

LICENSING SUB-COMMITTEE

Minutes of the meeting held at 2.00 pm on 16 December 2011

Present:

Councillors Nicholas Bennett J.P., Gordon Norrie and Charles Rideout

1 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Councillor Nicholas Bennett J.P. was appointed Chairman for the meeting.

2 DECLARATIONS OF INTEREST

There were no declarations of interest.

3 APPLICATION FOR THE REVIEW OF THE PREMISES LICENCE AT KWIK STOP, 5 STANLEY WAY, ORPINGTON, BR5 2HE

Having considered the application, Members decided to modify the conditions of the licence as follows:-

1. The following conditions proposed by the Council's Trading Standards Department shall be incorporated into the Licence:-
 - Refusals book or electronic point of sales refusals log - The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by the Trading Standards Department, Licensing Authority and Metropolitan Police. The Premises Licence Holder/DPS shall check the book once a week ensuring it is complete and up-to-date. The Premises Licence Holder/DPS will sign the book each time it is checked.
 - Training for all Staff to be documented - A documented training scheme shall be introduced for all staff. The scheme shall be made available at the request of the Licensing Authority, Trading Standards and Metropolitan Police.
 - The Premises Licence Holder/DPS shall ensure that all persons authorised to sell alcohol have completed a recognised underage sales training programme which includes a written test/NVQ accreditation (which shall be available for inspection by the Police or officers authorised by Bromley Council) to verify the competency of that person.

- The Premises Licence Holder/DPS shall authorise appropriately trained staff in writing to sell alcohol.
 - Staff training to be repeated at regular intervals - The Premises Licence Holder/DPS shall conduct weekly reviews with all members of staff and anyone else authorised to sell alcohol in order to reinforce the training and to promote best practice. A written record shall be made of the content of such reviews. This record shall be circulated to all persons authorised to sell alcohol at the premises.
 - Records of staff training/records of staff selling alcohol - The Premises Licence Holder/DPS shall maintain a file that shall be available for inspection by the Police or officers authorised by Bromley Council at the shop premises for each person to sell alcohol. The file shall contain all training records for that person and copies of the record of each of the weekly reviews.
2. The CCTV system installed shall be subject to a regular maintenance contract and a responsible member of staff should be capable of downloading images at the request of a lawful, relevant authority. A responsible staff member must be present at all times to provide any relevant authority upon request, with images necessary for investigating or preventing crime or apprehending or prosecuting an offender.
 3. All images shall be kept on a secure database for a minimum of 31 days.
 4. To adopt the London Safeguarding Children Board's Procedure for Licensed Premises.
www.londonscb.gov.uk/procedures/supplementaryprocedures/

The Review

Members carefully considered the application made by Rob Vale on behalf of Trading Standards at the London Borough of Bromley to review the premises licence of Kwik Stop, Stanley Way, Orpington, BR5 2HE, held by Ashaq Hussain and Iftab Hussain.

The application for a review of the premises licence arose as a result of test purchases carried out on 2 July 2011, resulting in the sale of tobacco and alcohol to a volunteer under the age of 18 and a further test purchase carried out on 17 July 2011 resulting in the sale of alcohol to a 16 year old volunteer.

Case Facts

On 13 May 2011, Trading Standards received intelligence concerning anti-social behaviour and the sale of alcohol to under age youths at the premises.

On 25 May 2011, Trading Standards Officers visited the premises and informed a Mr Maz Azam (whose name was later established as Maz Moshin), who was present at the premises at the time, about the complaints.

He was given a Challenge 25 pack together with advice about age restricted sales. However on 23 June 2011 further intelligence was received claiming that alcohol was being sold to children. As a result of these developments the premises was targeted by Trading Standards for test purchasing.

On 2 July 2011, Trading Standards conducted a test purchase operation resulting in the sale of tobacco and alcohol by Mr Maz Moshin (who confirmed his name as being Maz Azam at the hearing). When questioned by officers at the time he said he thought the volunteer was over 18. No refusal register was available for inspection at the time of the officers' visit to the premises. Mr Azam subsequently received a fixed penalty of £80.00.

On 11 August 2011, the premises licence holder, Mr Ashaq Hussain was interviewed under caution at the Council's premises. Mr Hussain explained that Mr Azam had been working for him for a few weeks, part time in a temporary capacity. Mr Hussain accepted that training records were not kept and confirmed to officers his intention to send Mr Azam on a training course. A copy of the transcript of the interview was attached to the review application.

A further test purchase was carried out on 17 September 2011. Mr Azam was again working in the shop. The first volunteer was a girl aged 16 and she was refused a sale of cigarettes. The second volunteer was a 16 year old boy who was sold alcohol. Although no officers witnessed the sale (both had been involved in the earlier sale so remained outside the shop), the volunteer told them the seller had said "No bloody ID, same old story" referring to the attempt made by the girl earlier, adding "I have been done before and I don't want to get caught again - I take it you are over age" to which the volunteer replied "yes". No ID was asked for by the seller.

When interviewed at the time, Mr Azam said "I thought he was 22 or 23. He looked my age. I ID'd the girl as she looked young. When asked why he didn't ask for ID if he thought the boy was 22 or 23 he replied "I get fed up with abuse". When told the volunteer was sixteen and had been refused by 11 out of 13 shops that day he replied "He had a beard he looks older than 16".

Mr Azam together with three other staff members subsequently attended a training session and passed the written test at the end of that session.

After completing his investigations, Mr Vale made an application for a review of the premises licence on 17 October 2011.

Facts Arising out of the Hearing

The applicant set out the facts at the hearing and referred to a further test purchase which was carried out at the premises on 7 December 2011. On that occasion Mr Azam refused the sale.

The applicant also explained that at the time of the various visits no refusal book was available for inspection.

Mr Ashaq Hussain was present at the hearing and acted on his own behalf. He did not ask the applicant any questions at that point. He did however pass to Members, handwritten sheets of paper which he claimed constituted the refusals book.

Councillor Rideout questioned the layout of the book and asked the applicant whether it was in an acceptable form. The applicant stated that there was no prescribed format in law as long as the premises licence holder kept and maintained a refusals log.

Mr Hussain made his own submissions. He explained to Members that he had been in the licensing business for 20 years and had never made any mistakes throughout that time. He came from a sporting background and would never tolerate kids drinking and smoking. He apologised to the Committee for the incidents which took place in respect of the underage alcohol sales and stated that he hoped it would not happen again. He also outlined the troubles he had been experiencing with youths on the estate including the abuse by children whenever they were refused alcohol or tobacco.

The Applicant had no questions for the premises licence holder.

In response to a question from Councillor Norrie, Mr Hussain replied he was responsible for managing the premises and accepted that he was responsible for failing to ensure that alcohol was being sold only to persons aged 18 and over. Mr Hussain has since put three of his staff on a training course including Mr Azam.

Councillor Bennett asked Mr Hussain for further information regarding the day-to-day operation of his business including any other businesses he operated. In response, Mr Hussain informed Members that he had a total of three family run shops, one located at the current premises in Orpington, one shop in Peckham and one in Camberwell, South London. Mr Hussain also explained Mr Azam's working arrangements.

Mr Azam was given an opportunity to speak at the hearing. He was reminded that he had been given warnings and a fixed penalty as a result of underage sales. Further he failed to provide Trading Standards Officers with CCTV footage at the time of their visit on 2 July 2011. Mr Azam explained that the CCTV was working at the time, however he could not switch the screen on. Mr Hussain confirmed this and stated that the screen had since been replaced.

P.C. Booth submitted representations on behalf of the Metropolitan Police and drew particular attention to concerns about the incidents of underage sales which occurred at the premises. The Police had asked for their views to be taken into consideration by Members under the crime and disorder and protection of children from harm objectives.

Reasons for the Decision

Policy Guidance

The Council's Statement of Licensing Policy 2008/2011 indicated that the Licensing Authority had instructed its officers to adopt a zero tolerance approach to criminal offences committed on licensed premises in the Borough. The matters that may be investigated following complaints or concerns include breach of licence conditions.

Paragraph 11.18 of the Guidance issued under Section 182 of the Licensing Act 2003 paragraph 11.18 indicates that in deciding which of the powers available on a review for them to use, licensing authorities should, as far as possible, seek to establish the causes of concerns identified by the representations. Remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response. However, paragraphs 11.22-11.27 also indicate that there is a distinction between those reviews arising in connection with crime and those which do not involve allegations of criminal behaviour. The guidance indicates that in reviews arising in connection with crime, it is the licensing authority's duty to take steps with a view to promoting the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.

A recent judicial authority (*Bassetlaw DC v Worksop Magistrates' Court*) confirms that in a review involving criminal activity, wider considerations come into play and the furtherance of the licensing objective includes the prevention of crime. Deterrence is an appropriate consideration for the licensing authority on such a review.

Conclusions of the Sub-Committee

Members carefully considered all the facts and circumstances presented to them by both Mr Vale and Mr Hussain. In particular, they took into account the possible financial losses which may be incurred by the premises licence holder if he were prohibited from selling alcohol at the premises. Members also took into account that Mr Hussain had placed members of his staff (including Mr Azam), on a training course all of whom had successfully completed the course and passed a subsequent test purchase.

Members were, however, still concerned about the general management of the premises and believed that the premises licence holder needed to take much more responsibility in relation to the running of his business in order to avoid instances of underage sales. Members felt that tighter measures needed to be put in place in order to promote the protection of children from harm objective. As a result, the Sub-Committee decided to modify the conditions on the current licence and incorporate the suggested conditions put forward by the Applicant.

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Members felt that the modification to the existing conditions were necessary and proportionate in order to promote the protection of children from harm licensing objective.

The Meeting ended at 3.30 pm

Chairman