visit her other businesses. Mr Singh had similar responsibilities and confirmed that he would attend the premises for a short time at least every other day.

Mr King, in responding to a question raised by Mr Charalambides confirmed that letters were not sent to premises owners as inspection visits were undertaken.

It was noted that Mr Hussain had received monthly training reviews following the sale on 14th October, 2016, and copies of the training records were circulated to all parties. Mr Charalambides also reported that himself, nor Mr Singh, could give the reason as to why Mr Hussain sold the alcohol to the test purchase volunteer, however, they did acknowledge that the sale had taken place.

Following concerns raised by Mr King in that Mr Hussain had sold alcohol to an underage person despite receiving training, Mr Charalambides commented that he was confident of the training and rehabilitation of Mr Hussain, however, if Mr Hussain failed again he would be dismissed from the premises.

In responding to a question by the Legal Advisor, Mr Wintrip confirmed that it was Dudley Trading Standards policy that test purchase volunteers would not lie should they be asked of their age.

Reference was made to the review of the premises licence in April, 2014, and Mrs Pawar confirmed that following the review, the majority of the conditions applied to the premises licence had already been implemented, including CCTV and training had been given to Mr Hussain when he was employed in September, 2016. It was also noted that CCTV in all stores were accessible and monitored from the main head office.

In responding to a question from a member in relation to the test purchases where the employee had not requested identification, Mr Charalambides stated that it would be beneficial to Mr Singh if following the test purchase, trading standards had informed him that identification had not been requested. He also confirmed that this would be enforced during the training provided to employees.

Following a request the Refusals Register was circulated to the Sub-Committee. Concerns were raised by the Sub-Committee regarding the discrepancies in the Refusals Register, as it was explained that there had been a separate book underneath the counter used by employees to register refusals. These would be inputted into the Register at a later date. Mr Lockett confirmed that a single pre-printed register would be implemented at all premises.

Following further discussion, Mr Singh stated that the premises were within the local community and customers were known on a first name basis.

In summing up, Mr King reiterated his concerns over the management of the premises, in that Mr Hussain remained employed at the premises and that it was apparent that there were discrepancies in the Refusals Register. These concerns had not been alleviated from the responses given today.

In summing up, Mr Charalambides stated that although Trading Standards had been vigilant, there was a lack of communication with Mr Singh and Mrs Pawar, and confirmed that the promotion of the Licensing Objectives was of paramount importance and therefore the conditions suggested previously, he considered would address the concerns raised.

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 Legal Advisor outlined the decision.

Resolved

That, following consideration of the information contained in the report submitted and presented at the meeting, Mrs Pawar be removed as the Designated Premises Supervisor in respect of Wall Heath Wine Lodge (AKA 1st Stop), 16A Albion Parade, Enville Road, Wall Heath.

The following conditions that had been applied to the premises licence will also be amended including an additional condition no. 10:-

- (3) A Register of Refusals of Sale of Alcohol (in the form of a single combined record) which indicates the date, time and reason for refusal will be operated and maintained at the premises. The Premises Licence Holder shall review the book once a week ensuring it is completed and up-to-date. The Premises Licence Holder will sign the book each time it is checked. This book shall be made available for inspection by an officer of any responsible authority.
- (6) All persons engaged to sell alcohol must complete a training programme provided by external trainers, which includes a written test, to verify the competency of that person prior to them being authorised to sell alcohol. An external review of training shall take place every three months in addition to the internal reviews in condition 7.
- (10) A Personal Licence Holder shall be in the premises at all times.

Reasons for Decision

This is an application for the review of the premises license for Wall Heath Wine Lodge, brought by Trading Standards on 17th November 2016. The license permits the sale of alcohol between 8am and 11pm except on Sundays when the hours are 8am to 10.30pm.

The review hearing was deferred from 3rd January 2017 at the request of the premises license holder.

Mr Tajinder Singh is the premises license holder and he attended the Sub-Committee today as did the Designated Premises Supervisor, Mrs Harkesh Pawar. Mr Charalambides, Barrister and Mr C Lockett, Licensing Agent attended to represent the premises license holder.

Mrs Pawar stated that she spent 2-3 hours a day in the store at different times. Mr Singh stated that he and his wife visited the premises every or every other day, and he was responsible for 5 premises. Mrs Pawar was responsible for different premises.

The barrister explained that Mr Singh managed 20 premises across the West Midlands and had had no reviews at any other premises.

It was asserted on behalf of the premises license holder that poor management was not the issue in this case, but the issue was about training for staff. Staff had taken training refreshers in November (Mr. Singh), Mr Hussain in August, 2016 and Mrs Kaur Pawar in 2015. Mr Hussains' training was reviewed after the test purchase sale. It was also stated that the agent would undertake further training for all staff following a review conducted in January 2017, and this should be further refreshed on a 3-monthly basis. Finally, it was suggested that a Personal License Holder should be present on the premises at all time.

On 14th October, 2016, a 17 year old female test purchaser was sold a bottle of cider by Mr. Porrhady Hussain, who was cautioned and made no comment. He had been employed since August 2016. He had made no attempt to ask the age of the purchaser or request identification. He was issued a fixed penalty notice. The exercise was conducted as a result of police information that under-age sales were being made at the premises. The allegation was that an elderly gentleman was buying alcohol for youths congregating outside the store, and that the police subsequently (3rd December, 2016) brought this to the attention of the premises. The man was described as an alcoholic who regularly sat outside or close to the store.

The police could not say that they had identified the elderly gentleman and addressed the alleged issue of proxy sales with him.

The review is brought on the assertion that the licensing objectives - the prevention of crime and disorder and the protection of children from harm - have been breached. However, the main issue was that of potential harm to children.

Challenge 25 posters were on display and the last entry in the refusals register was 16th June 2016 (some 4 months previously). However, a completed register was presented today, apparently compiled from another document kept under the till, of which Mr Hussain was not aware. This other original document was not provided today, and therefore, the committee was not able to rely confidently upon the refusals register presented today, or the apparent monthly reviews recorded on it. This manner of maintaining the refusals register is wholly unacceptable, and represents unsafe management practice.

This sale follows a failed test purchase exercise on 7th February, 2014 when a 16 year old was sold a bottle of Spritz and no attempt was made to ascertain the age of the purchaser. A number of conditions were subsequently attached to the premises license including conditions that (1) a challenge 25 policy was to be in force with proper staff training about requiring proof of age and that (9) any person suspected of purchasing alcohol for a person under age, shall be refused service.

Further test purchase exercises were conducted in March and November, 2015 and June, 2016 with no sales being made, albeit in March and November, 2015 the seller asked for the age and not identification of the purchaser. A tobacco test purchase exercise was conducted in November 2015 and no sale was made.

The police were not able to say whether elderly gentlemen had been identified and approached to raise this allegation of proxy sales or whether the member of the public gave their name to the police. The premises licence holder and designated premises supervisor stated that they knew of no such customer.

The Sub-Committee finds that the training of staff selling alcohol was not thorough or was not monitored in that on two test purchase exercises, identification was not asked for. Whilst test purchasers are instructed to always tell the truth, genuine under age customers are likely not to do so, and so this represents very poor practice. The refusals register does not comply with condition 3 to the license, and the Sub-Committee therefore takes the step of amending condition 3 to make it clear that the register must be a single continuous document, reviewed once a week and not monthly as is the current practice.

In the light of this poor management of the premises (and despite clear conditions being attached to the license in 2014) the committee also takes the step of removing the current Designated Premises Supervisor, Mrs. Harkesh Kaur Pawar. A new Designated Premises Supervisor should be appointed who is able to grasp the importance of training, refresher training, maintaining an accurate refusals register and monitoring the effectiveness of training.

Finally, the Sub-Committee amends condition 6 of the license to reflect that there shall be external training to all persons selling alcohol and that 3-monthly reviews will also be conducted by an external trainer. This is in addition to the requirements of condition 7.

A new condition 10 shall also be imposed on the license stating that there must also be a personal license holder on the premises at all times in which sales of alcohol are being made.

The meeting ended at 1.15 pm

CHAIR