

Minutes of the Licensing Sub-Committee 2

Tuesday 21st March, 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), B Hughes – Assistant Team Manager – Licensing and Enforcement, (Place Directorate) and K Buckle – Democratic Services Officer (Chief Executive's Directorate).

24. **Declarations of Interest**

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

25 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 14th February, 2017, be approved as a correct record and signed.

26. **Application for a Review of Premises Licence – Sandhu Stores, 2 Heath Street, Stourbridge.**

A report of the Strategic Director Place was submitted on an application for a review of the premises licence in respect of Sandhu Stores, 2 Heath Street, Stourbridge.

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

K Sandhu – Premises Licence Holder
D Craig – Legal Representative
G Wintrip – Trading Standards
J Annakin – Public Health
D Jenkins – West Midlands Police

Following introductions, the Assistant Team Manager presented the report on behalf of the Council.

Mr Wintrip 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 December, 2016, a child test purchaser was sold alcohol, namely a bottle of Echo Falls Wine from the premises, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives

Details of previous test purchases were referred to and it was noted that an advisory visit had been made to the Store by Trading Standards. The increasing problems with youths drinking in the park in Stourbridge which was to the fore of the premises in question were outlined.

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 imposing conditions to the licence.

D Jenkins then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Neighbourhood Team had no concerns regarding the premises, and although she was aware of concerns in relation to youths consuming alcohol in Stourbridge Park there was no evidence to suggest a link to Sandhu Stores. It was confirmed that the recommendations submitted by Trading Standards were supported by West Midlands Police.

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

Mr Craig then presented the case on behalf of Sandhu Stores and Ms Sandhu, and in doing so stated that it was clear that the Licence for these premises would have been previously licensed under the Licensing Act, 1964 which predated 24th November, 2005, therefore no conditions other than mandatory ones were on the licence and it may be an appropriate time to contemporise the licence to bring it up to date.

Mr Craig confirmed that the Premises Licence Holder should be in a position to promote the Licensing objectives, and she had been in that position for 10 years now, although it was accepted that there were previous issues in relation to cigarettes and alcohol products at the premises. The previous positive test purchases were referred to.

It was noted that Ms Sandhu accepted full responsibility for the actions of her staff and the incident in question, and acknowledged that there were training issues.

It was confirmed that there was no objection to the recommended conditions being applied to the premises licence, however, Mr Craig requested that condition number 5 be amended to reflect that the Premises Licence Holder and Designated Premises Supervisor would make proportionate steps to view the CCTV on a monthly basis, not weekly and the removal of condition 9 as that duplicated a legal requirement in any event. Mr Wintrip confirmed that he had no objection to the proposed amendments.

It was noted that the Challenge 25 system was now in operation at the premises which wasn't at the time, and it was proposed that appropriate training would be provided to the member of staff responsible for the sale, within 21 days.

Mr Craig concurred with the Neighbourhood Policing team that there was no link with the underage drinking in Stourbridge Park with Sandhu Stores and that the issues raised by Public Health in relation to the affects of underage drinking were a matter for the general public realm.

In responding to a question from Mr Wintrip, Ms Sandhu confirmed that as she was in full time employment, she worked at the store in the main on Saturday and Sunday evenings, and occasionally on Friday evenings.

It was noted that apart from Ms Sandhu and her brother the only other employee was Miss Foxall, who had been provided with in house training and would be provided with further training from an external source.

Following concerns raised by the Chair in relation to the lack of entries for the test purchases appearing in the Refusals Register, Ms Sandhu admitted that the failure was due to training issues.

Members asked questions and raised concerns and Mr Craig responded stating that an external trainer would be appointed, Miss Foxall had been aware of the Refusals Register, the need to complete that and the requirements to seek identification as internal training had been provided upon her appointment. There were 13 CCTV cameras at the premises, some of those capturing images outside the premises and previously accessed by West Midlands Police for evidential purposes.

The Chair referred to the location of the Premises and that the majority of customers would be young and the need for Ms Sandu and her staff to be vigilant Ms Sandu accepted that her staff were representing her.

Ms Sandu also accepted that the Challenge 25 system should have been in place previously given the age of most of the customers.

In summing up, Mr Wintrip reiterated that despite due diligence, the application for review had been made due to a child test purchaser being sold alcohol, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives, however it was hoped that, should conditions be imposed, the Licensing Objectives would be met.

In summing up Mr Craig referred to all parties being fully in agreement with conditions being imposed upon the Licence, advising that the imposition would be the most appropriate and proportionate step to take in relation to the matter.

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 outlined the decision.

Resolved

That, following consideration of the information contained in the report submitted and presented at the meeting, the following conditions be applied to the premises licence in respect of Sandhu Stores, 2 Heath Street, Stourbridge as follows:-

- (1) A written Proof of Age Policy (Challenge 25) is to be put in force, which all staff authorised to sell alcohol will be trained in and adhere to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age Standards Scheme (PASS) proof of age card such as Citizen Card. No other form of identification shall be accepted.
- (2) A4 notices to be displayed on the door to the premises and near the point of sale stating that it is an offence to buy alcohol for persons under the age of 18.
- (3) A Register of Refusals of Sale of Alcohol 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.

- (4) CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer so that the alcohol display area and the point of sale area can be viewed. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request to the Designated Premises Supervisor and in any event within 24 hours. The hard drive to be kept securely but readily accessible to all staff.
- (5) The Premises License Holder/Designated Premises Supervisor will take proportionate steps to review the premises CCTV on a monthly basis in order to identify persons under the age of 18 who are attempting to buy alcohol or persons over the age of 18 buying on their behalf. A record of these checks shall be maintained and be available for inspection upon request by an officer of any responsible authority.
- (6) All persons engaged to sell alcohol must complete a training programme, which includes a written test to verify the competency of that person prior to them being authorised to sell alcohol.
- (7) The premises licence holder shall ensure that monthly reviews are conducted with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy. The monthly reviews will be recorded in writing.
- (8) A file shall be maintained at the premises for each person authorised to sell alcohol (with proof of identity which will be a copy of passport and/or driving licence). This file shall contain all training records for each person along with copies of monthly reviews as stated in point 7. This file shall be made available for inspection by any officer from a responsible authority upon request to the Designated Premises Supervisor.

Reasons for the Decision

This is an application brought by Dudley Trading Standards to review the premises license of Sandhu Stores, 2 Heath Street, Dudley. The review is brought on 16th January 2017 further to a failed test purchase exercise on 14th December 2016 in which a 15 year old female test purchaser was sold a bottle of wine. The grounds for the review are the prevention of crime and disorder and the protection of children from harm.

Mr Craig. Barrister, attended to represent Mr. Sandhu today together with Ms. Baljinder Sandhu who is the Designated Premises Supervisor. The premises license holder is Miss K. Sandhu.

The person making the sale was a Lucy Foxall, shop assistant, who made no attempt to ask for age or ID. She was initially not truthful about this, and stated that she had sought ID, but then admitted that she had not. Further, there were no challenge 25 posters on display and the last entry on the refusals register was dated 6th November 2016, signed by her. She was issued a Fixed Penalty Notice.

The premises had previously passed test purchases exercises for alcohol on 7th November 2011, and 13th January 2016, and tobacco on 11th December 2013 and 19th August 2016. Trading standards had notified the premises licence holder of the results of all test purchase exercises but Ms. Sandhu could not recall receiving any such letters.

However, the premises had on 18th December 2011 been found to be selling 5 bottles of vodka with counterfeit duty labels, and a further 7 bottles were found on the premises on 18th December 2013, together with illegal cigarettes.

There had been a further concern, reported by police in July 2016 that young persons were increasingly congregating in the nearby park and allegedly obtaining alcohol from the store. However, there was no additional evidence to directly link these alcohol bottles with the Sandhu Store.

There have been no previous reviews of the premises licence, a number of test purchase exercises have been passed, and previous issues have been dealt with appropriately.

The shop assistant, who had only been employed for 6 weeks at the point of sale, did make a mistake, and Ms. Sandhu admits that there was a training problem, that will be addressed with training to be given to her and that Ms. Sandhu herself takes responsibility for this, and asserts that having held the license for 10 years, this is not a management issue.

Ms. Sandhu stated that the challenge 25 scheme is now in operation at the premises, Ms. Sandhu's brother will obtain a personal license and that external training (through Patrick Burke), will be given to Ms. Foxall in addition to internal training already delivered since the test purchase. Ms. Sandhu stated that a sticker was in the window for "no challenge no sale".

Ms. Sandhu was prepared to accept the proposed conditions as appropriate to address the issues raised in the review, with the amendment to proposed condition 5 to include the Designated Premises Supervisor also, and a monthly CCTV review. These amendments were agreed by trading standards. Ms. Sandhu did object to a condition being imposed on the basis that this replicated a legal requirement and was therefore not appropriate or necessary. Trading Standards did agree for condition 9 to be removed as a suggested condition.

The sub-committee is satisfied that this underage sale was a result of poor training and not primarily as a result of poor management of the premises. It finds that the imposition of conditions upon the premises license is the appropriate step to ensure that the training concern are rectified, and it accepts the evidence of Ms. Sandhu that she will commission external training for her staff. The committee therefore amends the proposed condition 5 to reflect that CCTV review can be conducted by the Designated Premises Supervisor and shall be monthly. It also accepts that proposed condition 9 is unnecessary and shall not attach it to the licence. The remaining 8 conditions shall be imposed upon the premises licence.

The sub-committee finds that no further steps are required to uphold the licensing objectives on this review.

27. **Application for Review of Premises Licence – Shepprdon (UK) Ltd (AKA Wallows Convenience Store) 28C Wallows Road, Brierley Hill**

A report of the Strategic Director Place was submitted on an application for a review of the premises licence in respect of Shepprdon (UK) Ltd (AKA Wallows Convenience Store) 28C Wallows Road, Brierley Hill.

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

Mrs N Nisa – Premises Licence Holder

Mr K Curtis – Solicitor

G Wintrip – Trading Standards

J Annakin – Public Health

D Jenkins – West Midlands Police

Following introductions, the Assistant Team Manager presented the report on behalf of the Council.

Mr Wintrip 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 25th January, 2017, a child test purchaser was sold alcohol, namely a 4% bottle of fruit alcohol from the premises, which was contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

Mr Wintrip referred to a previous test purchase at the premises which included the sale of 10 cigarettes to an underage test purchaser in 2013, which was dealt with by warning letter and that two bottles of counterfeit vodka were seized in 2014, which resulted in a warning letter being issued to Mr Ahmed, who is the husband of the premises licence holder, and premises Manager.

It was noted that Mr Iqbal, the employee who sold the alcohol on 25th January, 2017 made no attempt to ask for identification and admitted to receiving no training regarding age restricted products.

Details of the licence issued and a chronological list of the departments interventions was outlined, including a test purchase when no sale was made. It was noted that advice pack regarding the sale of age restricted products was provided to the Premises Licence Holder and she was also advised her of her obligation to train staff, however there were no recent entries in the Refusal Register and no sale to under 25 notice on display at the premises.

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 imposing conditions to the licence.

D Jenkins then presented the representations of West Midlands Police and in doing so informed the Sub-Committee that the Neighbourhood Team had no concerns regarding the premises and supported the recommendations submitted by Trading Standards.

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.

Mr Curtis then presented the case on behalf of Mrs Nisa and in doing so stated that Mrs Nisa had taken the matter extremely seriously and provided details of the current position relating to a formula of documented training

that would be rolled out to staff to prevent any further incidents occurring in the future. Folders detailing the training were circulated to Members. It was noted that Mr Iqbal no longer worked at the premise and Mrs Nisa was currently recruiting another member of staff.

Mr Curtis referred to the fact that Mr Ahmed had a personal licence issued by Dudley Council and that Mrs Nisa also held the Designated Premises Licence which had been issued by Birmingham City Council.

It was noted that Mrs Nisa was undertaking a monthly training review, checking identification and reviewing the challenge 25 system providing refresher training on a monthly basis. The CCTV at the premises would also be regularly checked to ensure that it was recording, with a recent inspection taking place by an independent company who had provided a certificate to confirm that it was fully operational.

Mr Curtis advised that Mr Iqbal had been provided with training, however the training provided may not have been fully appropriate given that he failed to request identification from the underage test purchaser.

The new mechanisms in place to ensure that the Refusals Register was being completed were outlined. Mr Curtis referred to the bundle of photographs which had been circulated to Members, in terms of what notices were being displayed at the store. The formal procedures in place regarding training, and tools in place regarding signing off the refusals register to avoid as far as possible, a further incident of this nature occurring in the future was again reiterated.

In responding to questions and concerns raised by Members, Mr Curtis and Mrs Nisa responded stating that it has now been accepted that the Refusals Register should have contained entries for those test purchases that were refused, Mrs Nisa was present in the shop approximately three to four days each week, with Mr Ahmed being present between the hours of 6am to 10pm every day.

Mrs Nisa accepted that Trading Standards had provided signage to be displayed at the premises, however this had been misplaced.

Mr Curtis had advised Mrs Nisa of the implications should a further incident of this nature occur in the future including the power of the Sub-Committee to revoke the Licence for the premises.

It was confirmed that there was no objection to the recommended conditions being applied to the premises licence, however, Mr Curtis questioned the need for condition number 9, as that mirrored a legal requirement and requested that condition number 4 be amended to reflect

the requirements of the Data Protection Act to prevent staff irregularities in regard of CCTV and that staff did not have access to confidential records. Mr Wintrip confirmed that he had no objection to the proposed amendment.

Following a request it was clarified that in relation to condition number 5, there would be a requirement to view the CCTV at the point of refusal in order to identify any person attempting to purchase under age products.

In summing up Mr Wintrip advised that he had conducted an advisory visit at the premises the previous week and it was hoped that should the Sub-Committee be so minded to impose conditions, mechanisms were in place that may prevent a further incident occurring in the future.

Mrs Nisa apologised to the Sub-Committee, stating that she would continue staff training.

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 outlined the decision.

Resolved

That, following consideration of the information contained in the report submitted and presented at the meeting, the following conditions be applied to the premises licence in respect of Shepprdon (UK) Ltd (AKA Wallows Convenience Store), 28C Wallows Road, Brierley Hil as follows:-

- (1) A written Proof of Age Policy (Challenge 25) is to be put in force, which all staff authorised to sell alcohol will be trained in and adhere to. Valid proof of identification will only include passport, photographic driving licence or a Proof of Age Standards Scheme (PASS) proof of age card such as Citizen Card. No other form of identification shall be accepted.
- (2) A4 notices to be displayed on the door to the premises and near the point of sale stating that it is an offence to buy alcohol for persons under the age of 18.

- (3) A Register of Refusals of Sale of Alcohol 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.
- (4) CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer so that the alcohol display area and the point of sale area can be viewed. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request to the Designated Premises Supervisor and in any event within 24 hours. The hard drive to be kept securely.
- (5) The Premises Licence Holder will take proportionate steps to review the premises CCTV upon any refusal of sale in order to attempt to identify the purchaser, and this review shall be recorded in the refusals register
- (6) All persons engaged to sell alcohol must complete a training programme, which includes a written test to verify the competency of that person prior to them being authorised to sell alcohol.
- (7) The premises licence holder shall ensure that monthly reviews are conducted with any persons authorised to sell alcohol in order to reinforce training, promote best practice and policy. The monthly reviews will be recorded in writing.
- (8) A file shall be maintained at the premises for each person authorised to sell alcohol (with proof of identity which will be a copy of passport and/or driving licence). This file shall contain all training records for each person along with copies of monthly reviews as stated in point 7. This file shall be made available for inspection by any officer from a responsible authority upon request to the Designated Premises Supervisor.

Reasons for the Decision

This is an application for a review of the premises license, brought by Dudley Trading Standards on 6th February 2017, further to a failed test purchase exercise on 25th January 2017, in which a 15 year old male test purchaser was sold a 4% bottle of fruit alcohol. The review is brought on the grounds of the prevention of crime and disorder and the protection of children from harm. The seller of the alcohol was a shop assistant Mr. Jhavad Iqbal who stated that he had had no training in the sale of age restricted products and did not know the law. He did not ask for any ID before the sale. There were no recent entries in the refusals register. He was issued a Fixed Penalty Notice.

The premises license holder and the Designated Premises Supervisor is Mrs. Nasma Nisa and she attended and was represented today by Mr. A. Curtis.

The premises had passed an alcohol test purchase exercise on 26th September 2012 and a tobacco test purchase on 13th May 2016. However the premises did sell 10 cigarettes to an underage test purchaser on 17th July 2013.

Further, trading standards seized 2 bottles of vodka from the store on 30th January 2014 which had counterfeit duty labels and had not therefore been obtained from a reputable wholesaler. The premises were written to about this incident on 19th February 2014. On three occasions before the failed test purchase, advisory visits had been made to the premises and challenge 25 materials provided, as well as other guidance. At the time of the test purchase no challenge 25 policy was in place. A "No sale no ID" sticker was on display.

Mrs. Nisa stated today that she had rolled out a new programme of training, but Mrs. Nisa and Mr. Ahmed are the only persons currently working in the store and they are actively recruiting. Both have personal licenses. There will also be a monthly training log and refresher training delivered. She accepted the need for CCTV and regular review and presented evidence that this was serviced on 14th March 2017.

Mrs. Nisa asserted that Mr. Iqbal had been given training, albeit not documentary, and therefore he had not been truthful with trading standards. However, he had left the premises after the test purchase, had not returned and would not be re-employed.

Further she stated that the premises was now operating a refusals register, and that it was now being reviewed and signed on a weekly basis by Mrs. Nisa. Notices had now been displayed in the store and a Challenge 25 policy was now in operation. She stated that she took the failed test purchase very seriously and had taken steps to ensure that it did not happen again.

The sub- committee was satisfied that the premises had put in place the challenge 25 policy and training and review procedures in order to prevent a further underage sale. The sub-committee therefore does not take any steps upon this review, except to impose conditions upon the premises license.

In terms of the conditions proposed, 1-3 were accepted. Condition 4 raised a concern for Mrs. Nisa in that she did not wish to allow all staff to have access to CCTV. Condition 5 was thought by her to be too onerous in relation to a store of this size and she questioned its relevance. Conditions 6-9 were accepted, albeit 9 was thought to be unnecessary as it represented the law. Trading standards was content if, the wording in condition 4 were amended so that “and all of staffCCTV” and “accessible to all staff” were deleted. Condition 5 could be re-worded to read, “The Premises Licence Holder will take proportionate steps to review the premises CCTV upon any refusal of sale in order to attempt to identify the purchaser, and this review shall be recorded in the refusals register.”

The sub-committee accepts these amendments as appropriate and amends conditions 4 and 5 accordingly, and imposes these, together with the other proposed conditions on the premises license. However, condition 9 shall not be imposed as this is a legal requirement in any event.

The meeting ended at 12.25 pm

CHAIR