

Licensing Sub-Committee

Monday, 10th March, 2014

PRESENT: Councillor B Gettings in the Chair

Councillors A Khan and G Wilkinson

193 Election of the Chair

Councillor Gettings was elected Chair of the meeting

194 Exempt Information - Possible Exclusion of the Press and Public

RESOLVED - That the public be excluded from the meeting during consideration of that part of the agenda designated as exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present there would be disclosure to them of exempt information so designated as follows:

- a) Appendix D of the report and the supplementary documents referred to in minute 197 both in terms of Regulation 14 of the Licensing Act 2003 (Hearing Regulations 2005) and the Licensing Procedure Rules, and Access to Information Procedure Rule 10.4 (7) on the grounds that it is not in the public interest to disclose the documents as they include information relating to any particular person and may contain information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
- b) To note that the press and public will also be excluded from that part of the hearing where Members deliberate the application as it is in the public interest to allow the Members to have full and frank debate on the matter, as allowed under the provisions of the Licensing Procedure Rules

195 Late Items

There were no formal late items, however the following additional information for inclusion in Appendix D had been circulated in advance of the meeting to all relevant parties:

- typed versions of the witness statements for ease of reading
- a further page of one witness statement
- statements from Trading Standards Officers

Additional information in the form of letters of support were also circulated

A preliminary matter was raised regarding the submission of additional information. The legal representative, Mr Cordingley, for the Premises Licence Holder advised that he had submitted supporting letters on behalf of his client but that these had not been included in the bundle. Members were advised these had been submitted after the cut-off date for submission of further information. PC Dobson of West Yorkshire Police (WYP) confirmed that WYP had no objection to them being admitted but stated there had not been time for the content of the

documents to be checked. The Chair agreed to accept these documents, whilst noting the points made by PC Dobson

Mr Cordingley stated he had not received the witness statements from West Yorkshire Trading Standards which had been circulated. Copies of these documents were provided to Mr Cordingley and his clients, with the Chair advising that both sets of additional documents would be treated by the Licensing Sub-Committee in the same way

196 Declarations of Disclosable Pecuniary Interests

There were no declarations of disclosable pecuniary interest

197 Review of the premises licence for Church Lane Off Licence - 78 Church Lane Manston LS15

The Licensing Sub-Committee considered an application made by West Yorkshire Police under Section 51 of the Licensing Act 2003 for a review of a Premises Licence in respect of Church Lane Off Licence, 78 Church Lane Manston LS15

Present at the hearing were:

PC Dobson – West Yorkshire Police (WYP)

Sergeant Shaw – WYP

Mr R Patterson – WYP

Mr Box – local resident and witness

Ms Emms – local resident and witness

Ms Bradley – local resident

Mr Parvinder Singh Kang – Premises Licence Holder and Designated Premises Supervisor

Mr Harpal Kang – Father of the Premises Licence Holder

Mr Cordingley – Agent for the Premises Licence Holder

The Licensing Officer presented the report, outlined the operating hours permitted in the premises licence, confirmed that by choice, the premises opened each day for 3 hours only, from 19.00 – 22.00 and the steps the Sub-Committee could take when determining the review

The Licensing Sub-Committee then heard from PC Dobson who stated that a review of the premises licence had been brought due to suspicions that the premises were supplying alcohol to children or to adults for the consumption of children waiting outside the store; they had suspected this for some time.. Local residents had come forward to state they had seen under 18s congregating outside the premises shortly before it opened and had witnessed proxy sales. The statements of two mothers who had experienced their daughters being drunk and therefore vulnerable were also highlighted to Members, with those young people having indicated they had obtained the alcohol from the premises. The problems of disorder and anti-social behaviour from alcohol fuelled young people were also outlined and the impact this behaviour had on the lives of local residents

The fact there had not been any failed test purchase for alcohol at the premises was not conclusive in view of the evidence provided by local residents, with the view being that alcohol was sold only to those children known to the proprietors or through proxy sales

Members' attention was drawn to the plan of the shop included in the bundle and it was stated that the layout of the shop had changed, with the counter now being near to the door. Members were informed by Mr Kang that the layout of the premises had been changed on the advice of WYP, following thefts from the store

Reference was made to letters sent by WYP to Mr Pavinder Singh Kang, who was also known as Michael, inviting him to meetings to discuss the concerns which had been raised, which were not responded to. Mr Kang stated that he did not recall having received these letters; that he did not have a problem with postal deliveries and in the event they had been sent to the accommodation above the premises, he had access to this

Details were also provided in respect of a telephone conversation PC Dobson had with a man purporting to be Pavinder Singh Kang, who then admitted to being Harpal Kang. A telephone conversation with Pavinder Singh Kang did take place with PC Dobson being assured that the premises adopted a Check 25 policy, with only photographic ID being accepted

In terms of possible action, WYP considered that only revocation of the premises licence would address the issues

In response to questions from the Sub-Committee the following information was provided:

- the number of licensed premises close to Manston Park, where young people in drink had been found. PC Dobson stated that 78 Church Lane was the closest licensed premises
- recent test purchases, with PC Dobson indicating these had not been carried out due to safety concerns for the child who would be attempting the test purchase
- complaints by local residents and to whom these were made. Members were informed that WYP would be contacted and the proprietors of the premises also informed. Reference was also made to a petition which in the past had been drawn up

The Sub-Committee then heard for Mr Cordingley who provided background information on the current and previous occupation of his client and his father; details of their standing in the local community and the previous trading record of Harpal Kang, known as Paul

Regarding the letters sent by PC Dobson inviting Michael to meetings, these had not been received and if they had, they would not have been ignored. Despite WYP being aware of the opening hours of the premises and the fact that Police Officers and PCSOs passed the premises regularly, contact by letter was relied upon and that it had taken four months for WYP to locate a contact telephone number for Michael

Members were informed that the premises sold a range of products, although the quantity of the items was limited due to space constraints. The layout of the shop had been altered at the request of WYP, following a small number of thefts. The result of the changes had meant that the number of customers who could be in the shop at any one time was also limited, which would result at times in queuing outside the shop

In relation to the statements which had been provided, Mr Cordingley was of the view these comprised hearsay, suggestions and beliefs; that no complaints had been made directly to Michael and Paul Kang and that no hard evidence of underage sales of alcohol or proxy sales from the premises had been provided

The Panel then heard from Michael Kang who stated that the review proceedings had come as a shock; that underage sales did not occur and that it was not in his or his father's interest to alienate local residents. Alcohol was never served to people over 18 where there was a suspicion that it was being passed on to younger people; that no incidents of this nature had been seen and that local residents had not approached him about any concerns and neither had the police prior to the commencement of review proceedings

The Panel also heard from Paul Kang who provided further information on his background, experience and training and that Trading Standards and HM Revenue and Customs had visited the premises and carried out thorough checks, with no issues being raised

In respect of the location of the premises to Manston Park, Paul Kang stated that his shop was the furthest licensed premises from the Park and referred to the 27 letters of support which had been provided, in support of the premises

In response to questions from the Sub-Committee the following information was provided:

- that the premises did not have CCTV inside but there was a camera in the street
- that different trading hours had been tried but that the current hours suited the family best
- that no proxy sales had been seen and that soft drinks were sold which might be assumed by onlookers to be alcohol
- that WYP had not approached Paul or Michael Kang about proxy sales

In response to further questions from Members, PC Dobson confirmed that she had visited the premises once some time ago and that a PCSO had reported there was a problem at the premises and had spoken to residents about it who had then come forward and made statements

In summing up the case for WYP, PC Dobson stated that the main product sold at the premises was alcohol; that witness statements had been made by residents who had witnessed underage sales and proxy sales; that local residents had suffered disorder and anti-social behaviour from young people who had been drinking and feared the summer months due to the number of young people congregating outside the premises. The harm to health caused by drinking when young was also highlighted

The Sub-Committee was informed that WYP considered that only revoking the premises licence would address the problems and that a lesser measure was not considered to be appropriate

The Sub-Committee considered how to proceed and invited all parties back to offer the Proforma Risk Assessment in the event Members were minded to recommend additional conditions be placed on the Licence

In response to this PC Dobson reiterated the view that only revocation of the Licence would suffice and that WYP would appeal the decision if lesser sanctions were decided upon by the Sub-Committee

Following a brief adjournment to enable both parties to consider the Proforma Risk Assessment, the hearing resumed

Sergeant Shaw advised that WYP considered there were no conditions which were of value to protect local residents and stated that it was not the role of the Police to be part of the decision making process; that this fettered their ability to appeal against decisions and in the event of a future review of the premises, WYP would not appear to be impartial

Sergeant Shaw suggested Members might wish to consider adjourning the hearing to enable WYP to take legal advice. When asked if they wished to make an application for an adjournment, they declined

Members deliberated further

The Sub-Committee carefully considered both the written and verbal representations from West Yorkshire Police, the local residents, Michael and Paul Kang, their legal representative and the written representations from Trading Standards and local supporters

Members considered that the evidence was not strong enough for a revocation of the Premises Licence at this time. The Sub-Committee noted that the proceedings were the first time the Premises Licence Holder became aware that there was an issue, even though WYP considered there had been problems at the premises since 2007. There was no action plan meeting proposed until October 2013

The Licensing Sub-Committee considered the other sanctions open to it under the Section 182 guidance and concluded there was no necessity to remove the Designated Premises Supervisor and that excluding licensable activities at the premises would be the same as revocation, so would be disproportionate. There were also no training issues to warrant a suspension of the Licence, however the Sub-Committee felt it was appropriate to impose conditions on the Licence

RESOLVED - To impose the following conditions on the Licence, as set out in Proforma Risk Assessment:

CCTV

A suitable Closed-Circuit Television (CCTV) system will be operational at the premises at all times when licensable activities are being carried out and at any other times where members of the public are present on the premises.

The CCTV system will cover all areas of the premises occupied by the public under the terms of the licence, including corridors and stairways (excluding WCs and changing rooms).

The CCTV system will cover the main entrance/s and exit/s and designated emergency egress routes from the premises.

The CCTV system will cover all external areas of the premises occupied by the public, i.e. queuing areas, beer gardens, smoking areas and car parks.

The location of CCTV cameras are identified on the site plan of the premises. No amendments to the locations of the cameras will be made without prior consultation with West Yorkshire Police/British Transport Police and the Licensing Authority

The CCTV system will be of a satisfactory resolution quality which will enable the identification of persons and activities, and other fine details such as vehicle registration number plates.

The CCTV system will contain the correct time and date stamp information.

The CCTV system will have sufficient storage retention capacity for a minimum of 31 days' continuous footage which will be of good quality.

The CCTV footage will be controlled and kept in a secure environment to prevent tampering or unauthorised viewing. A record will be kept of who has accessed the system, the reason why and when.

A designated member / members of staff at the premises will be authorised to access the CCTV footage and be conversant with operating the CCTV system. At the request of an authorised officer of the Licensing Authority or a Responsible Authority (under the Licensing Act 2003) any CCTV footage, as requested, will be downloaded immediately or secured to prevent any overwriting. The CCTV footage material will be supplied, on request, to an authorised officer of the Licensing Authority or a Responsible Authority.

The data controller, under the Data Protection Act 1998, who is responsible for any CCTV images caught on cameras on the premises will, on the lawful request of an authorised officer of a Responsible Authority (under the Licensing Act 2003), be downloaded immediately, or where this is not possible, as soon as reasonably practicable, and supplied to the requesting officer. Where the CCTV images are not supplied at the time of the request being made the data controller will ensure that it is secured to prevent any overwriting.

The CCTV system will be capable of securing relevant pictures for review or export at a later date.

The CCTV system will be adequately maintained and be capable of transporting recorded material onto a removable media.

The CCTV system replay software must allow an authorised officer of the Licensing Authority or Responsible Authority to search the picture footage effectively and see all the information contained in the picture footage.

It must be possible to replay exported files immediately e.g. no re-indexing of files or verification checks.

Designated Premises Supervisor

A Supervisor's Register will be maintained at the licensed premises, showing the names, addresses and up-to-date contact details for the DPS and all personal licence holders.

The Supervisors Register will state the name of the person who is in overall charge of the premises at each time that licensed activities are carried out, and this

information will be retained for a period of twelve months and produced for inspection on request to an authorised officer.

Incident Report Register

The PLH/DPS will ensure that an Incident Report Register is maintained on the premises to record incidents such as anti-social behaviour, admissions refusals and ejections from the premises.

The Incident Report Register will contain consecutively numbered pages, the date time and location of the incident, details of the nature of the incident, the names and registration numbers of any door staff involved or to whom the incident was reported, the names and personal licence numbers (if any) of any other staff involved or to whom the incident was reported, the names and numbers of any police officers attending, the police incident and / or crime number, names and addresses of any witnesses and confirmation of whether there is CCTV footage of the incident.

The Incident Report Register will be produced for inspection immediately on the request of an authorised officer.

Responsible Sale of Alcohol

The PLH/DPS staff will ask for proof of age from any person appearing to be under the age of 25 who attempts to purchase alcohol at the premises.

The PLH/DPS staff will ask for acceptable evidence (as agreed by WYP / WYTSS) from any person appearing to be under the age of 25 who attempts to purchase alcohol at the premises.

Litter

The PLH/DPS will ensure that litter arising from people using the premises is cleared away regularly and that promotional materials such as flyers do not create litter.