

LICENSING PANEL

FRIDAY, 18 OCTOBER 2013

PRESENT:- Councillors Junab Ali, John Haines and Steve Wakefield.

15. Appointment of Chair

Resolved – That Councillor Junab Ali Chair this meeting of the Panel.
(Councillor Ali took the Chair.)

16. 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.

17. Application to Review the Premises Licence held by Longs Bar, Victoria Road, Swindon

The Panel considered (a) a report of the Council's Licensing Officer setting out details of an application made by the Wiltshire Police to review the Premises Licence held by the Longs Bar, Victoria Road, Swindon, (b) written representation supporting application for Review received from Wiltshire Police, (c) oral representations from Sarah Lefeure (Barrister to the Police), Sian Kalyinka (Police Licensing Officer) and PC Michael Diffin (Wiltshire Police Night Time Economy Manager) in support of the application, (d) written representatives opposing the application received from Mr Nigel Musgrove (Cousins Business Law), (e) oral representation opposing the application by Mr Nigel Musgrove (Cousins Business Law), Mr George Arkell (Premises Licence Holder) and Mr Michael Sheridan (Designated Premises Supervisor), (g) written submissions received from Lincoln's Inn Consultancy Limited opposing the application, (h) questions from Members to the Police representatives, Mr Nigel Musgrove, Mr Michael Sheridan and Mr George Arkell and answers received, and (i) the Council's procedure for licensing hearings, Government Guidance and the Council's Licensing Policy.

Resolved – That after considering: -

1. The application for a Review of the Premises Licence made by the Wiltshire Police
2. Submissions made by representatives of the Applicant and the Licensee:

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
- ii. The Protection of Children from Harm

(1) That Mr Michael Sheridan be removed from his position as Designated Premises Supervisor.

Reasons

(i) Mr Sheridan was the Designated Premises Supervisor for Longs Bar during the period when on four occasions sales of alcohol were made to underage test purchasers during operations conducted by the Police.

(ii) The Panel considered a letter from Lincolns Inn Consultancy Limited regarding the legitimacy of the underage sales tests conducted by Wiltshire Police. The Panel determined that in the absence of any corroborative evidence to support the letter the contents would not form part of its decision. The Panel further noted that there was no suggestion from Messrs Arkell, Musgrove or Sheridan that the test purchases had not been correctly undertaken.

(iii) The Panel noted that Section 11.27 of the amended Home Office Guidance set out that the illegal purchase and consumption of alcohol by minors should be treated particularly seriously and that 11.30 of the same Guidance indicated that the responsible authorities should consider revoking the licence if it considers this outcome is appropriate.

(iv) The Panel noted that Section 11.23 of the amended Home Office Guidance indicated that it is the duty of the Licensing Authority to take steps with a view to the promotion of the Licensing Objectives in the interest of the wider community.

(v) The Panel noted that paragraph 9.12 of the of the amended Home Office Guidance indicated that the Police were an essential source of advice and information on the impact and potential impact of licensable activities and in particular with reference to the Crime and Disorder Licensing Objective; the Panel took this into consideration when reaching its decision.

(vi) The Panel considered the fact that Mr Sheridan had appeared before a Licensing Panel on 5th December 2012 in relation to an application by the Wiltshire Police for a review of the Premises Licence following a failed test purchase by two under age volunteers. This had followed a previous failure in February 2010 involving volunteers aged 15 and 17 respectively.

(vii) Further sales to minors during test purchase operations occurred on 26th February 2013 and 13th July 2013.

(viii) The Panel heard evidence from the Police that Mr Sheridan appeared to intervene to allow under age test purchasers to gain access to the Premises after they had initially been refused access by door staff. This evidence was disputed by Mr Sheridan and the Panel determined that this evidence would not form part of its decision. Likewise disputed timescales for the notification to the Police of malfunctioning CCTV equipment was also not considered.

(ix) The Panel took into consideration the fact that Mr Sheridan had undergone a period of illness. The Panel listened carefully to the evidence from Mr Sheridan regarding his health and whilst the panel was sympathetic to the health issues Mr Sheridan faced it determined that as Designated Premises Supervisor it was his responsibility to ensure appropriate measures, including if necessary the appointment of alternative management, to ensure that the Licensing Objectives

were upheld.

(x) The Panel noted that following a Review of the Premises Licence brought by Wiltshire Police in December 2012 additional conditions relating to the use of a Challenge 25 Policy, supervision of under 18s at the bar after 9:00pm and the use of SIA qualified door staff had been imposed on the Premises Licence as a proportionate response to the review application. It also noted that the systemic management failures on the prevention of underage sales continued despite these additional conditions, advice from the Police regarding the prevention of underage sales, advice on staff training and, based upon evidence from Mr George Arkell, advice from the Brewery. The Panel heard no evidence to persuade it that the culture of sales to minors had changed and that further sales to minors would not occur.

(xi) The Panel noted the installation of an ID Scanner at the premises. However, given evidence from Mr Sheridan that there were problems with its current operation and further the failure by Mr Sheridan to consistently use other management tools and policies the Panel was not persuaded that the sale of alcohol to minors would be prevented.

(xii) The Panel considered evidence of the logbooks showing refusals of sales but determined that given the failure to pass four under age test purchases and three in nine months that the management and adherence to management policies was at best inconsistent. This was evidenced by Mr Sheridan's statement that a member of staff had refused to serve what appeared to be an under aged customer immediately prior to a volunteer being served.

(xiii) The Panel considered evidence relating to training including annual training from an outside provider, records of training, the ABV training packs, signage, door supervisor duty logs and staff wearing Challenge 25 badges. The Panel accepted that such training was in place and noted Mr Sheridan's statement that he was working to put in place appropriate management systems. However the panel determined that, given the track record of underage test purchase failures, management was not consistently enforcing this policy and training appeared to be ineffective. Given that a Challenge 25 Policy was conditioned this showed a lack of adherence to the training or failure of management to ensure its enforcement.

(xiv) The Panel noted Mr Sheridan's twenty-two years in Swindon in various licensing roles but its primary concern was the circumstances relating to the review.

2. That the Premises Licence for Longs Bar, Victoria Road, Swindon, be revoked.

Reasons

(i) The Panel heard evidence from the Premises Licence Holder that he had no management control over the activities at Longs bar.

(ii) The Panel heard evidence from the Premises Licence Holder that in his opinion he couldn't impose or insist that effective management controls be put in place at Longs Bar because of the lease agreement in operation. The Panel did not accept the principle that the lease agreement of a public house could or should take precedence over the legislation setting out the Licensing Act or over the

maintenance of the Licensing Objectives.

(iii) The Panel determined on the basis of information provided at the hearing that there were no effective management policies in operation by the Premises Licence Holder to promote the Licensing Objectives at Longs Bar.

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(iv) The Panel noted evidence that Arkells Brewery were made aware of the problem of underage sales at Longs Bar through emails and meetings with Wiltshire Police.

(v) The Panel heard evidence that following failed underage test purchases intervention from the Premises Licence Holder was through advice and the offer of support. The Panel determined that failure by the Premises Licence Holder to instigate a policy review or a review of policies leading to the failure of upholding the Licensing Objectives and to rely on the Police and Licensing Authority to oversee compliance with the Licensing Objectives at the bar was an abdication of responsibility for events that were known to be occurring in a property that the brewery owned.

(vi) The Panel noted that the Premises Licence Holder had funded the installation of an ID Scanner at the premises. However, noted from the evidence of Mr Sheridan that there were problems with its current operation.

(vii) The Panel noted the regret of the Premises Licence Holder in respect of the failed underage tests purchases but determined that to the Premises Licence Holder ought to have taken proper action to ensure the Licensing objectives were upheld at the premises.

(viii) That given the evidence of the Premises Licence Holder the Panel was not confident that the Premises Licence Holder would intervene to ensure compliance should further breaches of the Licensing Objectives occur at Longs Bar.

The Chair reminded both parties that they had the 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 the determination being sent to both parties.