

LICENSING SUB-COMMITTEE HEARINGS

11 MARCH 2011

Present :- Councillors Nick Cope, Dave Harris and Ann Quarrie

1. Appointment of Chairman

RESOLVED that Councillor Cope be appointed Chairman.

2. Declarations of Interest

There were no declarations of interest.

3. Application for a Review under the Licensing Act 2003

The Head of Environmental and Protective Services submitted a report in relation to the following application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

Bar B Q House, 45 North Station Road, Colchester

The Sub-Committee considered an application for the review of a premises licence in respect of Bar B Q House, 45 North Station Road, Colchester in relation to the following licensing objective -

- Protection of children from harm

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In Attendance:

Applicant: Mr Groves (Trading Standards) and Ms Yarnell (Trading Standards)
Premises Licence Holder and Designated Premises Supervisor: Mr G Morina
Officers: Mr Daines, Head of Protective Services; Mr Samuels, Legal Services; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Weavers (Legal Services Manager & Monitoring Officer)

Ms Tuthill, Committee Services Assistant (Licensing) briefly introduced the application made by Trading Standards to review the premises licence of Bar B Q House, 45 North Station Road, Colchester. The review had been sought on the grounds of the protection of children from harm.

Mr Groves addressed the Sub-Committee on behalf of Trading Standards and explained that within a six month period two test purchases had been carried out by Trading Standards which the premises had failed as alcohol had been sold on both occasions to underage customers. The first of these incidents occurred on 9 April 2010, after which a warning letter was sent to Mr Morina but there was no response. The second test purchase took place on 21 October 2010.

Ms Yarnell, who was present at both failed test purchases, then read her witness statement aloud and circulated photographs of the underage volunteers used on both occasions to the Sub-Committee.

Mr Groves stated that he understood that since the second failed test purchase Mr Morina had adopted the Challenge 25 scheme and implemented a record book at the premises. However, Mr Groves considered that the conditions set out in the 'Minimum Desired Outcomes' included in the review application would further address Trading Standards concerns.

The Chairman asked Mr Morina if he understood what was being said and if he was aware that he could have had representation. Mr Morina confirmed that he did.

Mr Morina then addressed the Sub-Committee and stated that he was unaware that underage sales had been occurring. He confirmed that since the second failed test purchase, the premises had adopted "Challenge 25" and a record book of sales. In response to questions posed by members, Mr Morina said that there was no excuse for the failed test purchases but that he could not guarantee that it would not happen again as he was dependent on his delivery staff to carry out the conditions of the licence. However, since the two incidents, customers are being asked to produce proof of age as part of all telephone orders taken.

Following a question from Mr Weavers, Legal Services, Mr Groves confirmed that Trading Standards only sort to suspend the supply of alcohol on the premises licence and not the entire licence. It was suggested that the suspension should be for a period of at least a month to allow the suggested conditions to be implemented.

Each party chose not to give a closing statement.

The Decision

That the reasons for the review brought by Trading Standards be upheld and the conditions set out below be applied to the Premises Licence:

1. Customers who appear under the age of 25 will be asked for identification before the alcohol is handed to the customer.
2. Any customer ordering alcohol via telephone shall be asked if they are over 25 and if they are under 25 they shall be warned that they will be required to provide identification upon delivery of the alcohol.
3. All staff (including drivers) to undertake and successfully pass the Trading Standards Institute Fair Trading Award Underage Sales Module before being permitted to sell age-restricted products.
4. Refresher training to be provided annually for all staff (including drivers) on underage sales.

5. Records to be kept of all staff (including drivers) training which will be made available to Trading Standards or the Police upon request.

6. A challenge book shall be maintained by each member of delivery staff which will be made available to Trading Standards or the Police upon request.

7. That all new members of staff receive immediate verbal or written training from the Designated Premises Supervisor followed by formal training within one month of the start of their employment. In the event that this training cannot be provided such staff shall not take orders or deliver any alcohol.

Also, the permission to supply alcohol on the premises licence shall be suspended for a period of six weeks from the date of this hearing to allow sufficient time for these conditions to be implemented.

Considerations

The review had been sought by Trading Standards following two sales of age restricted products to persons under 18 years of age the final sale being made in October 2010. The review request had been supported by the Children's Safeguarding Service although it was noted that they were not in attendance.

Photographs of the volunteers used were circulated to the members.

Reasons for the Determination

The Sub-Committee had given due weight to the evidence presented by Essex Trading Standards and had regard to the conditions to support the licensing objectives of the protection of children from harm.

The Sub-Committee considered the changes to the operation of the premises that Mr Morina had implemented since the failed test purchases but considered it necessary to impose the additional conditions as a necessary and proportionate measure in order to further the licensing objective of the protection of children from harm.

4. Application under the Licensing Act 2003

The Head of Environmental and Protective Services submitted a report in relation to the following application for determination by the Sub-Committee, in accordance with the provisions of the Licensing Act 2003.

4 High Street, Rowhedge

The Sub-Committee considered an application for a premises licence in respect of the premises at 4 High Street, Rowhedge

In Attendance

Applicant: Mr Aylott (Agent for the Applicant) and Mr Kandasamy Mohanathan (Applicant)

Officers: Mr Daines, Head of Protective Services; Mr Samuels, Legal Services; Ms Tuthill, Committee Services Assistant (Licensing); Mrs White, Committee Services Officer (Licensing); Mr Weavers (Legal Services Manager & Monitoring Officer)

Objectors: Councillor Lilley, Ward Councillor for East Donyland; Councillor Bayham, East Donyland Parish Council; Mr Niland, resident

Mrs White, Committee Services Officer (Licensing) advised that an application had been received for a new premises licence to permit the supply of alcohol from 06.00 to 23.00 Mondays to Sundays inclusive. Representations had been received opposing the application from local residents, Councillor Lilley and East Donyland Parish Council.

Mr Aylott, on behalf of the applicant, outlined the application and explained that the premises would be a general convenience store selling alcohol in addition to other goods including newspapers. In the event that the licence was not granted the shop would open for the same hours but without selling alcohol. Mr Mohanathan had been working in the trade for 15 years and had another premises in the area. He intended to have 2 or three staff at the premises and whilst Mr Mohanathan would be the Designated Premises Supervisor initially, it was anticipated that his wife would obtain a personal licence and become the DPS at the store in Rowhedge.

Mr Aylott drew the Sub-Committee's attention to the schedule of conditions included in the operating schedule which he believed were comprehensive and would address a number of the concerns expressed by residents. Condition 3 of the Schedule concerning the disposal of refuse was amended to reflect the hours in the Council policy prohibiting the disposal of rubbish between 19.00 and 07.00 and this condition was extended to include the prohibition of deliveries in this period although the delivery of newspapers would be exempt. Mr Aylott explained that deliveries would be by way of small van and not large lorry deliveries. A training manual was submitted for consideration by the Sub-Committee and objectors and Mr Aylott confirmed that Challenge 25 would be operated at the premises as sought by Councillor Lilley in his letter of representation.

Mr Aylott addressed the points raised in the letters of representation and outlined those areas which he did not consider fell within the terms of the licensing act in promoting the four licensing objectives such as planning, need for an additional premises, traffic and parking issues. In addition the issue of vicinity was considered in relation to two of the objectors who he believed outside of the immediate vicinity of the premises. Mr Aylott reiterated that there were no representations from the responsible authorities including Essex Police.

Councillor Lilley addressed the Sub-Committee on the points raised in his letter of

representation and on the issue of underage drinking which had been raised. Parish Councillor Bayham addressed the Sub-Committee on behalf of the Parish Council and reiterated the concerns of local residents. Mr Niland then addressed the Sub-Committee on the issues set out in his letter of representation. As a very close neighbour of the premises Mr Niland explained that they would be directly affected by the premises and its operation. He informed the Sub-Committee that they had already had occasion to phone the Council's Environmental Control team with regard to noise and he was concerned that the shop would bring increased traffic and noise from slamming car doors late at night. Mr Niland expressed his concern regarding the effect of deliveries on already congested roads in the area and in particular on Darkhouse Lane which ran adjacent to the shop and his house. Darkhouse Lane was a narrow, gravel, no through road giving access to properties in the Lane and access was already restricted on occasion by general parking in the area and the situation was unlikely to be improved if the licence was granted.

Mr Aylott responded to the concerns raised by drawing attention to the schedule of conditions and the proposed amendments, to the lack of representations by the responsible authorities, and the Section 82 guidance and the case law in relation to the consideration of planning matters and evidence.

The Decision

RESOLVED that a premises licence be granted for 4 High Street, Rowhedge to permit-

- The supply of alcohol off the premises Mondays to Sundays inclusive 06.00 to 23.00
- The premises to be open Mondays to Sundays inclusive 06.00 to 23.00

Reasons for the Determination

The applicant's representative submitted that there was no significant evidence that the licensing objectives would be undermined and the Sub-Committee after carefully weighing the evidence of all parties noted that this was an application for a new licence and that there were no representations received from responsible authorities. It felt that when weighed against the evidence presented by the interested parties, some of which was not within the remit of the Sub-Committee, it gave greater weight to the evidence of the applicant and believed that the interested parties concerns could be successfully addressed with the conditions set out in the operating schedule and those imposed by the Sub-Committee.

The Sub-Committee was mindful that its decision must be a necessary and proportionate response aimed at the promotion of the licensing objectives. For the reasons stated above, the Sub-Committee was satisfied that the most appropriate way forward was to grant the application subject to the operating schedule and to the relevant mandatory conditions in the Licensing Act 2003.

The Sub-Committee would remind all parties that they have the right to request a review if problems occurred once the new licence was in operation. All parties had the right of

appeal against the decision and all parties were encouraged to maintain a constructive dialogue.

The Licence was granted subject to the following conditions –

Conditions set out on the Operating Schedule

1. The premises licence holder shall ensure that notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and leave the area quietly.
2. The premises licence holder shall take all reasonable steps to ensure that any persons loitering outside the premises shall disperse quickly and do not congregate.
3. The premises licence holder shall ensure that that there is no external disposal of refuse after 19.00 or before 07.00 daily and that deliveries of goods and alcohol, except newspapers, are not permitted within these hours.
4. Staff shall routinely check the premises during opening hours to ensure they are clean and tidy and to ensure the frontage of the premises is swept at least once every trading day.
5. The premises licence holder shall ensure that all training records shall be retained for 12 months and made available to police and local authority officers upon reasonable request.
6. The premises licence holder shall ensure that refresher training shall be satisfactorily completed every six months for all staff as documented above.
7. The premises licence holder shall ensure that the premises shall install and maintain a comprehensive CCTV system.
8. The premises licence holder shall ensure that the CCTV system shall continually record whilst the premises is open for licensable activities and during all times when customers remain on the premises.
9. The premises licence shall ensure that all CCTV recordings shall be stored for a minimum period of 28 days with date and time stamping. Recordings shall be made available following the reasonable request of Police or authorised officer throughout the preceding 28 day period.
10. The premises licence holder shall ensure that a staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public.
11. The premises licence holder shall ensure in the event of its failure, the CCTV system will be repaired as soon as possible.
12. The premises licence holder shall ensure that an alarm system will be installed and

in the event of its failure, repaired as soon as practicable.

13. The premises licence holder shall ensure that that adequate first aid equipment and fire safety materials are available on the premises.

14. The premises licence holder shall ensure that in the absence of adequate daylight suitable and sufficient artificial lighting is provided and maintained in any area to which the public have access.

15. The premises licence holder shall ensure that reasonable and adequate staff training shall be carried out and properly documented in relation to dealing with incidents and prevention of crime and disorder; sale of alcohol (to underage, persons over 18 purchasing for underage, drunks etc) prior to being allowed to sell alcohol.

16. The premises licence holder shall ensure that an incident log shall be kept at the premises and made available on request to an authorised officer of the Council or the Police, which will record the following :- any complaints received, violence by any person against another, any other criminal incidents, any visit by a relevant authority or emergency service.

17. The premises licence holder shall instruct all staff to co-operate and comply with all reasonable requests of Police officers investigating incidents of crime and disorder associated with the premises.

18. The premises licence holder shall ensure that there is no access to the premises through the 'fire exit only'.

19. The premises licence holder shall operate a "Challenge 25" scheme at the premises whereby anyone who appears to be under the age of 25 shall be asked to provide proof of age that he or she is over 18. Proof of age shall only comprise of a passport, a photocard driving licence or an industry approved proof of age identity card.

20. Notices shall be displayed in the premises to advise patrons and staff that a "Challenge 25" or similar scheme operates in the premises.

21. The premises licence holder shall ensure that any refusals of sale of age related products are recorded in a refusals log as soon as is reasonably practicable after the sale is refused. The log should show the date and time of the event, the product(s) sought; the gender and approximate age of the customer together with a description of the customer. The log is to be perused daily or weekly by all staff and initialled to the this effect.

Conditions imposed by the Sub-Committee at the Hearing

1. The premises licence holder shall make best endeavours to ensure that any persons loitering outside the premises disperse quickly and do not congregate.

2. Waste to be stored in an adequate secure storage space at the premises until collection.

3. The applicant must proactively engage by regular informal forums with the local community.

Mandatory conditions where licence authorises supply of alcohol

1. No sale of alcohol may be made under the premises licence-

a) at a time when there is no designated premises supervisor in respect of the premises licence.

b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence or his personal licence is suspended.

2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

3. The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

4. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. Close of Meeting

The meeting closed at 14.03.