

LICENSING PANEL

TUESDAY, 23 JUNE 2015

PRESENT:- Councillors John Ballman, Michael Bray and Vera Tomlinson

4. Appointment of Chair

Resolved – That Councillor Michael Bray Chair this meeting of the Panel.
(Councillor Bray took the Chair.)

5. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

6. Application to Review of a Premises Licence in respect of Abbys, 147 Manchester Road, Swindon, SN1 2AF

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application for a Review of the Premises Licence for Abby's, 147 Manchester Road, Swindon, SN1 2AF, (b) written representations from Wiltshire Police in support of the review, (c) additional written representations supporting their application for a review received from Wiltshire Police, (d) a written submission supporting the review, submitted by Wiltshire Police from Councillors Julie Wright and Robert Wright, (e) oral submissions in support of the application for a review received from Jacqueline Gallimore (Acting Police Licensing Manager), Councillor Julie Wright (Ward Councillor), Councillor Bob Wright (Ward Councillor), PC Diffin, PC McLaren, PC Rutherford, in support of the Police Objection, (f) oral submissions received opposing the application for review from Messrs Britton and Ioannov (Devereaux Solicitors) solicitor to the applicants, Mr Arumgam Raveendrum (Premises Licence Holder), Mrs Kavitha Sathiyathevan (Designated Premises Supervisor pending determination of her application), Mr Thakkna and Mr Sathiyathevan, (g) additional papers submitted by the Police relating to Police Storm logs, Regina v Tagg case law and Blackstones's Handbook for Policing Students, (h) additional papers submitted by Devereaux's solicitors relating to training records for Abbys staff and a petition and letters from members of the public opposing the closure of the store, (i) CCTV footage, (j) questions from Members to the applicants and objectors and answers received, and (k) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

Prior to the commencement of the submissions the Licensing Manager asked if all parties had all the correct paperwork as there was additional papers since the printing of the report. The Panel considered

(1) The letters and petition against the closure of the store and determined that these would not form part of its deliberations as the alleged sale of alcohol to a drunk women and breaches of the Licensing conditions needed to be considered and determined in their own right.

(2) That Police references to a previous review and a Cumulative Impact Policy would only be considered as background information supporting the Police Review as they had no direct bearing to the reasons for review submitted by the Police. The Licensing Manager confirmed that the reason they were within the papers was because it formed part of the review application by Wiltshire Police which had already been advertised and was in the public domain.

The Police case for a review and summary raised points can be broadly summarised as follows:

- That the Police case was in line with the Licensing Act, Section 182 Guidance and the Council's Statement of Licensing Policy.
- The facts were as set out in the Police Review on pages 14 to 17 of the agenda papers.
- Comments from Councillors Bob and Julie Wright concerning alleged incidents of Street Drinkers being provided with alcohol from people leaving Abbys Store and the effect it has on Crime and Disorder and Public Nuisance within the locality and an alleged incident of an individual staggering out of the shop with alcohol. Mr Ioannov noted that if he had been made aware of this alleged incident earlier he could have reviewed it on CCTV footage which was kept for 30 days. The Licensing Manager confirmed that this had been circulated at the previous meeting where the matter was adjourned.
- That Police had been on an undercover operation when they witnessed a woman they believed to be drunk leaving the shop in possession of alcohol she had bought at Abbys.
- An unadopted Cumulative Impact Policy Statement for the Broadgreen area, Designated Public Place Order and breakdown of off-licences on Manchester Road and their hours of operation.
- The predominant nature of alcohol sales for shops on Manchester Road and how this affected the maintenance of the Licensing Objectives in the Broadgreen area and Police obligations to prevent anti-social behaviour in the area which relied on well run businesses.
- The failure of the premises management to comply with conditions 3, 7, 13 and 17 attached to its Premises Licence.
- PC Rutherford's presentation on Police Training, Blackstone's Handbook for Policing Students, Regina v Tagg case law and his and other Police officer's skill and experience in identifying and judging levels of intoxication of individuals.
- A letter to Mr Raveendran advising him of forthcoming police visits to premises in the locality and highlighting issues the Police would address during these visits.
- The witness statements of PC Atkinson regarding the alleged incident of the sale of alcohol to an individual they believed to be drunk.
- The supporting comments of PC McLaren regarding the witness statement and the incident in question and Police evidence, via logs, that the individual concerned had been drinking in the town centre area.
- That the individual in question was known to the Police and had been arrested for alcohol related offence on four occasions previously.
- Supporting comments of PC McLaren regarding the sale of alcohol to the individual in question and his evidence that the sale, to a person the Police considered to be drunk and unsteady on her feet, was clearly witnessed.

- The Police assertion that the individual, in their opinion, was drunk when entering the store and drunk when exiting with alcohol and that the shop staff should have been able to smell alcohol when interacting with the individual.
- PC Diffin's additional evidence in support of his witness statement set out on pages 35 to 37 of the agenda papers relating to a routine licensing check carried out on 20th September 2014 and an outline of the four breaches of the Licensing conditions identified during the visit. PC Diffin highlighted the sale of alcohol under duty price, failure to have three Members of staff on the premises whilst selling alcohol regardless of the reason for this and the failure to provide CCTV footage on request and his comments that the remote, operating this equipment, was broken.
- That regardless of the excuses provided by the management of the Premises the Licensing Conditions had been breached.
- That a caution for the breaches of conditions attached to the Premises Licence had been accepted by Mr. Raveendran. PC Diffin was content that given Mr Raveendran's experience as a Premises Licence Holder and given the level of understanding in contact between them previously that Mr Raveendran understood the caution.
- That the management of Abbys should have been expected to understand the pricing of alcohol according to ABV and that there were tools available on the internet to assist with such calculations.
- Additional police information/intelligence pertaining to Abbys set out on page 87 of the agenda papers.
- That Abbys had permitted street drinkers to use the area to the rear of their shop.
- That when asked to provide training records the Police were told that they were not available in the shop at that time.
- Police comments regarding the unsatisfactory nature of the training records provided which related to training undertaken in 2014 and which appeared to include out of date questions.
- That Abbys had not heeded advice offered by the Police in order to maintain the Licensing Objections and to help prevent breaches of the Licensing Objectives.
- That CCTV footage could not determine whether an individual was drunk and this needed to be set against Police experience in determining such matters.
- That training at the Premises was a significant worry in quality, due to them being out of date and responses to questions to witnesses regarding this training.
- Conditions attached to the Premises Licence had been clearly breached.
- That intelligence concerns continued, with the last raised on 26th May 2015.
- That the evidence heard did not satisfy the Police that the Licensing Objectives were being promoted at Abbys.
- That advice had been ignored, conditions had been ignored a previous review had not resolved issues at Abbys and that in the Police's opinion a revocation of the Premises Licence was required.

Questions to the Police and responses received in respect of:

- The nature of Police evidence on drunkenness and whether this was regarded as "non expert" and the weight that can be given to other witnesses

views on the level of sobriety of an individual.

- Whether the Police Statistics provided could identify issues with individual premises and the use of these as a general indicator of crime and disorder and public nuisance rather than a specific indicator.
- How the Police determined the individual was drunk, the system used by the Police to identify levels of intoxication and why no action was taken against her at that time.
- Whether the individual was known as a street drinker to the shop through photographic identification.
- Clarification that the two incidents before the hearing were the only outstanding issues the Police were aware of.
- Who the Designated Premises Supervisor was at the time of the incident relating to the sale of alcohol to a person who was allegedly drunk. Both the management of Abbys and Police confirmed that in their view Mr Raveendran was the Designated Premises Licence holder but the Council's Licensing Manager confirmed that following the removal of the Designated Premises Licence holder in April 2012 there was no Designated Premises Licence holder specified. The meeting was adjourned to allow the Police to clarify this point but no proof of the appointment of a new Designated Premises Licence holder could be produced.

Points and issues raised by the Solicitor to the respondents and witnesses called including but not limited to the following:

- An acceptance that alcohol had been sold under the duty price and an explanation for this was to clear stock due to its best before date.
- Acceptance of management that sales of alcohol under the legal duty price should not have occurred and would not occur in the future and that he would dispose of any such stock in the future.
- That there had been a third Member of staff on the premises but that he had left, as a result of illness, three hours earlier.
- That the Police had agreed to visit the shop the following morning to receive a copy of the CCTV footage because the Member of staff with a key had left the premises and further the CCTV footage had been duly provided.
- That Mr Raveendran had not understood the caution he had signed and this caution had subsequently been challenged and was the subject of a legal review.
- That whilst not challenging the evidence provided by officers, the sale of alcohol needed to be knowingly to a drunken individual and the offer to watch the CCTV footage of this incident was made. The Panel then watched the CCTV footage in question (there was no sound available with the footage).
- The Premises Licence Holder gave evidence that the individual (in relation to the alleged sale to a drunken person) didn't appear drunk to him or Mrs Sathiyathevan, the sales person and that if she had appeared to be drunk she would not have been sold alcohol. He outlined his understanding of the characteristics of a person who was drunk.
- That Mr Raveendran could not remember where the Refusals book recording refusals of underage sales was located on 20th September 2014.
- That on 18th September 2014 the person with the key had left the shop earlier and that the Police had indicated to him they would return for this footage the following day at which time the CCTV footage had been provided.

- Mr Sathiyathevan confirmed that he had been working on 20th September but had left earlier as he had been working there all day and had been feeling unwell but would have returned if necessary to provide a copy of the CCTV footage.
- That he understood his role in the promotion of the Licensing Objectives.
- That the two incidents before the hearing were the only ones that the Police were aware of.
- That the Act was specific in setting out that any sale needed to be knowingly made to a drunk person and that staff were not in this position.
- That the management understood their responsibilities under the Licensing Act otherwise there would have been more than two incidents being considered at the hearing.
- That wider social issues were not the responsibility of Abbys, especially given the high number of licensed premises in the vicinity.

Questions to the respondents and responses received in respect of:

- Questions relating to questions on the training records provided by the shop management and whether these were correct, out of date and whether they fostered an understanding of obligations in respect of upholding the Licensing Objectives.
- Questions relating to witnesses understanding of drunkenness and how to identify it.
- Whether the Premises Licence Holder had attempted to contact other staff to ensure that there were three Members of staff present at the premises during sales of alcohol.

The Panel was adjourned and reconvened on Thursday 25th June to reach its decision in camera.

Resolved - That, having considered the evidence and representations before it, and the seriousness this Panel places on breaches of Licensing Conditions, the Panel determines that (a) the Premises Licence held by Abby's, 147 Manchester Road, Swindon be amended to include the additional conditions and/or amended conditions set out below, and (b) that the premises licence be suspended for a period of nine weeks to reflect the seriousness with which the Panel viewed the breaches of the Licensing Objectives by the Premises Licence Holder.

Reasons

1. The Panel heard evidence from the Police regarding the sale of alcohol to a woman they described as drunk, Police experience in determining such matters, together with Storm Log details of the person in question relating to her drinking and travelling from the town centre to the Manchester Road area and considered this in the light of CCTV footage viewed of the individual entering and leaving the shop and of the sale of alcohol and evidence from Mr Arumgam Raveendrum (Premises Licence Holder), Mrs Kavitha Sathaythevan (Designated Premises Supervisor) as to their contention that she was not drunk. CCTV footage did not show an individual that was not in control of herself. Indeed the individual concerned appeared to converse with Mr Raveendran regarding the product she wanted to purchase, to pay for her purchase and following the sale to place a donation in the charity box on the

counter. After carefully considering all the evidence before it the Panel was satisfied that the seller was not aware that the individual was drunk at the time of sale.

2. The Panel was satisfied that four Licensing Conditions had been breached; indeed management of Abbys accepted that breaches of the conditions regarding the price of alcohol and the provision of the CCTV footage had occurred.

3. The Panel considered the absence of a Designated Premises Supervisor in place at Abbys. The Panel heard submissions from both the Premises Licence Holder and Police that Mr Raveendran was the Designated Premises Supervisor but noted that no evidence of such an appointment could be produced. Given that both parties to the review believed that a Designated Premises Supervisor was in place and given that an application had been received by the Licensing Authority to make Mrs Kavitha Sathyathevan the Designated Premises Supervisor the Panel determined that it would take no action in respect of this at this time given that the absence of a Designated Premises Supervisor did not form part of the grounds for review before it.

4. The Panel weighed up the evidence provided at the hearing, the fact that there had been a previous successful review of the Premises Licence and that a condition arising from this review had been breached.

5. In determining that the management of Abbys did not knowingly sell alcohol to a person who was drunk and that Licensing Conditions had been breached the Panel needed to weigh up how this could be addressed either through a combination of conditions and a suspension or revocation of the Premises Licence. Notwithstanding that the Premises Licence had been the subject of a successful review in 2012, the Panel determined that whilst it took such breaches seriously it was not reasonable or proportionate that they on their own warranted a revocation of the Premises Licence.

6. Having determined that a revocation of the licence was not proportionate the Panel determined that given there were breaches of four conditions placed on the licence, one of which was the result of an earlier review, and that there had been a previous successful review of the Premises Licence a suspension of the Premises Licence for a period of nine weeks and the attachment of the following additional conditions to ensure the upholding of the Licensing objectives was both appropriate and proportionate.

Conditions:

1. That regular update training be undertaken by the management of Abbys which shall include changes to alcohol legislation, the pricing of alcohol on sale at the premises and the imposition of Mandatory conditions on the Premises Licence. Such initial training shall be completed within the period of suspension.

Reasons

i. To ensure the promotion of the Licensing Objectives.

ii. That the Panel determined that such training was required given the training

records submitted to it appeared to be out of date.

iii. To define the timescales for such training to ensure the management were able to uphold the Licensing objectives.

2. That the Designated Premises Supervisor be required to undertake training in relation to the CCTV equipment and its operation, such training to be completed within the period of suspension and that the Designated Premises Supervisor also be required to hold on the premises a set of keys to allow immediate access to the CCTV equipment.

Reasons

i. To ensure the promotion of the Licensing Objectives.

ii. To ensure compliance with conditions on the Premises Licence and to provide a responsible person for such compliance.

iii. To define the timescales for such training to ensure the management were able to uphold the Licensing objectives.

3. That all staff undertaking alcohol sales at the Premises be required to undertake training, to be provided by an External Trainer, in relation to the Licensing Act and their duties in complying with its requirements, such training to be completed within the period of suspension.

Reasons

i. To ensure the promotion of the Licensing Objectives.

ii. That the Panel determined that external training was required given the training records submitted to it appeared to be out of date and to ensure staff were appropriately trained.

iii. To define the timescales for such training to ensure the management were able to uphold the Licensing objectives.

4. That, further to 3 above, the Designated Premises Supervisor be required to forward to the Council's Licensing Manager a copy of the training undertaken together with named copies of the examinations undertaken by staff following the external training undertaken, such documentation to be provided within the period of suspension.

Reason

i. To allow the Licensing Authority to satisfy itself that the management and staff of Abbys was properly trained and able to uphold the Licensing Objectives.

That in addition to the conditions set out above the Designated Premises Supervisor

be reminded of her duty to be aware of all conditions placed upon the Premises Licence and to ensure compliance with them and that the training referred to in the conditions above must first be undertaken within the nine week period of suspension.

The Chair reminded all parties that they had the right of appeal to the Magistrates Court and that an application for any such appeal should be made within 21 days of the receipt of this decision notice incorporating the reasons for the Panel's decision.