

LICENSING ACT 2003 SUB-COMMITTEE

Thursday, 22 October 2015

Present:

Councillors A Hodson
 S Niblock
 J Salter

21 **APPOINTMENT OF CHAIR**

Resolved – That Councillor A Hodson be appointed Chair for this meeting.

22 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members of the Sub-Committee were asked to declare any disclosable pecuniary and non pecuniary interests in connection with the application and state the nature of the interest.

Councillor A Hodson declared a non pecuniary interest by virtue of being acquainted with the Solicitor acting on behalf of the Premises Licence Holder.

23 **APPLICATION TO REVIEW A PREMISES LICENCE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - K & M GENERAL STORE, 7-9 OXTON ROAD, BIRKENHEAD**

This meeting was reconvened from 1 October 2015 (minute 16 refers).

Heidi Jones, Trading Standards, attended the meeting together with Samantha Cushion and Geoff Lee, Merseyside Police Licensing Officers, Jon Hardwick, Environmental Health and Tricia Cavanagh, Public Health.

The Premises Licence Holder attended the meeting together with the owner of the premises and his representative, Mr Martin Green.

The Licensing Manager confirmed that all documentation had been sent and received and that no further submissions had been received during the period the meeting had been adjourned. It was confirmed that the owner of the premises was in attendance but would not be providing any evidence during the meeting.

Ms Jones, Trading Standards advised Members that the review had been brought due to grave concerns regarding the failure of the business to promote the licensing conditions. She reported upon a multi-agency visit that was made to the premises on 6 August 2015 involving officers from HMRC, Merseyside Police and Environmental Health when HMRC seized a large quantity of what was said to be duty diverted alcohol. Trading Standards advised that over £400 of duty was avoided on the beer and £1800 on the tobacco. It was reported that at the time of the multi-agency visit on 6 August 2015, Sam Ahmed was working in the premises when he was not lawfully entitled to work in the UK and that he had not received any training in respect of the law relating to the sale of alcohol as required by a condition on the Premises

Licence. Members were advised that as a consequence of the inspection of the premises on 6 August, officers identified that the Premises Licence Holder had failed to notify the Licensing Authority of his change of address in respect of his Personal Licence as required by Section 127 of the Licensing Act 2003.

Ms Jones responded to questions from Mr Green, Mr Coen, Legal Advisor to the Sub-Committee and Members of the Sub-Committee. In response to questions, Ms Jones advised that Trading Standards were unable to provide evidence from HMRC that the seized alcohol and tobacco were illicit products however, the labelling of the tobacco products would have prevented them from being sold in England.

Mr Geoff Lee, Merseyside Police informed Members that the application to review the premises by Trading Standards was supported by Merseyside Police. He referred to the joint operation made on 6 August 2015. He expressed concerns in respect of the management of the premises as he considered that organised criminal activity had been taking place which included the employment of an individual who was not lawfully entitled to work in the UK, the storage of alcohol and tobacco which had been seized by HMRC as it was believed that duty had not been paid and breaches of the Premises Licence conditions. He referred to the witness statement provided Christine Williams who reported that on 22 April 2015 a male had been causing disturbance in Birkenhead after sniffing legal highs purchased from the premises and that staff from the YMCA, Whetstone Lane believed that the use of the highs in conjunction with alcohol could be fatal and that the premises had a detrimental effect on the local community.

In response to questions from Members of the Sub-Committee, Mr Coen, Legal Advisor to the Sub-Committee and Mr Green, Mr Lee confirmed that no breaches had taken place at the premises.

Ms Cavanagh, Public Health advised Members that their representation was founded on information provided by Trading Standards, Merseyside Police and Environmental Health. The concerns of Public Health primarily related to the impact of the sale of duty diverted alcohol and super strength alcohol and general concerns of the harm caused by alcohol.

Ms Cavanagh responded to questions from Mr Green and Members of the Sub-Committee.

Mr Hardwick, Environmental Health advised Members that it was their belief that the owner had been failing to promote the licensing objectives. He referred to the multi-agency operation carried out on 6 August 2015. He also advised that the premises were situated in the centre of a hotspot and reported upon visits made to the Seven Beats area of Birkenhead to invite premises to participate in a voluntary inclusion scheme which was designed to reduce the number of shops selling high strength beers, larges and ciders sold cheaply.

In response to questions from Mr Green and Members of the Sub-Committee, Mr Hardwick advised that these premises had not been approached to participate in the Reducing the Strength campaign.

Mr Green addressed the Sub-Committee

The Premises Licence Holder responded to questions from Mr J Coen, Legal Advisor to the Sub-Committee, Ms Jones, Mr Lee and Mr Hardwick.

In determining the review application the Licensing Act 2003 Sub-Committee had regard to the Licensing Objectives, the Council's Statement of Licensing Policy and relevant guidance issued under Section 182 of the Licensing Act 2003.

Members gave careful consideration to the application made by Trading Standards to review the Premises Licence at K&M General Store, 7-9 Oxtan Road, Birkenhead which was supported by representations from Merseyside Police, Environmental Health and Public Health.

Members noted that in 2009 when Mr Amin was involved with the premises, offences were committed in respect of the sale of illegal tobacco, however, as this took place prior to Milosz Kwiecien becoming the Premises Licence Holder, Members did not take these facts into consideration when determining the review application. Evidence was provided that on 1 August 2014 a search was undertaken at the premises for illegal tobacco and none was found. Trading Standards submitted that underage sales had taken place at the premises, however, no evidence was provided to support these submissions. Evidence was provided that on 6 March 2015 a young person under the age of 18 years, working under test purchase conditions, attempted to buy alcohol from the premises and the sale was refused.

It was subsequently accepted by Merseyside Police that whilst it had been reported there were numerous breaches of the Premises Licence but this was not the case. It was accepted that the Designated Premises Supervisor could not produce his Personal Licence and that when it was produced he had failed to notify the Licensing Authority of his change of address.

In determining the matter Members considered the submissions made by Mr Green on behalf of the Premises Licence Holder. He advised that the Premises Licence Holder had owned the premises since 2011 and that Mr Amin was his business partner. He informed Members that training was provided for staff in compliance with the conditions of the Premises Licence and that the premises was an international food and drink store which provided for the Polish community in the area. He maintained that there was no evidence provided that the alcohol or tobacco seized from the premises on 6 August 2015 was duty diverted. Members heard from the Premises Licence Holder that he acknowledged that the premises was located in a challenging area and that street drinkers purchased alcohol from his shop but that alcohol was not sold to people who were drunk or underage. The Premises Licence Holder advised Members that since the joint operation in his premises on 6 August he has not sold super strength alcohol and that he would be content to have a condition on his licence not to sell this type of product. He also advised Members that he would be happy to stop selling legal highs from the premises. He advised that his beer was sourced from legal sources in the UK and invoices were available for Members' inspection. He referred to his Premises Licence and accepted this should have been updated. He informed Members that Sam Ahmed was helping out in the shop and did not receive a salary.

The Premises Licence Holder and Mr Green responded to questions from Members of the Sub-Committee, Mr Coen, Legal Advisor to the Sub-Committee, Ms Jones,

Trading Standards, Mr Lee, Merseyside Police and Mr Hardwick, Environmental Health.

In determining the matter the Licensing Act 2003 Sub Committee had particular regard to the fact that there was no conclusive evidence that illicit alcohol or tobacco had been stored or sold on or from the premises. Members took into account the undisputed evidence that an individual had been working in the premises who was not legally entitled to work in the UK and that no regard had been given to the need to train this individual before he was allowed to work in the shop. Members also gave particular consideration to the fact that the shop was located in a challenging environment that is a hot spot for alcohol related anti-social behaviour and was frequented by street drinkers.

Members gave consideration to the amount of alcohol and tobacco seized by HMRC and the labelling found on the tobacco, however in the absence of evidence from HMRC to state their findings, Members had no evidence to support the allegation that duty had not been paid on these products. Whilst Members were presented with invoices for alcohol purchased for the premises these were not accepted as being accountable for all of the alcohol seized by HMRC.

The revocation of the licence was given serious consideration by Members in accordance with Section 11.28 of the Statutory Guidance. Members also considered the absence of conclusive evidence that the alcohol and tobacco seized by HMRC was illicit and the undertakings given by the Premises Licence Holder in determining the application.

Resolved –

(1) That in accordance with Regulation 14(2) of the Licensing Act 2003, the public be excluded from the meeting during consideration of the application.

(2) That the Premises Licence be suspended for a period of 30 days during which time the Premises Licence Holder may take appropriate action to ensure compliance with the following modification to the Premises Licence.

(3) That the hours permitted for the sale of alcohol be amended to

Monday to Sunday 10.30 to 23:00

(4) That a written recruitment procedure must be in place which includes the steps that will be taken by the Premises Licence Holder to check the immigration status and the eligibility of an individual to work in the UK in accordance with the Home Office Guidance ‘ Full Guide for employers on preventing illegal working in the UK’.

(5) That beer, lager or cider with an ABV of 6.5% and above must not be sold at the premises in plastic bottles or tin cans.

(6) That prior to being permitted to sell alcohol in the premises, all staff must have a Level 1 Qualification in Responsible Alcohol Retailing. Staff must also receive refresher training every three months in respect of Responsible Alcohol Retailing which includes the prevention of the sale of alcohol to

persons under 18, Challenge 25 Policy and the sale of alcohol to persons who are drunk. A written record of this training must be maintained on the premises and be available for inspection by an Authorised Officer on request.

(7) That a paginated book must be used to record any refusal of the sale of alcohol to any person under the age of 18 or a person who is drunk. This book must be kept on the premises and be available for inspection by an Authorised Officer on request.

(8) That a CCTV system must be in operation at the premises and recorded images must be retained for a period of 31 days. Downloads must be provided to the Police and Authorised Officers upon request in line with the Data Protection Act 1998.

Further to the above steps resolved by the Licensing Act 2003 Sub-Committee, Members endorsed the proposal put forward by Public Health that the Premises Licence Holder who is also the Designated Premises Supervisor arranges to meet with the Manager of the YMCA, Whetstone Lane, Birkenhead to discuss how the premises may address the concerns regarding the sale of alcohol to individuals who attend the YMCA due to alcohol related issues.