

Record of a Hearing of the Bradford District Licensing Panel held on Wednesday, 7 February 2018 in Committee Room 1 - City Hall, Bradford

Procedural Items

DISCLOSURES OF INTEREST

No disclosures of interest in matters under consideration were received.

INSPECTION OF REPORTS AND BACKGROUND PAPERS

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

Hearings

Application for Review of the Premises Licence for Mars a Day, 274 Lumb Lane, Bradford.

**APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR MARS A DAY, 274
LUMB LANE, BRADFORD.**

Commenced: 10.00
Adjourned: 11.35
Recommended: 11.50
Concluded: 11.55

Present

Members of the Panel

Bradford District Licensing Panel: Councillor M Slater (Ch), Councillor A Hawkesworth and Councillor Morris

Parties to the Hearing

Representing Responsible Authorities

Mr Bethell, Mr Clutterbrook & Ms Jackson (West Yorkshire Trading Standards Service)
P C Lord (West Yorkshire Police)

Licensee

Mr S Hoskins

Representations

DISCLOSURES OF INTEREST

No disclosures of interest in matters under consideration were received.

INSPECTION OF REPORTS AND BACKGROUND PAPERS

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**APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR MARS A DAY, 274
LUMB LANE, BRADFORD,**

The Assistant Director, Waste, Fleet and Transport Services presented a report, **Document "L"** which outlined an application for a review of a premises licence for the sale of alcohol which had been received from West Yorkshire Trading Standards Service (WYTSS).

It was explained that following inspections made by WYTSS concerns had been raised that the premise was not operating legally. It was requested that the licence be revoked.

Document "L" also reported that a representation had been received from West Yorkshire Police regarding a number of incidents at the premises. A copy of the representation was appended to the report.

Representatives of WYTSS addressed the Panel and explained that, acting on intelligence received, they had attended the store on three separate occasions. On the first occasion a 14 year old test purchaser, who did not look older than his age, had purchased fireworks. The same test purchaser had been refused sales at all other stores which WYTSS had visited.

It was felt that the person who had served the test purchaser was unaware that the goods were age restricted. The Designated Premises Supervisor (DPS) was not contactable at that time. WYTSS were told that the owner of the premises had run out of stock at the last minute and had left to go to the wholesalers. The person serving indicated he had learning difficulties and lived in sheltered housing. Officers from WYTSS stated that they were so concerned by the lack of awareness of the person serving that they wanted to stay and supervise.

On two other subsequent visits the DPS was not available and illegal cigarettes/tobacco was found in the shop. It was explained that illegal meant that the goods were genuine cigarettes but that no duty had been paid. Samples of the illicit goods, and examples of illegal packaging were shown to the Panel.

It was explained that the cigarettes found at the store did not contain health warning on the packets and did not conform to legal standards. The detriment illicit tobacco had on law abiding retailers was the loss of trade. The illegal cigarettes sold for approximately £3 per packet which was one third of the legal price. The cigarettes were made for the Russian market and smuggled into the country.

Fireworks (rockets) which had been sold at the premises were also tabled and it was witnessed that the safety seals had been removed. Members were advised that they would have been contained in a pack of five but had been sold individually. It was stressed that the detriment of these being sold to minors was that they could cause serious injury or death if not handled with care. The serious nature of the offence was stressed.

Following the representations of WYTSS Members questioned the nicotine levels in the illicit cigarettes and they were advised that the levels were roughly the same as lawful cigarettes. The cost differential between the cigarettes was discussed and it was explained that the illegal cigarettes were bought for about £1 per packet compared to £9-10 for lawful goods. The profit on legal tobacco was approximately 5% which equated to 40 to 50p whilst the illicit products would make significantly more.

Although the Premises Licence Holder/DPS disagreed with that statement, and claimed that the illegal cigarettes were purchased for approximately half that of legal goods, WYTSS maintained that illicit cigarettes were purchased for between £1 and £2 pounds per packet. Concern was also expressed that the goods were smuggled into the country by criminal gangs and they referred to the link to organised crime.

The DPS stressed that he had not purchased illegal cigarettes.

A representative of West Yorkshire Police addressed the meeting and explained that the basis of the representation was the failure of the premises to comply with the four licensing objectives.

It was reported that, acting upon a significant amount of intelligence gathered over a period of time, three Police Officers from the Ward neighbourhood Policing Team had attended the premises on 23 January 2017. A voluntary search with the manager of the store had been conducted. Large quantities of counterfeit cigarettes were discovered on the floor of the shop behind the counter area. Police officers made contact with Her Majesty's Revenues and Customs (HMRC) and were advised to seize the goods. HMRC later

attended Trafalgar House Police Station and removed the cigarettes. Members were advised that photographs of the seized goods were available should they wish to see them.

It was reported that following a call from the store manager regarding the seized cigarettes officers had again visited the store on 9 February 2017. Counterfeit cigarettes were found at the store during that visit. The cigarettes were contained in a plastic box on the shop floor and further counterfeit cigarettes were behind the counter. The cigarettes were seized and kept by the police until they were collected by HMRC. The police representative believed that the incidents, occurring twice within a two week period, clearly showed that there was no compliance with the Prevention of Crime and Disorder licensing objective.

The police representative continued to report that following a call from HMRC, on 10 August 2017, the Store Manager, and another man, had been arrested for the possession of cannabis and had received a conditional discharge for the offence. It was explained that HMRC had been at the premises investigating illegal cigarettes when the cannabis had been found. One bag had been found at the staircase to the basement of the shop and a second bag was found under the shop counter. During a further search several small self sealed plastic bags were also seized and there was evidence of remnants of green vegetable matter in the store's basement and behind the counter. The items were seized by officers. In interview the store manager admitted the offence of possession of cannabis. Photographs of the seized items were available should the panel wish to view them. It was maintained, by the police representative, that the illegal drugs were a breach of the Prevention of Crime and Disorder licensing objective. As the store was frequently attended by children it was also felt that the Protection of Children from Harm objective had also been breached.

With regard to the fireworks incidents it was reported that police officers had attended the store on 30 October 2017 following a call about fireworks being thrown into Lumb Lane. Police officers, on an operation for the bonfire period, had witnessed the store manager light a rocket firework whilst holding it in his hand and he had fired it into the air from the doorway of the premises. It was explained that the doorway was only two metres away from a busy street and junction. The store manager, and a friend, were dealt with for the offence under S80 of the Explosives Act by way of a Penalty Notice for Disorder. Both males were allegedly working in the shop at the time of the incident and according to the police officer who dealt with the incident were heavily in drink. No other shop workers were present at the time and cannabis could be smelt although not located. It was maintained that the behaviour of the store manager was grossly irresponsible and anti-social. It was also believed that there was a threat to public safety; the incident was disorderly; it had caused a public nuisance and could be harmful to passing children and road users. It was felt that the incidents demonstrated a clear disregard for the licensing objectives.

Due to the incidents which had occurred and intelligence gathered it was maintained that the store manager was not a suitable person to be running the premises; that he appeared to have a total disregard for the law and had failed to promote the four licensing objectives.

Although the DPS had no obligation to be present at the premises at during licensable activities it was a major concern to the police that he was either aware of the incidents which had occurred and done nothing to address the breaches of the Licensing Act 2003 or, just as concerning, that he had no knowledge of the incidents at the premises for which

he was responsible. It was stressed that the DPS should be the person who had day to day control of the business or was responsible for running the premises.

Reference was made to Annex 2 of the Premises Licence which stated that "*all staff shall be trained on the requirements of the Licensing Act 2003 with regard to the licensing objectives*". It was believed that the requirement was either not being enforced by the licence holder or was being ignored.

Members were requested to consider revoking the Premises Licence due to the catalogue of incidents relating to the premises. If Members were not minded to revoke the licence it was requested that the DPS be removed.

The Premises Licence Holder, who was also the Designated Premises Supervisor, addressed the meeting to discuss the allegations of which he maintained some were true and some less so. He maintained that WYTSS and West Yorkshire Police statements did not give the true picture and that progress had been made to improve the general area and outside lighting.

It was explained that the premises had opened in September 2015 although the licence had been acquired later. Since that time improvements had been made to the premises, vermin had been eradicated and outside lighting installed. Unfortunately the outside lighting had been less effective than had been thought and there was still a considerable amount of crime in the area. The store manager regularly had to break up fights and protect local residents. Cases when people had found refuge in the shop and had been helped by store staff were reported. It was maintained that vandalism to the shop had occurred because the staff had helped local residents and the premises did have the support of the majority of people in the area.

The DPS explained that he had been unwell during January but prior to that he had been present at the shop from late afternoon into the evening on most days. The times he was present had been scheduled to coincide with the times when the premises were busy and most alcohol sales had taken place. Efforts had been made to promote the licensing objectives within the shop and to improve the local environment.

It was argued that the shop did not sell fireworks. The person behind the counter at the time of the WYTSS visits would not have received training on the sale of fireworks because they were not sold at the premises. The fireworks which had been on the premises had been purchased for a private family celebration and bonfire night. Staff would only be left unsupervised if the store manager was not available and the DPS claimed that he had never seen that occur.

The store manager had been told that he cannot sell illegal cigarettes/tobacco and had now complied. The Licence Holder reported that he had found it difficult to explain why this could not happen as it was believed that all other local stores stocked those goods. A representative selling the cigarettes had called to the shop whilst the Licence Holder was present and he had witnessed the store manager refusing to purchase those items.

With regard to the CCTV cameras not working it was reported that the recording unit had been in the hands of the police for some time. Several attempts to retrieve the unit had been made and once it was returned it had been reinstalled.

The representatives of WYTSS disagreed with that statement and maintained that the unit

had been returned by the police on the three occasions when they had visited, however, the cameras were not in operation.

Members questioned how the Licence Holder could demonstrate his compliance with the licensing objectives when on more than one occasion illegal cigarettes were at the premises and fireworks had been sold.

In response the Licence Holder said that there had been on-going issues but now all involved were aware of their responsibilities. It was claimed that the store manager would always protect children and vulnerable people and that the fireworks would not have been sold if he or the store manager had been on the premises.

The responsibility to ensure all those working on the premises were compliant with the licensing objectives and received appropriate training was questioned. The Licence Holder agreed that it was his responsibility but explained that he had not foreseen a requirement to provide firework training as they were not for sale at the premises. The only age restricted products at the store were alcohol and cigarettes. All staff were aware that any person looking under the age of 21 must be challenged. Specific training on the prevention of crime and disorder had not been provided, however, it was maintained that all staff would be aware of their responsibilities.

In response to further questions the Licence Holder confirmed that staff had been provided with training on the Prevention of Public Nuisance, Protection of Children from Harm and Public Safety objectives of the Licensing Act 2003.

The Licence Holder conceded that he may not have communicated the requirement to comply with the objectives sufficiently but confirmed that since the incidents under discussion he felt that he had. He reported that he had witnessed staff asking for identification and that as they knew a lot of customers well they were aware, from previous identification, of their ages. It was felt that maybe he hadn't been in the premises enough because of previous ill health and claimed it was more difficult for the store manager to refuse to sell illegal cigarettes because all the local stores stocked those products.

It was questioned if the Licence Holder had been aware of his responsibilities and if he was concerned that he may have been unaware of the incidents taking place. In response he maintained that only one incident regarding fireworks had occurred and that he had dealt with that issue. He reported that he had been aware of the illegal cigarettes and told the staff that they must stop selling those products. It had taken a few attempts to get the store manager to understand the severity of the incidents but, on recent visits to the store, there had been no evidence of illegal cigarettes at the premises. The store manager had been made aware that should there be a repetition of the offences the he would step down and the store would be unlicensed.

Members questioned the Licence Holder's position in the business and were advised that the store manager owned the business but not the licence. The Licence Holder had undertaken that role as a friend. They had worked together previously and when he had opened the shop it was not felt that he had the necessary language skills to apply for the licence or undertake administrative roles.

In response to questions the Licence Holder confirmed that he had been working on the premises in October 2017. He maintained that he would be in the shop most days but

could not be available for all of the hours the store was open.

The Police representative questioned the reason for obtaining a personal licence and the Licence Holder explained that he wanted to help his friend with his business and his partner was also interested in operating licensed premises in the future.

The number of people working at the premises was questioned and it was explained that there were a few but only the store manager and two others were allowed to authorise sales. None of those employees had the benefit of a personal licence.

The police representative questioned if there was evidence of staff training and in response the Licence Holder explained that formal records were not kept. New members of staff would be supervised and shadowed for a period of time and their requirements would be explained.

The Licence Holder maintained that he had been unaware of the seizure of illegal cigarettes and drugs. He had since been made aware that cannabis was found for the store manager's personal use and he had told him that it could not be kept in the store. He felt it would be difficult to comment on the reports that two people had been intoxicated whilst looking after the store as he had not been present at the time but, whilst having no problem with the store manager having an alcohol drink, he did believe that he should have closed the shop if he had been drunk.

In response to questions about the store manager's likelihood of complying with the Licence Holder's instructions it was explained that he would comply. It was claimed that he was totally honest; he would not lie and would always take the consequences of his actions. It had been reported to the Licence Holder that the fireworks had been set off by local residents. The representative of the WYTSS disagreed with that statement and explained that the incident had been witnessed by their officers.

Following questions about the frequency of the Licence Holder's visits to the premises it was reported that he was on the premises every day unless he was ill. In response to WYTSS claims that this was contradictory to their experience as he had not been present on any of the occasions they had visited the premises, he maintained that he had never arrived at the store and found unauthorised staff alone. Staff were unaware of the times that he would arrive and he had always found staff supervised.

The representative of WYTSS questioned why the CCTV was not working as, at the time of their visit, the recording unit had been returned by the police. It was acknowledged that the equipment should have been in working order at that time. As soon as he had become aware of its return he had arranged for it to be reinstalled.

In summation the police representative explained that he had not heard anything at the hearing which changed his concerns about the day to day running of the premises. The police maintained the view that the license should be revoked.

The representative of WYTSS, in summary, reiterated that they had visited the premises as a result of complaints and did not believe that the incidents which had occurred were isolated. The shop was busy and frequented by children and they felt that it was not managed appropriately. Members were urged to revoke the licence.

In summary the Premises Licence Holder reiterated that he had never seen fireworks for

sale on the premises. Once he had been made aware of the incident the fireworks had been removed from the store. Staff had also been instructed that they were for personal use and should not be left in the store.

Although he did not want to speculate on why complaints against the premises had been made it was reported that there had been various unfounded allegations made in the past. Certain local people did not want the store manager on the premises and he would have to learn to live with that. It was stressed that he had every confidence in the store manager and was certain that fireworks were not for sale on the premises. There had been discussions about their sale in the past but it had been decided that due to the fire service inspections, locked cabinets and display areas required it had been decided that they would not be stocked.

In response to questions the DPS/Premises Licence Holder was unsure of the quantity of fireworks on the premises or from where they had been purchased.

Resolved –

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 determines that the premises licence be revoked.

Reason: That, in light of the evidence presented by West Yorkshire Trading Standards Service and West Yorkshire Police, the Panel felt that revocation was the only appropriate and proportionate approach to address all four of the licensing objectives.

Chair

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