

LICENSING PANEL

THURSDAY, 17 AUGUST 2017

PRESENT:- Councillors Wayne Crabbe, Steph Exell and Eric Shaw.

An apology for absence was received from Councillor Abdul Amin.

57. Appointment of Chair

Resolved – That Councillor Eric Shaw chair this meeting of the Panel.
(Councillor Shaw took the Chair.)

58. Minutes

Resolved – That the minutes of the meetings held on 28th June, 5th, 7th and 10th July 2017, be confirmed and signed as a correct record.

59. 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.

60. Application for Premises Licence - Premier Local, 160 Cricklade Road, Swindon, SN2 8AG

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application for a Premises Licence for Premier Local, 160 Cricklade Road, Swindon, SN2 8AG, (b) oral submissions in support of the application for the grant of a premises licence by Mr Furlong (solicitor to the applicant) and Mr Saravanbavananthan Thasarathakumaran (applicant), (c) documentation tabled at the hearing in relation to electronic till receipts and training records for staff at the premises in support of the application, (d) written submissions opposing the grant of a Premises Licence received from Wiltshire Police, (e) oral submissions opposing the grant of a premises licence received from Sian Kalyinka (Police Licensing Officer) and Sergeant Steven McGlincy (f) questions from Members to the applicants and objectors and answers received, and (g) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

The Council's Licensing Officer introduced the report noting:

- The application for a Premises Licence was set out in Appendix A of the Agenda Papers.
- That consideration of the application had been slightly delayed due to the availability of representatives from interested parties.
- The history of licensable activities at the premises including a review of the old premises licence by the Police resulting from the employment of person not entitled to work in the United Kingdom and training issues.
- That the previous review called by the Police had not been undertaken as at that time there was no valid premises licence in operation.

- The premises licence application requested licensable activities from 08:00 – 23:00 hours.
- That the Police objection was on the basis that, if granted, the Prevention of Crime and Disorder Licensing Objective would be undermined.
- The Police objection was requesting the Panel to refuse the application but should it be granted that a number of conditions be attached to any Premises Licence.

The Police objection and summary of points raised can be broadly summarised as follows:

- The Police had previously visited the premises which had identified the employment of a person not permitted to work in the United Kingdom and breaches of the licensing conditions.
- A further visit on 16th December showed that breaches of the premises Licence conditions were still occurring.
- The review called following these visits had not been able to progress as the day prior to the hearing it had been discovered there was no premises licence in operation at 160 Cricklade Road.
- The applicant was believed to be the Premises Licence holder and Designated Premises Supervisor who had previously not upheld the Licensing Objectives.
- The facts as set out within the witness statement of PC Michael Diffin as appended to the agenda papers.
- The breaches of conditions 5,6, 7 and 9 of the premises licence on the visit by the Police to the premises in October 2016 and conditions 7, 8 and 9 of the premises licence on the visit by the police to the premises in December 2016.
- The failure of the premises Licence Holder to properly maintain CCTV equipment.
- Concerns of the police that any conditions approved for inclusion on a premises licence would not be enforced given the current history of the applicant.

Responses to questions to Wiltshire Police from Panel Members and the solicitor to the applicant can be broadly summarised as:

- The objection was based on the Police view that the applicant was not a suitable person to hold a Premises Licence or to be a Designated Premises Supervisor given his history of not upholding the Licensing Objectives.
- The condition relating to the sale of single cans or bottles of beer, cider or lager over 5.5% ABV was a common condition in Swindon.
- The condition relating to loitering around the premises was intended to reinforce the maintenance of the Licensing Objectives and to encourage responsibility by the Designated Premises Supervisor.

The submission by the solicitor to the applicant can be broadly summarised as:

- His client's concern that somebody not entitled to work in the United Kingdom had previously been employed by his brother-in-law.

- The history of the status of the person caught working illegally at the premises including her current on-going application for asylum and the complicated nature of the processes involved.
- That his brother –in-law had previously managed the premises and that his client had been in Sri Lanka at the time the lady was employed and subsequently caught working at the premises.
- His client's acceptance that whilst he was not directly involved in the employment of the individual that he could not absolve himself of responsibility.
- That his client had put into place checks and balances to ensure such a situation could not reoccur.
- In future written applications for employment would be accompanied by a declaration of the applicant's right to work in the United Kingdom.
- The issues relating to the failure to display Challenge 21 signage had arisen following renovations at the store and staff failure to replace these in the correct positions.
- Challenge 25 signage was now prominently displayed throughout the store.
- Age checks were also promoted by the till used at the premises and details of transactions and checks undertaken and audited and could be printed. Such systems were used by local co-operative stores and an example of a printout was tabled.
- The applicant, in recognition of training issues had undertaken, together with his brother-in-law, refresher training at the start of the year.
- All required licences and signage was appropriately displayed.
- When the Police previously visited the premises the hard drive for the premises CCTV was not working. This was not known by management until the Police visit. A new CCTV system had been installed at the premises which included 15 cameras which could be monitored by the applicant from anywhere in the world on a live feed and had a 50 day 6 Terra Byte hard drive.
- His client had assisted the Police previously by providing CCTV footage when approached regarding anti-social behaviour in the vicinity of his shop.
- His client could not be held responsible for issues in the vicinity of his premises that were not related to customers.
- His client would seek clarification from the Council's Licensing Manager on future queries relating to the management his business.
- He had fully complied with a request from the Council's Licensing team not to sell alcohol and to this end no alcohol had been sold at the premises since the review date in April 2017.
- His client will ensure all records are kept up to date and maintained in written form where required.
- That a Premises Licence should be issued with conditions 1, 2 and 3 and a modified condition 5 to exclude issues outside the premises.
- That condition 4 relating to the sale of single cans or bottles of alcohol would put his client in an uncompetitive position as other local shops were not subject to any such condition. It was not an issue for the Police to determine what individuals should drink.
- To his client's knowledge there had been no issues with customers of the shop for over five years.

Response to questions to the applicant and his representative from members of the panel and the Police can be broadly summarised as:

- Copies of the electronic till records could be printed to provide a refusals book if required.
- Training issues were the reason the applicant's brother-in-law was unable to answer police officers during their visits to the premises in October and December 20-16. Refresher training been undertaken both the applicant and his brother-in-law and written records of this training were available for inspection.
- The training referred to was provided internally.
- If further training was required by the panel the applicant would arrange for this to be undertaken.
- The applicant lived in Hayes Middlesex and had a family address in Swindon.
- The till system could be programmed to show which member of staff had made a refusal of sale of an age restricted product.
- There would be two members of staff that were in possession of a personal licence.
- His client was fully aware of the potential ramifications should there be breaches of any conditions placed on a premises licence if such a licence were approved.

Resolved - After considering: -

1. The application for a Premises Licence ; and
2. Representations and material put forward on behalf of the Objectors;

And taking into account: -

1. The Secretary of State's Guidance; and
2. The Licensing Authority Licensing Statement:

And having in mind the promotion of the Licensing Objectives in particular: -

- i. The prevention of crime and disorder;

The Panel has determined the following: -

1. That a Premises Licence be granted for the sale of alcohol for off sales for the following permitted hours be:

Monday to Sunday 08:00 until 23:00

2. That in addition to the Council's mandatory conditions the following additional conditions should be applied to the licence: -

1. A Challenge 25 policy shall be operated. Any person who appears to be under the age of 25 who attempts to buy alcohol shall be challenged to provide age verification in the form of a passport, photo driving licence or PASS accredited card. Where proper verification is not provided the sale shall be refused. A record of the refusal shall be kept in a refusals book, identifying the member of staff who refused the sale. This book is to be kept on the premises and shall be made available to officers of any of the responsible authorities on request.

2. Should the refusals book incorporate the electronic print out system operated at the premises this system shall be modified to identify the member of staff making the refusal together with details of the age restricted product refused for sale. Such print outs shall be made on a daily basis.
3. No staff shall be permitted to sell alcohol until they have completed external training upon induction, designed to ensure that no person who is unduly intoxicated is sold alcohol and to ensure that they understand the 'Challenge 25' policy. Those staff shall receive refresher training every three months (this can be provided internally). Records of this training shall be kept at the premises and shall be made available to officers of any of the responsible authorities on request.
4. CCTV equipment which is fit for purpose and which covers all trading areas and entrance areas shall be provided and maintained in working condition when the premises are open for business. The CCTV product will be maintained for a minimum of 40 days and shall be provided to enforcement bodies on request. There must be a person on the premises able to operate and to download CCTV at all times the premises is open for trading.
5. That the Premises Licence Holder shall retain at the premises a copy of documentation relating to any check that any person working at the premises has the right to work in the United Kingdom. Such documentation shall be made available to officers of Statutory Authorities upon request.

Reasons

1. The Panel noted the applicant's proposal for a Challenge 25 Policy as set out in his application and confirmed at the hearing by his solicitor.
2. The Panel determined that the use of an external trainer for training on Challenge 25 and in respect of the sale of age restricted products was appropriate and proportionate given the history of the management and operation of the premises.
3. The Panel considered that the computer system in operation for recording refusals in respect of the sale of age restricted products should incorporate additional information in order to enable it to be a robust tool for upholding the licensing objectives.
4. The Panel determined that the request by the Police for no single cans of alcohol over 5.5% ABV was not appropriate as no evidence was provided to show that such sales were currently undermining the licensing objectives, nor was a history of such a problem provided.
5. The Panel considered that the proposed police condition preventing loitering outside the shop after 21:00 hours was not enforceable. It did note that there was an expectation that any management of premises should take reasonable steps to prevent this occurring and liaise with the police should

such issues arise.

6. The Panel noted that the application referred to only two members of staff working at the premises and heard oral evidence that a third part-time employee would commence work at the premises. The Panel determined that the number of staff working at the premises was outside its remit and that the employment of staff could be appropriately conditioned through right to work in the United Kingdom checks and training.

The Chair remind both parties that they had a right of appeal to the Magistrates' Court against the determination of the panel and that any such appeal must be commenced within 21 days of this determination.