

Licensing Sub Committee

Tuesday 30 April 2013

PRESENT:

Councillor Rennie, in the Chair.
Councillor Mrs Bowyer, Vice-Chair.
Councillors Mrs Dolan (Fourth Member) and Kate Taylor.

Also in attendance: David McIndoe, Devon and Cornwall Police Representative, Marie Price, Licensing Officer, Mr Guney Naci, Applicant, Ann Gillbanks, Senior Lawyer, and Katey Johns, Democratic Support Officer.

The meeting started at 10 am and finished at 1.16 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

102. **APPOINTMENT OF CHAIR AND VICE-CHAIR**

Agreed that Councillor Rennie is appointed Chair and Councillor Mrs Bowyer is appointed Vice-Chair for this meeting.

103. **DECLARATIONS OF INTEREST**

There were no declarations of interest made by members in accordance with the code of conduct.

104. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's urgent business.

105. **CORNER SHOP, 81 NORTH HILL, PLYMOUTH - REVIEW OF PREMISES LICENCE**

The Committee having –

- (i) considered the report from the Director for Place;
- (ii) adjourned for one hour to allow the applicant a further opportunity to seek legal representation and, in the absence of this being achieved, reconvened having agreed that it was in the public interest to continue the hearing having regard to the licensing objective “protection of children from harm”
- (iii) heard from a representative of Devon & Cornwall Police (the Police) and considered written representations that –

The application for review of the premises licence was being made under the licensing objective of protection of children from harm

On Friday 14 September 2012 the Police conducted a test purchase operation aimed at off licence premises in Plymouth. During this operation 16 premises in total were tested. Two premises including the Corner Shop failed

The test purchaser was a 16 year old female (briefed to reveal true age if challenged) but she was not challenged and no identification was requested. The offender was at the time the business partner of the premises licence holder. This was a first test failure.

On the 7 February 2013 the Police received information that the premises were selling tobacco and alcohol to persons who were underage

On 13 February 2013 the Trading Standards Department of the Council in partnership with the Police carried out a test purchase operation aimed at off and on licence premises in the Plymouth area. The test purchaser was briefed that they could lie about their age but to produce ID if requested.

One of the premises that failed was the Corner Shop where the premises licence holder and DPS sold alcohol to a 16 year old male test purchaser. He did not request identification but did ask his age and date of birth, to this the test purchaser replied by giving a false date of birth which the premises licence holder considered meant that he had complied with the law and made the sale. In the interview that the Police carried out on 13 February the premise licence holder stated that the policies the shop had in place were challenge 18 for tobacco and challenge 25 for alcohol

On 19 February 2013 the Police received further information that the Corner Shop was selling alcohol and tobacco to persons under the age of 18 years

Other underage people have heard that the shop are making underage sales and intelligence is that they are travelling from all other Plymouth to this shop

Following this operation the premises licence holder received a letter from Plymouth City Council dated 20 February 2013 indicating his failure and advising him to obtain the necessary training and adopt the "no proof of age no sale" procedure

On Wednesday 6 March 2013 the premises licence holder attended a meeting at Charles Police Station and established that he had not provided or received any training in underage sales since taking the examination to obtain his personal licence.

It was also established at that meeting that when the premises licence holder personally made the sale on the 13 February that he had relied on the female to answer his questions but had not asked to see any identification; and that he had not made an application to update his training nor follow the advice given by the Council in their letter dated 20 February 2013

At the end of the meeting on the 6 March 2013 the premises licence holder was informed that it was considered that he had breached both condition 3 of the Protection of Children from Harm section of his premises licence and also conditions 3 and 4 of the Mandatory conditions attached to the premises licence.

On 16 March police intelligence was that a group of teenagers entered the premises and bought in the region of £80 worth of alcohol

On Friday 26 April 2013 a further positive test purchase was carried out where a shop assistant sold alcohol to a 16 year old test purchaser. This is the third failure since September last year

The Police are of the opinion that the failure to comply with conditions has resulted in the commission of the offences listed and consequently has had a negative result on the licensing objective of the protection of children from harm.

The premises are small and Mr Naci is the premises licence holder and the DPS. There are already mandatory and voluntary conditions attached to the licence that are not being adhered to. The Police had checked with PCC underage sales officer and no records could be found either with PCC or SWERCOTS requesting advice or training on the issue of underage sales

It was confirmed that the premises licence holder had been advised by the Police of the need for training as he appeared to be disregarding the age of customers

The premises licence holder has been directed by the Police and PCC about the conditions on his licence which he is failing to comply with

The sale on 26 April is the third failure of sales since September last year and the Police have concerns not just regarding the underage sales to children but are concerned that the premises licence holder has no concerns about the effects this is having on the community.

As a result of these test purchases and the premises licence holder's failure to comply with current licence conditions it is considered that no further conditions will satisfactorily address the issue and

therefore the Police submission is that the committee consider revoking the licence

The Police consider that the premises licence holder has failed to engage effectively with any responsible authority to address the training issues

(iv) heard from the premises licence holder that –

The first failed test purchase was carried out by the premises licence holder's business partner and that, as a result of a discussion after this time, he has now bought out his business partners share of the operation

With regard to the third failed test purchase on 26 April this had been carried out by one of his staff whom he has now dismissed

With regard to the second failed test purchase on 13 February the premises licence holder confirmed that he conducted this himself but he said it was a genuine mistake on his part. He had asked for the persons age but had not been aware that a test purchaser would not give the correct age and therefore relied on the fact that the age given was over 18 so made the sale

He had trained himself and his staff informally via information he obtained from the internet but that he did not keep a written record of this

He and his staff do refuse under age sales but they do not keep a formal record of any refusals but said that his CCTV would record refusals made for the 30 days that information was kept on the system

In his experience people do not always carry ID such as passports with them and that they get abusive when ID is requested and he said that there was an incident at his shop which was alleged that the persons friend smashed the window when they were unable to provide ID when requested

There have been a number of occasions where the staff have had abuse from people who had been refused sales and it was alleged that there had been incidents of theft of alcohol following one such refusal

He informed committee that only the day before the hearing he had made a refusal of sale

The shop is located near the University and most University students are over 18 and do not always carry ID with them

The Police have only seen three failed test purchases but we do refuse sales all the time but there have been a couple of times when there has been a genuine mistake

(v) considered written representations in support of the premises that –

One person has regularly used the shop and that on more than one occasion had witnessed people being asked for ID and being refused to be served without ID, and that the person in the shop does a great job and is good for the area

One person has been a resident in the area for 14 years and that the premise was nearest to home and had the most convenient opening hours and reasonable prices. The person also confirmed that they had been asked to identify themselves when purchasing alcohol and had also witnessed other customers being asked to identify themselves when making age restricted purchases

The Committee considered responses to questions made during the hearing as follows:

The Committee had concerns about the premises licence holder's ability to follow the challenge 21 policy which is advertised in the posters provided to him by the police and which are displayed in his shop

In response to question about whether he reported the incidents of damage to the property the premises licence holder said he had reported some incidents and received little support from the Police

Members were also concerned by the response to questioning regarding the premises licence holder's understanding of the conditions on his premises licence where he said he considered he needed more advice about this despite the fact that the licensing officer confirmed the licence had been issued in 2011 with advice and also in 2012 with advice on conditions

The premises licence holder confirmed under questioning that he did not keep a written record of refusals to sell alcohol nor did he keep any written record of training undertaken or provided to staff in accordance with licence conditions

The Committee considered that the response that the premises licence holder still required advice on the conditions demonstrated that he clearly did not understand the conditions and responsibilities of a premises licence holder and of a designated premises supervisor in the requirements of sales of alcohol and this became apparent under questioning

The Committee also asked the Police representative why so many test purchases had been carried out in a relatively short period of time and were advised that this was due to the level of intelligence and frequency of activity in the premises

Having taken into account all the relevant representations made, the Committee have considered whether they could deal with this matter by imposing additional conditions, or removal of DPS or suspending the licence for three months but regrettably do not consider

that these actions would properly address the licensing objective of protection of children from harm given the fact that an underage sale took place on the Friday prior to this hearing.

The Committee are also concerned that there is a complete disregard by the premises licence holder of compliance with the licensing conditions already imposed and a breach of licence conditions by the premises licence holder admitting failure of keeping necessary records in accordance with mandatory conditions.

The Committee consider for all the above reasons that it is appropriate to revoke the licence and have therefore agreed to revoke the licence.

(Councillor Mrs Dolan left the meeting at the start of this item having not been required as Fourth Member).

106. **EXEMPT BUSINESS**

There were no items of exempt business.