

LICENSING SUB-COMMITTEE

Minutes of the meeting held at 10.00 am on 22 June 2022

Present:

Councillor Robert Evans (Chairman)
Councillors Jonathan Laidlaw and Keith Onslow

Also Present:

4 APPOINTMENT OF CHAIRMAN FOR THE MEETING

Members appointed Councillor Evans as the Chairman for the meeting.

5 DECLARATIONS OF INTEREST

There were no declarations of interest.

6 APPLICATION FOR A REVIEW OF THE PREMISES LICENCE AT DEVRIM MANAGEMENT LIMITED T/A EMBAS LOCAL, 5 STATION APPROACH, LOWER SYDENHAM LONDON SE26 5FD

Applicant's case:

The Applicant explained a key priority for his service was to protect children from harm. In order to prevent underage sales, test purchasing was used. He summarised the chronology of events, which was detailed in the application for the review. He showed the meeting the can of alcohol which had been purchased on 7 April 2022.

Questions to the Applicant:

There were none.

Licence Holder's case

Ms Bird spoke for the Licence Holder, who accepted responsibility and that the events had taken place. It was serious, but the circumstances would be explained and the steps taken since would be set out. The premises was one of five stores operated by the Licence Holder. There were no issues in relation to the other stores, which were outside the borough, and there was deep upset and concern at what had happened.

In the October 2021 Challenge 25 case, the staff member had suffered a bereavement shortly before, so she had not been functioning normally. This was no excuse, however. In the April 2022 underage sale, the member of staff was new and did not know the product was alcohol. She had only been

working a few hours, was provided with further training, but now no longer worked at the store.

Steps had been taken to ensure there would not be a recurrence. It had not been possible to train the employee from October 2021 immediately afterwards because she went abroad. She had since received refresher training after returning to the UK. The Licence Holder referred to the certificate and signage included in appendix 3. The till system prompted for an age check, which prevented the future misinterpretation of products. It was installed in May 2022 and there had been no problems since. All staff had received further training. The employee from October 2021 had received enhanced training, as she wanted a personal licence. The Licence Holder supported all staff who desired enhanced training. The refusal register was checked by directors weekly, if not twice weekly. The Licence Holder wanted to be a positive influence in the community and to keep children safe.

Questions to the Licence Holder

The Licensing Officer asked how many members of staff there were. The Licence Holder said six and one of them had a personal licence. The Licence Holder acknowledged condition 14 and apologised if this had been breached. It was a matter for committee whether to add any new conditions, but they would be complied with. The committee could require a personal licence holder to be present at all times and further training. The Licence Holder had already taken steps without prompting.

The Chairman pointed out that the certificates in appendix 3 post-dated the underage sale and asked if there had been training previously. The Licence Holder said there had been, but was not able to say what particular course.

Final comments

The Applicant reiterated that a stepped approach had been taken and the review was an opportunity to protect children.

Decision

Following an adjournment, members returned and the Chairman announced the licence would be suspended for one month and a condition added that a personal licence holder must be present at all times.

There was no doubt an underage sale had taken place and this was a serious contravention. The premises had improved training and systems afterwards.

Reasons

The following are the reasons for the decision.

The Licensing Sub-Committee carefully considered the application for a review of the premises licence at Devrim Management Limited t/a Embas

Local, 5 Station Approach, Lower Sydenham London SE26 5FD. In doing so, they had regard in particular to:

- The four licensing objectives
- The Council's current Statement of Licensing Policy
- The Council's Guidance for Members hearing a Review of a Premises Licence
- The Secretary of State's Revised Guidance issued under section 182 of the Licensing Act 2003
- The application and all oral representations by the Applicant
- All written and oral representations by the Licence Holder

Members noted that the basis for the application was that the licensing objective of protecting children from harm was not being met.

There had been one underage sale and poor training played some role. Given the earlier Challenge 25 failure, there was doubt over the robustness of that policy. The Licence Holder operates several licensed premises and therefore Members expected staff selection and training to have been more effective at preventing the underage sale. Members agreed though that it was incomprehensible for the employee not to have known the product was alcohol. It was therefore more likely that the cause was a one-off failure.

Given the existing licence conditions, Members were not of the view that an additional training condition would be suitable in the circumstances. Children were at risk of harm, so steps should be taken.

Accordingly, it was decided that a licence suspension of one month and an additional condition for a personal licence holder to be present at all times were appropriate steps for promoting the licensing objectives.

7 APPLICATION FOR A REVIEW OF THE PREMISES LICENCE AT JOHNY FOOD STORES 2 CROYDON ROAD PENGE

Applicant's case

The Applicant explained that a key priority for his service was to protect children from harm and that one way in which that is done was through test purchasing. He summarised the chronology of events, which was detailed in the application for the review. He showed the meeting the can of alcohol which had been purchased on 7 April 2022.

Questions to the Applicant

Councillor Onslow queried the extent of the anecdotal evidence that alcohol was being sold to children. The Applicant said the only evidence was that in section 4 on page 11 of the agenda.

The Chairman asked about the July 2021 underage sales visit. The Applicant confirmed that no sale had been made, but that the behaviour had given him

cause for concern. The Chairman noted the premises had been licensed for 16 years and enquired if there was an indication of problems over that period. The Applicant stated there had been one underage sale in 2014, a few Challenge 25 sales, but the majority had been refusals. The Applicant was not able to provide any information about training over the 16 years, as he relied on what the licence holder told him.

Licence Holder's case

Ms Hughes spoke for the licence holder. She said he was also the designated premises supervisor.

The Licence Holder was not making any excuse or justification for the underage sale and was very aware of the seriousness. He was very sorry for the slip in standards. The Licence Holder summarised the chronology of events, which was detailed in appendix 6 of the agenda, and emphasised that it had been a very difficult and traumatic time immediately before. The Licence Holder referred to the refusal log and pointed out there had been regular refusals before and after.

In relation to the steps since the underage sale in April 2022, there was now a robust training policy in place, given by the designated premises supervisor. The training was refreshed every 6 months. Staff members had to complete a checklist (also in appendix 6), which had been obtained from Medway Council as Bromley did not have an equivalent. There was also third party Challenge 25 training and the certificates in the appendix 6 were referred to. The Licence Holder said that work had been done in order to reassure the committee that the premises was operating in a way which protected children from harm.

The Licence Holder was happy for training every 6 months to be a condition and pointed out that test purchases could be made.

If there were a 3 month suspension, this would result in a serious financial loss. This would be in addition to the costs of the break-in and general increase in cost of living. It would be a devastating loss of income for the family and the business may no longer be viable. Family and employees were dependant on the business. It would also affect the local community and letters from residents and councillors were cited.

A suspension would not promote the licensing objectives and conditions could be imposed instead. That might include refresher training every 6 months and external training every 12 months. When the sale had been made there had been training in place, but the Licence Holder appreciated this had perhaps not been adequate.

Questions to the Licence Holder

The Licensing Officer asked what percentage of the stock was alcohol. The Licence Holder replied that it was about 9%. In reply to what other conditions

could be imposed, the Licence Holder answered that there could be an enhanced training condition, such as third party Challenge 25 training, as well as a signage condition. The person who had made the sale still worked at the premises, but could be removed from the role. The Licence Holder was willing to accept any steps necessary in order to make sure an underage sale did not happen again. There were currently three members of staff: the Licence Holder, his wife and one other. Both the Licence Holder and the other staff members had a personal licence.

The Chairman said he appreciated the shop was an important part of the community, but explained Members had to consider the protection of children. This had been an underage sale, yet training had been carried out. Was the Licence Holder aware of any previous underage sale? The licence had been taken over in 2015 and there had been nothing since then but refusals. This was the first slip-up. He was ashamed and would make sure it would not happen again. There had been an earlier refusals register, but it had not been retained. The register included in appendix 6 started at the end of 2021 so before April 2022.

Objector's case and questions to him

Mr Kelly spoke in support of the Licence Holder and against the application. He had been a customer since the Licence Holder had taken over and knew how diligent he was. He had seen customers being turned away even if they looked 18. The Licence Holder had been through a lot recently and his mind had not been in the right place for quite some time afterwards. He took great pride in the shop and looked after his customers and was devastated by the underage sale. The shop was important to the community.

The Licence Holder asked if Mr Kelly had heard any anecdotal evidence that the premises was a place for underage sales of alcohol. Mr Kelly said he had not, but that he had heard of premises in Sydenham where children went.

Final comments

The Applicant said that a stepped approach had been taken and that his service had engaged with the shop. The approach was always to try and advise first, then a Challenge 25 test purchase and finally an underage test purchase.

The Chairman permitted the Licence Holder to speak directly. The Licence Holder said he asked if customers were underage and would not serve them if they were. He did not want to lose his licence. He helped customers and local people. When he had refused sales in the past he had been threatened. This was on top of everything else that he had been through.

Decision

Following an adjournment, members returned and the Chairman announced the licence would be suspended for one month and a condition added that a personal licence holder must be present at all times.

The sale to a youngster had been a very serious offence and members wanted to try and stop that from happening again. This was set off against what Mr Kelly, ward councillors and others had said about the importance of the shop. It was accepted that the shop contributed a great deal to the local community. However, the harm had been serious.

Reasons

The following are the reasons for the decision.

The Licensing Sub-Committee carefully considered the application for a review of the premises licence at Johny Food Stores, 2 Croydon Road, Penge London, SE20 7AF. In doing so, they had regard in particular to:

- The four licensing objectives
- The Council's current Statement of Licensing Policy
- The Council's Guidance for Members hearing a Review of a Premises Licence
- The Secretary of State's Revised Guidance issued under section 182 of the Licensing Act 2003
- The application and all oral representations by the Applicant
- All written and oral representations by the Licence Holder
- All written and oral representations by objectors

Members noted that the basis for the application was that the licensing objective of protecting children from harm was not being met.

Chairman