

Record of a Hearing of the Bradford Licensing Panel held on Wednesday 13 April 2011 in Reception Room 2, City Hall, Bradford

Procedural Items

DISCLOSURES OF INTEREST

Councillor Walls disclosed a personal interest in the item as he was a Council nominated representative on the Joint Services Committee and as the interest was not prejudicial he remained in the meeting.

Councillor Ahmed disclosed a personal interest in the item as he owned a convenience store within the Bradford District and as the interest was not prejudicial he remained in the meeting.

Action: *City Solicitor*

INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no appeals submitted by the public to review decisions to restrict documents.

Hearing

1. **Application for a review of premises licence for Girlington Mini Market, 81 Girlington Road, Bradford (Document "M")**



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RECORD OF A HEARING FOR A REVIEW OF PREMISES LICENCE FOR GIRLINGTON MINI MARKET, 81 GIRLINGTON ROAD, BRADFORD (DOCUMENT "M").

Commenced: 1045
Adjourned: 1200
Re-convened: 1230
Concluded: 1235

Present:

Members of the Panel:

Bradford Licensing Panel: Councillors Ruding (Chair), Walls and Ahmed.

Parties to the Hearing:

Representing Responsible Authorities:

Mr Mullins, West Yorkshire Trading Standards
Ms Hundsdorfer, West Yorkshire Trading Standards – Witness
PC Dawson, West Yorkshire Police - Witness

Representing the Licensee:

Cllr I Hussain representing the Licensee
Mr T Nazir, Manager
Mr W Nazir, Designated Premises Supervisor

Observers:

Mr Stroeber, West Yorkshire Trading Standards

Representations:

The licensing officer in attendance summarised the background to the application and valid representations received as set out in the report.

The Review applicant reported that the application had been submitted as a result of the sale of alcohol to underage persons at the premises on three occasions between 12 June and 22 October 2010. The first sale had been made to volunteers working for West Yorkshire Trading Standards (WYTS) and the subsequent sales to volunteers working with West Yorkshire Police (WYP). All the sales had been carried out by members of the Nazir family. He explained that an investigation had been undertaken following the receipt of a complaint that the premises were selling to underage persons and, therefore, a test purchase operation had been carried out on 12 June 2010. Other test purchases had taken place on the same day, however, the premises were the only one that had failed. It was noted that following the sale the owner of the premises had arrived and had been obstructive to WYTS officers. A formal interview had then been conducted with the owner on 15 July 2010 where it was ascertained, amongst other issues, that the CCTV system in the premises was not connected to recording equipment and that this was a breach of the premises licence. The Review applicant stated that the owner had confirmed that he had not received any training in respect of underage sales from the Designated Premises Supervisor (DPS) and that he believed it to be "just common sense". A formal interview with the person who had made the underage sale, the owner's younger brother, had not been able to be arranged despite repeated attempts to contact him.

The Review applicant then informed the Panel that on 17 July 2010 WYP had undertaken a test purchase operation at the premises and alcohol had been sold by the DPS. A Fixed Penalty Notice had then been issued to the DPS and his attitude towards the police officers had become aggressive and obstructive. It was noted that eight other test purchases had been carried on 17 July 2010 and that the premises was one of two that had failed. Members were then informed that on 22 October 2010 a further test purchase had been carried out at the premises by the police and alcohol had been sold by the owner. He had also been issued with a Fixed Penalty Notice and his attitude towards the police officers had been aggressive and obstructive. On that evening the police had made eight test purchase visits and three, including the premises, had allowed the sale of alcohol to underage volunteers.

The Review applicant stated that the premises had allowed three underage sales within a five month period and had displayed a disregard towards WYTS and WYP officers. He reiterated that the premises was in breach of its licence conditions and requested that the licence be revoked and/or the DPS be removed.

In response to questions from the Panel and the Council's legal officer the Review applicant confirmed that:

- test purchases had been carried out on 12 June, 17 July and 22 October 2010.
- CCTV footage had not been available.
- under age sales were usually made in 20% of test purchases.
- these premises had failed three test purchases in a short period of time which was unusual and therefore a Review of the licence had been requested. Only three test purchases had been carried out and on every occasion under age sales had taken place which suggested that the problem was endemic at these premises.
- the premises were visited in November 2009 in order to advise how to avoid under age sales and an information pack would also have been provided. The owner had acknowledged this visit in his interview.
- WYP carried out their own test purchase operations and these had taken place in July and October 2010.
- the initial test purchase had been undertaken as a consequence of the complaint received on 25 May 2010 about sales of alcohol and cigarettes to under age children at the store.
- a warning letter had been sent to the premises in October 2010 in relation to the under age sale of cigarettes, however, the criminal prosecution had not been pursued as it was believed that a Review of the Licence was the best way forward.

The Licensee's representative then questioned the Review applicant and was informed that:

- WYTS officers had tried on numerous occasions to contact the person who had made the under age sale and a statement had been submitted to verify this.
- only three test purchases had been undertaken and under age sales had been made on all three occasions.
- five other test purchase operations had been carried out on 12 June 2010 and eight premises had been visited by WYP.
- WYTS test purchases were defined by the complaints received as it was policy to conduct test purchases at premises subject to complaints about under age sales.

The Chair highlighted that appropriate staff training was a condition of the Licence and noted that the owner had stated that staff training had not been provided. In response the Review applicant explained that each individual premise was responsible for staff training

and that records should be available. The DPS would have been trained and would be expected to train other members of staff.

The Review applicant then called the representative of WYP as a witness, who made the following comments:

- WYP held monthly meetings to discuss problem premises.
- WYP had been informed that WYTS had carried out a test purchase at the aforementioned premises, which had failed and that an interview had been undertaken with the owner.
- WYP were conducting a test purchase operation, so they visited the premises on 17 July 2010.
- The DPS had sold alcohol to an underage person on 17 July 2010 and had become aggressive when notified of the operation. He had been issued with a Fixed Penalty Notice and requested to provide information regarding his personal licence and the premises licence. The situation at the premises had become hostile so WYP officers had left as the safety of the test purchasers was paramount. WYTS were informed of the failed test purchase.
- A second test purchase had been undertaken at the premises on 22 October 2010 and the owner made a further under age sale. He was issued with a Fixed Penalty Notice, that he disregarded, and was asked for information in relation the DPS which he could not supply. WYP officers left the premises due to the hostile environment.
- It had been agreed at a WYP Management Team meeting that no further test purchases would be carried out at the premises due to the aggressive behaviour witnessed as the safety of the test purchasers was vital.
- WYP covered the whole of the Bradford District when undertaking test purchase operations.

In response to queries raised, the representative of WYP confirmed that police 'minders' were present to look after the welfare of the test purchasers and that a Fixed Penalty Notice was a fine of £80 that had to be paid within 21 days.

The Licensee's representative then addressed the Panel and began by stating that he condemned the sale of alcohol to under age persons, however, he did support business in the area. He then clarified an issue made by the representative of WYP with regard to the behaviour witnessed and stated that it was not the intention of the DPS to be aggressive towards the officer. There were other people in the premises at the time and he had felt uncomfortable.

In relation to the first failed test purchase on 17 June 2010, the Licensee's representative explained that the person who had made the sale was not connected to the shop. Renovations were being carried out at the time and the person should not have been left in the premises unsupervised and the Licensee had accepted responsibility for this. He stated that on the other occasions the premises had not been the only one where under age sales had been made. The test purchasers looked older than their actual age, however, it had been acknowledged that identification should be checked in all cases and training was a major issue for the premises. A book to record proof of age checks was now being used and under age sales had been refused since October 2010, however, the Licensee had not brought the book to the hearing as evidence. Also if the customer was not a regular and could not provide identification then they were not served.

The Licensee's representative confirmed that the CCTV system had been temporarily disconnected due to the refurbishment of the premises but the footage could now be viewed by WYTS along with the 'log' book. He acknowledged that there had been a

training issue at the premises, however, the under age sales had not been wilfully made and it had been acknowledged that better measures could have been put in place. The Licensee's representative stated that it was a local family run business and that the loss of the alcohol licence would be detrimental.

The Review applicant responded to a question from the Council's legal advisor by confirming that the children who had taken part in the test purchases were carefully chosen to ensure that they clearly, with the exercise of reasonable discretion by the store, looked under age.

The Panel then questioned the Manager of the premises and the DPS and was informed that:

- the role of the DPS was to provide adequate training and the DPS understood who could and could not be sold alcohol. No formal training was provided and it was the responsibility of the DPS to disseminate information to the staff.
- the premises had been extended twice and the CCTV system had not been switched back on. This had been a mistake as a great deal of electrical work had been ongoing in the premises at the time, however, the system could have been working intermittently.
- it was accepted that the person who had made the first under age sale should not have been left unsupervised in the premises and been allowed to serve. The DPS had previously informed staff to use their own judgement when asking for identification from customers but a policy was now in place that proof of age was required for every customer that looked under 25 years of age.
- members of staff had been informed that if the customer was known to them they could be served without identification, however, if they did not know them and there was any doubt to their age then identification should be requested. A book was also used to log any sale refusals.
- it was the officers' opinion that the DPS had been aggressive towards them.
- the DPS had not left the premises in order to follow officers following the test purchase.
- the facts in the statements submitted were not being disputed.

In summation the Review applicant stated that the premises had failed to satisfy the conditions imposed by the licence in that there was not an age verification policy in respect of the sale of alcohol and that the CCTV had not been in operation at the premises and the footage had not been available to be viewed by responsible authorities for 28 days. He reported that the premises had no system for the training of staff and no record of the refused sales had been retained. An effective proof of age policy had not been effectively enforced or staff appropriately trained. The Review applicant confirmed that the events had occurred during 2010 and that reference had been made to improvements that had been implemented since but no evidence had been submitted to the Panel. He requested that the Panel acknowledged that the premises had not demonstrated the necessary care required during the 5 months in 2010 when the incidents had occurred and were not fit to hold a premises licence, therefore it should be revoked. If however the Panel decided not to revoke the licence, it was requested that consideration be given to whether the DPS had demonstrated the necessary care and if he should be removed from his position.

In conclusion the Licensee's representative reiterated that the DPS's manner was not intentional and the under age sales had not been deliberate. The test purchasers had appeared to be over 18 years of age, however, a policy was now in place at the premises and a log book used to record refusals. He confirmed that the CCTV system was now operational and the recorded evidence was available for the required 28 days. Members of staff had been trained and were operating the proof of age policy. The Licensee's

representative stated that revoking the licence would have dramatic consequences on the family business, which was a community store. He requested that additional conditions be placed on the licence instead and that the DPS be allowed to remain in the position.

Decision

That having considered all valid representations made by the parties to the hearing; valid written representations received during the statutory period, the published statement of licensing policy and relevant statutory guidance; the Panel revokes the premises licence.

Reason: Having regard to the compelling evidence, presented by the review applicant West Yorkshire Trading Standards relating to the serious and persistent breaches of the licence conditions (particularly those relating to the requirement of a proof of age policy; the requirement to make CCTV footage readily available to Responsible Authorities on request; and the requirement to ensure adequate staff training on relevant licensing laws); the serious and persistent breach of licensing laws in relation to the sale of alcohol to children; and the obstructive and aggressive behaviour to a police officer in uniform who was investigating alleged breaches of licensing laws and conditions, the Panel considers revocation of the Licence is justified in order to address serious concerns related to licensing activities carried out at these premises undermining the Prevention of Crime and Disorder and Prevention of Children from Harm objectives.

Chair

Note: This record is subject to approval as a correct record at the next meeting of the Licensing Committee.

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