

LICENSING PANEL

WEDNESDAY, 20 SEPTEMBER 2017

PRESENT:- Councillors Vera Tomlinson (Chair) Derique Montaut and Caryl Sydney-Smith.

76. 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.

77. Application for a Premises Licence, 109-110 Commercial Road, Swindon

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application for a Premises Licence for 109-110 Commercial Road, Swindon, (b) written representations from Wiltshire Police opposing the application, (c) oral submissions in support of the objection received from PC Michael Diffin, M.B.E., (Police Licensing Officer), (d) a written submission from the Council's Trading Standards Team in support of the objection to the grant of a Premises Licence, (e) oral submissions in support of the application received from Mr Faridon Ali Saeed (Applicant) and Safina Yonis (Representative) supporting the application, (f) questions from Members to the applicants and officers and answers received, (g) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy, and (h) advice from the Panel's legal advisor in respect of Section 4 of the Rehabilitation of Offenders Act 1974 and its application in respect of the convictions set out in the letter of Wiltshire Police dated 5th June 2017, should not form part of the Panel's deliberations as no prosecution was currently being undertaken.

The Council's Licensing Manager introduce the report noting that:

- The Police had opposed the grant of a Premises Licence for 109-110 Commercial Road, Swindon as they believed that the Prevention of Crime and Disorder Licensing Objective would be undermined.
- The options available to the Panel in respect of determining the application.
- Photographs of the vicinity of the premises.
- That there had previously been no Premises Licence in operation at the premises.
- The application was set out on pages 13 of 35 of the agenda papers.
- The Police representation was set out on page 36 of the agenda papers.
- The written submission received from the Council's Trading Standards Team opposing the grant of a Premises Licence.
- Evidence submitted by the Police in support of their application as set out in the agenda papers.
- That Me Saeed currently resided in Derby.

The Police case opposing the grant of a Premises Licence and a summary of points raised can be broadly summarised as follows:

- That the grant of a Premises Licence would likely lead to breaches of the Crime and Disorder Licensing Objective.
- That the convictions referred to in their objection related to the sale of counterfeit alcohol and tobacco.

Responses to questions to Wiltshire Police from Panel Members and the Premises Licence Holder and his representative can be broadly summarised as:

- That the convictions from 2013 were considered spent under the Rehabilitation of Offenders Act.
- That the sale of counterfeit alcohol and tobacco was an issue in Swindon.
- That the Police had no information regarding convictions since those outlined in their submission.
- That Mr Saeed had been granted a personal licence in Derby and had held this since 2011.

The Applicant's case for the grant of a Premises Licence and a summary of points raised can be broadly summarised as follows:

- The offences highlighted by the Police occurred in Derby five years previously when he took over a shop including stock.
- He had gone on holiday and when he returned his premises had been visited by the Authorities. He was unaware of any problems relating to this stock until the Authorities inspected it and he was subsequently charged.
- He didn't know whether the counterfeit goods were part of the premises stock he bought with the shop or entered the premises whilst he was away.
- Following this incident he had sought advice on how to identify counterfeit goods.
- He accepted he was responsible for all the goods in his shop.
- He had not had any issues with sales or the Licensing Act since this time.
- He was aware of his obligations under the Licensing Act.

Responses to questions to the Applicant from Panel Members and the Police can be broadly summarised as:

- He planned to reside in Swindon for six months in order to establish the shop, train staff and find a suitable manager.
- He would stay at a friend's house in Swindon.
- He had signed a ten year lease for the premises.
- He had managed a shop in a location with anti-social behaviour in Derby that was considered difficult.
- The manager he appointed would have a Personal Licence and would also be the named Designated Premises Supervisor.

Resolved - After considering: -

The application to review the premises licence made by Wiltshire Police, together with additional evidence from Wiltshire Police; and

1. Representations and material put forward on behalf of the Premises Licence Holder;

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 the prevention of crime and disorder;

Resolved - After considering: -

The application for the grant of a premises licence by the applicant; and Objections to the grant of a Premises Licence received from the Police and supported by Swindon Borough Council's Trading Standards;

And taking into account: -

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

And having in mind the promotion of the Licensing Objectives in particular the prevention of crime and disorder;

A. The Panel determined that subject to the conditions set out below a Premises Licence for the sale by retail of Alcohol for consumption off the premises Monday to Sunday between the hours of 08:00 and 23:00 hours be granted in respect of 109/110 Commercial Road.

Reasons

1. The Panel disregarded evidence relating to the applicants previous convictions as these were spent and, in accordance with Section 4 of the Rehabilitation of Offenders Act 1974, could not be considered.

2. The Panel heard no compelling evidence from the Police or Trading Standards as to the applicant's inability to manage the premises and uphold the Licensing Objectives.

3. The applicant, who currently resides in Derby stated that he would remain in Swindon as a Designated Premises Supervisor for a period of approximately six months in order to train management and staff of the premises and to oversee the installation of policies and management structures at the premises.

4. The applicant gave evidence that the manager installed in the premises would have acquired a personal licence and would be appointed as the Designated

Premises Supervisor.

5. The applicant gave evidence that he currently operated licensed premises without incident in Derby at which he is the Designated Premises Supervisor.

B. That, in addition to the Council's Mandatory Conditions applied to Premises Licences the following new/amended conditions be appended to the Licence:

1. A Challenge 25 policy shall be operated. No member of staff shall be permitted to sell alcohol until trained in the operation of the Challenge 25 policy. 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.

Reason

The Panel considered that the inclusion of this condition would assist the applicant in upholding the Licensing Objectives.

2. No staff shall be permitted to sell alcohol until they have completed 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. 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.

Reason

The Panel considered that the inclusion of this condition would assist the applicant in upholding the Licensing Objectives.

3. 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 28 days and shall be provided to enforcement bodies on request. There must be a person on the premises able to download CCTV at all times the premises is open for trading.

Reason

The Panel considered that the inclusion of this condition would assist the applicant in upholding the Licensing Objectives.

4. No single cans or bottles of beer, lager or cider shall be sold unless such alcohol is less than of 5.5% ABV (alcohol by volume).

Reason

The Panel considered that the inclusion of this condition would assist the applicant in upholding the Licensing Objectives.

5. That the Designated Premises Supervisor for 109/110 Commercial Road shall be in day to day control of the licensed premises and to achieve this shall live no more than a 30 minutes commuting distance of the Premises and shall be easily contactable when not on the premises.

Reason

(i) The Panel considered that the inclusion of this condition would assist the applicant in upholding the Licensing Objectives.

(ii) To ensure the effective management of the licensed premises.

The Panel considered the following additional condition proposed by the Police but determined that it would not append this condition to the Premises Licence.

Proposed Condition

The Designated Premises Supervisor is to ensure that people do not loiter outside the shop and cause nuisance between 2100hrs until closure.

Reason

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 issues arise.

The Chair reminded both parties that they had the right of appeal against the decision of the Panel and that any such appeal must be commenced within 21 days of this determination.