

MINUTES OF LICENSING PANEL

MEETING DATE Monday, 28 October 2019

MEMBERS PRESENT: Councillors Ken Jones, Jacky Alty and Jacqui Mort

OFFICERS: Chris Ward (Licensing Officer), Mark Marshall (Head of Licensing), Tasneem Safdar (Senior Solicitor) and Coral Astbury (Democratic and Member Services Officer)

4 Apologies for absence

None.

5 Declarations of Interests

None.

6 Review of Premises Licence

The Panel met to determine a review of premises application in respect of S & D Convenience Store (*Leyland Lane, Leyland PR25 1XL*) pursuant to the provisions of S52 of the Licensing Act 2003. The application had been brought for review by the Council's Head of Licensing, Mark Marshall on behalf of the Licensing Authority as a Responsible Authority.

Representations had also made by one other Responsible Authority, Lancashire Constabulary, although no representative was present at the hearing.

The Premises Licence Holder (PLH) who was also the Designated Premises Supervisor (DPS), Mr Sumitkumal Patel was in attendance.

The Licensing Officer, Chris Ward, presented the Committee report and confirmed that all notice and procedural requirements had been adhered to. The process in respect of the hearing was also outlined by the Chair.

The Licensing Authority were of the view that the licensing objectives had been undermined, these being the prevention of crime and disorder and the protection of children from harm. The Licensing Officer provided that there was a number of issues which had raised concern, those being lack of proof of age records and refusal log, a failed test purchase, poor management of the premises and a breach of the conditions of the licence.

The Head of Licensing explained that during a routine visit on the 3 April 2019 licensing officers found that the store had been taken over by new owners some months previously, however the licence had not been transferred into the new owner's name. Officers spoke to the owner's wife who advised that the licence would be transferred by the end of the week. Two further calls were made to the new

owners of the business to follow up on the transfer of the licence. Due to no response, officer's hand delivered a letter outlining the concerns of the Licensing Authority. As a result of the letter, the licence was transferred and the position of DPS into Mr Patel's name on the 22 May 2019.

The panel heard that following concerns raised by the Police on 5 July 2019 a licensing officer attended the premises. Mrs Patel was running the store and was unable to provide any evidence that staff had been trained or evidence of any refusal of sales to underage customers when asked. A verbal warning was given about the breaches disclosed and Mr Patel was given 7 days to rectify the issues.

On 23 July 2019 officers visited the premises to follow up on the 5 July visit and to check the issues had been resolved. Records of staff training were produced to officers by Mr Patel for all the staff he advised worked at the premises. Mr Patel explained to officers that the refusal process was done manually through the till, which printed a void transaction receipt for employees to complete by hand. Mr Marshall advised the panel that the system was overly complex for staff to follow and that it would be easy to forget to log the tear slips or to print them off. Officers were left with a clear impression that the competence of the licence holder was limited at best and further guidance and assistance was required.

During this visit Mr Patel mentioned an idea he had regarding the sale of alcoholic slush. Officers asked him to put the idea on hold until further information could be obtained. Nevertheless, on 29 July 2019 officers had observed via social media that the premises was advertising the sale of alcoholic slush even though Mr Patel had been asked to put the idea on hold until further information could be obtained.

Licensing Officers contacted the licence holder with concerns about the container used for the slush and explained to Mr Patel his licence authorised him to sell alcohol for off-site consumption and that he would not be permitted to sell alcohol in an open container. Officers also asked what measures would be taken to ensure the alcoholic slush would not be sold to children.

The Head of Licensing advised the panel that Mr Patel emailed photos showing containers which were unsuitable, the container was of a design and construction that meant a customer was being served a drink ready to consume. Following comments from licensing officers Mr Patel changed the container to something more appropriate.

On 16 August 2019 the Police and Licensing Officers performed a test purchase exercise. A 16 year old male was sent into the premises and was sold a large 620ml bottle of Peroni and a pink gin alcoholic slush which was served to him in one of the open containers. Members of staff who were present and working at the time were not included on the written authorisation that had previously been provided to officers. The DPS was then asked to produce copies of refusals to under age customers since the last visit on 23 July 2019, but he was only able to produce one copy of a refusal.

Mr Patel was asked why he had no other copies of refusals, given that it was towards the end of the school summer holidays. He stated that people who are underage know not to try and get served at his premises.

On 22 August 2019 Licensing Officers revisited the premises again following the

failed test purchase on 16 August 2019. Staff training was requested for the members of staff present on the evening of the failed test purchase. No training was on file for the member of staff who served the underage volunteer or Mrs Patel. After further scrutiny it was discovered that the training Mr Patel had provided was actually produced by the old licence holder in 2017 and not Mr Patel.

The premises was retested as part of an underage test purchase exercise on the 7 October 2019, the Head of Licensing explained that the volunteer was a 14 year old female and was refused the sale. The panel were advised that the volunteer on the evening looked very young and all 12 premises that had been tested, had passed.

Mr Patel was given an opportunity to present his case to the Panel. He explained that it was his first business with no previous experience and he was told by the previous owner that the transfer should be carried out at the date when the annual fee was to be paid. He provided that on the day of the failed test purchase, he had been at the shop from 6am and had only went upstairs for a short break. During this time, the staff member Joshua Hill who had served the child, was under 18 himself and therefore had no authority to sell alcohol.

Mr Patel told the panel that the Joshua Hill was employed under the previous owner and knew that he couldn't sell alcohol but had done so. Mr Patel provided that he had only made this one mistake, however, upon being questioned further by the panel, accepted that there was a number of issues that the review had highlighted which were of concern and not only the underage sale.

Mr Patel was asked whether he had informed his staff that they were not to serve alcohol to any underage children. He responded by saying that he had informed all his staff of this and as a result the Joshua Hill who failed the test purchase was sacked.

In summing up, the Head of Licensing explained that if the panel were minded to allow the PLH to retain his licence, the issues could be managed by use of conditions on the licence.

Nevertheless, an offence was committed on the 16 August 2019, which had undermined the licensing objectives and an appropriate and proportionate response was required.

Mr Patel stated that he would be happy with the conditions which Mr Marshall had outlined to the panel and apologised that the matter had reached a review.

In reaching its decision the panel took into account the following:

1. Both written and oral evidence presented in connection with the hearing
2. The Licensing Act 2003
3. S182 Revised Guidance of the Licensing Act 2003
4. South Ribble Borough Council – Licensing Policy

RESOLVED: (Unanimously)

1. The Panel noted that there had been some issues at the premises, which had undermined the licensing objectives namely the prevention of crime and disorder and the protection of children from harm.
2. The panel carefully considered all the evidence provided by the parties at the hearing together with the S182 Guidance and the Council's licensing policy.
3. The panel considered the steps it could take to address the undermining of the licensing objectives. It was obvious that there was a training need required, not only for Mr Patel but also his staff. The removal of the designated premises supervisor was considered but it was concluded that Mr Patel should be given a chance to rectify matters.
4. The panel considered whether a suspension would be appropriate in the circumstances, as per Para 11.23 of the guidance. The panel noted that they had the option to suspend for up to a period of 3 months, however, were of the view that this was not a case which would warrant such a long period of suspension. The panel were of the view that a shorter period would be a proportionate and appropriate response to the undermining of the licensing objectives. In the circumstances the panel agreed that a short suspension of 7 days was appropriate. In that regard the panel made the following decision:-
 - i) *To suspend the premises licence for a period of 7 days. The timing to be determined by the Head of Licensing in consultation with legal services.*
 - ii) *To add the following conditions onto the licence:-*
 - a) *A Challenge 25 proof of age policy shall be implemented and adhered to. Any person who looks or appears to be under the age of 25 shall be asked to provide identification that they are over the age of 18. The following are the only forms of identification acceptable:*
 - i) *A recognised proof of age scheme accredited under the British Retail Consortium's Proof of Age Standards Scheme (PASS)*
 - ii) *Photo driving licence*
 - iii) *Passport*
 - iv) *Official ID card issued by HM Forces or European Union bearing a photograph and date of birth of the holder.*

If no suitable identification is provided the sale of alcohol to them will be refused.
 - b) *All staff involved in the sale of alcohol shall receive suitable training in relation to the proof of age scheme to be applied upon the premises. All staff receive regular refresher training at intervals of at least 6 months. Records to evidence this will be made available to officers upon request.*
 - c) *Suitable signage will be displayed to specify the Challenge 25 policy is in place.*
 - d) *CCTV must be installed internally and externally at the premises and must comply with the following:*

- i) Appropriate signage alerting customers to CCTV recording must be displayed in conspicuous positions on the premises.*
 - ii) The CCTV system must be installed, maintained and operated to the reasonable satisfaction of Lancashire Constabulary.*
 - iii) The system must record all hours the premises are open to the public.*
 - iv) Recordings must display the correct date and time.*
 - v) Digital recordings must be held for a minimum period of 21 days.*
 - vi) A staff member who is conversant with the operation of the CCTV system will be on the premises at all times the premises are open to the public. This staff member will be able to show Police, Responsible Authorities or an authorised person recent data or footage with the absolute minimum of delay when requested and provide footage in a viewable format within 48 hours of request, with minimum delay.*
 - vii) The licence holder must notify the Police licensing unit on any occasion when the CCTV is to be inoperative for a period in excess of 1 working day and shall provide a certificate from a competent person stating the reason for the system being inoperative and the measures which have been taken to satisfy the conditions of this licence.*
 - viii) Bi-annually documented maintenance checks by a suitably qualified CCTV engineer must be made of the CCTV system to ensure that the system is in good working order and is operating in compliance with the conditions of this licence.*
- e) The Designated Premises Supervisor should re sit the BII Level 2 qualification (Award for Personal Licence Holders) within 3 months of the decision.*
- f). An incident book will be maintained, in which shall be recorded:*
- (i) All incidents of crime and disorder*
 - (ii) Refused sales to suspected under age / drunken persons*
 - (iii) A record of any person refused admission or asked to leave the premises*
 - (iv) Details of occasions upon which the Police are called to the premises*

That book shall be available for inspection by a Police Officer or authorised person.

5. The Panel were of the view that the above mentioned conditions and the suspension of the licence, would address the issues raised and promote the licensing objectives. The Panel felt that after careful consideration of the case before them, an appropriate and proportionate decision had been reached.
6. Any party who is aggrieved by the decision, has a right to appeal the decision to the Magistrates Court within 21 days.

Chair

Date