

Minutes of a Meeting of the Licensing Act 2003 Sub Committee held in on Thursday, 22nd September, 2022 at 10.00 am.

PRESENT

Councillors David Andrews, Sandra Campbell-Wardman and Graham Cullen.

Councillor Terry Taylor attended the Meeting as a Substitute.

Officers in Attendance:

Adrian Twiddy	- Principal Licensing Officer
Joanne Paterson	- Democratic Services Officer
Lynda Eastwood	- Democratic Services Officer
Martha Rees	- Legal Representative

Also in Attendance:

Mr Robert Sutherland	- Solicitor representing Mr Kayran
Mr Kenan Demir	- Solicitor
Mr Ali Kayran	- Licence Holder
PC Casey	- Lincolnshire Police
PC Tilford	- Lincolnshire Police
Ms Suna Coverdale	- Interpreter

1. ELECTION OF CHAIRMAN:

Councillor Sandra Campbell Wardman was duly nominated and upon being put to the vote, it was

RESOLVED

That Councillor Sandra Campbell Wardman be elected Chairman of the Licensing Sub-Committee for this Meeting only.

COUNCILLOR SANDRA CAMPBELL WARDMAN IN THE CHAIR

2. DISCLOSURE OF INTERESTS (IF ANY):

Councillor Graham Cullen asked that it be noted that he was a personal licence holder.

3. APOLOGIES FOR ABSENCE:

No apologies were received.

4. REVIEW OF A PREMISES LICENCE:

This item was being presented to Committee following an adjournment of the Sub-Committee Meeting held on 12 September 2022.

(N.B. An interpreter was in attendance to assist the Premises Licence Holder).

The Principal Licensing Officer advised Members that the Police had requested to present additional evidence in private session without the presence of the licence holder and his representative. Further to discussion with the Chairman, it was proposed that a discussion and the additional evidence referred be heard at the end of the hearing.

It was agreed that the Sub-Committee would continue with the Review Hearing and consideration of the factors that brought the review forward, together with submissions from both parties. Towards the end of the hearing, Members would vote to go into Exempt Session to discuss the legal considerations for the additional evidence received from the Police.

Further to a discussion, Members agreed with this proposal and for the hearing to remain in Open Session.

The Principal Licensing Officer introduced his report and advised the Sub-Committee Members that the report considered an application by Lincolnshire Police for a review of the premises alcohol licence held in respect of the premises known as Arcade Mini-Market, Skegness. The review was a result of a compliance check undertaken by the Police where they had identified a person at the premises who held no permission or right to work in the UK. The application for review was advertised outside the premises and copied to all responsible authorities, however the Licensing team received no representations from these.

The Principal Licensing Officer highlighted the steps that the Sub-Committee could take that was appropriate for the promotion of the licensing objectives, (page 2 of the report refers).

PC Tilford, representing Lincolnshire Police outlined the premises licence details (Appendix D, pages 35 refers) which highlighted that the premises was allowed to supply alcohol between the hours of 08:00 and 23:00hours Monday to Sunday.

It was highlighted that two of the licencing objectives were being undermined at the premises. PC Tilford reminded the Sub-Committee that when considering the crime and disorder objective the guidance did indicate that the Police were best placed best to provide that information. Both the prevention of crime and disorder and protection of children from harm objectives had been undermined in three ways; firstly, employment of staff members who were not recorded correctly within the documentation, secondly, the pricing issues within the store that were noted within the documentation and thirdly, sale to underage members of the public and this was captured on CCTV. As such, the Police considered revocation of the licence the best course of action in this particular case.

The Police further explained the circumstances that gave rise to the premises review. A joint Police and Immigration visit to the store on 15th June 2022 had been undertaken as a result of intelligence received around illegal workers, (Annex A refers). PC Cotton and PC Jones attended the store with PC Casey and were met by a lone male named 'Deniz Basal'. Mr Basal had served customers within the store and was ultimately detained by immigration. Members were informed that Mr Basal had a visa to be in the UK but did not hold a visa to work in the UK.

Furthermore, Police Officers then conducted a compliance check within the store. This highlighted that staff training records were out of date, the last entries being 2016. Police were concerned that the last entry within the refusals of sales of alcohol log was in March 2020 which was deemed inadequate by the Police and it was a criminal offence for these documents not to be completed.

The Sub-Committee were referred to the statement of PC Casey (Annex C page 18 of the Police evidence pack refers). This was the first reference to alcohol being on display without a purchase price on it, another offence that could be dealt with under the Price Marking Order Act.

A further statement had also been provided by Immigration Officer, Stacey Donnelly which had highlighted further information around the Mr Basal's visa and confirmed that he was working in breach of his visa conditions.

Members were referred to further information as follows:

- A statement from PC Casey dated 9th September 2022 relating to reviewed CCTV footage on 11th June which showed that Mr Basal was serving customers, both individuals being 15 years of age. A further visit by PC Casey on 28th July had shown photographs of products not priced within the store. It then appeared that Mr Basal had not reported or checked back in with immigration, however it did not appear he had left the country. Reference was made to an additional statement from PC Casey dated 9th September which corroborated this.
- A further visit by PC Casey on 28th July related to photographs the Committee had from a pocket notebook entry. On that particular entry, alcohol was not priced up within the store. It was noted that further documentation was provided by the Licence Holder at that point in relation to the Refusals Log, however this particular document did have entries in relation to 2022.
- PC Tilford referred to the statement provided by Mr Kyran which made reference to right to work checks and CCTV, however Police argued that ultimately none of those had been forthcoming.

In summary, when considering the crime and disorder licensing objective PC Tilford considered that even though a penalty had not been received for the illegal worker, this did not signify that the crime and disorder objective was not engaged. PC Tilford referred to some case law that would assist Members in relation to this, within that there was a paragraph which detailed how crime and disorder objective could be interpreted. This would help Members around how they could weight circumstances presented before them even though no penalty had been issued.

In terms of the protection of children from harm objective, the Sub-Committee had evidence of a sale of alcohol to underage children. The issues around records was crucial as those records were keystones around showing that the Premise Licence Holder was operating his store in a safe way.

Mr. Sutherland, Solicitor representing Mr Ali Kyran wished to clarify a couple of points with Lincolnshire Police. In particular, reference was made to when alcohol was not priced correctly at the store, he believed there to be only one incident on 15th June and queried whether there was another occasion being referred to.

The Police clarified that there were 2 occasions; the first being the initial visit on 15th June, the second being on 28th July and there were photographs of that particular visit and pocket note book entry from PC Casey to that effect.

Further to a query on the layout of the shop by Mr. Sutherland and asking for confirmation of the locations on where the products referred were photographed, Lincolnshire Police could not confirm this information.

Mr. Sutherland made reference to the refusals book and additional copies of these were re-circulated to Members of the Sub-Committee. Mr Sutherland wished to thank the Committee for adjourning the original hearing to allow them to address the points that had been previously raised.

Mr. Sutherland made reference to the witness statement from Mr. Kyran and asked that it be treated as evidence put forward by the Licence Holder. Mr. Sutherland began by stating that this whole process had been initiated by the alleged illegal employment of a person who was not entitled to work in the UK. Mr Sutherland found it frustrating that the Police could come in front of the Sub-Committee arguing that it did not matter what the Home Office were saying and to disregard the conviction referred as that did not relate to the matter the Committee were dealing with.

Reference was made to a historical case that had been considered by a past Licensing Sub-Committee whereby the licensing objectives were engaged in that matter and this decision was made appropriately. As such, Mr Sutherland considered that the matters in front of the Sub-Committee were very different to the historical case being referred to by the Police.

Mr Sutherland urged the Sub Committee to look at that determination which was that Mr Kyran had not employed a person that was not entitled to work in

the UK. The additional statement that Members were given by an Immigration Officer in September regarding what the individual was actually doing was completely irrelevant to this case. Mr Sutherland stated that this case was about the promotion of the licensing objectives.

Reference was then made to allegations about pricing not being displayed and Mr Kyran's understanding was that the visit of 28th July was somewhat different as the Police were satisfied with what had been done at the premises.

Further reference was made to the internal plan of the Mini Market, (page 13 of the report refers) and an explanation provided to the layout and storage and labelling of items. Following which, Mr Sutherland assured Members that the Licence Holder would in future ensure that the price marking was displayed on individual shelves and asked that in this particular circumstance the Sub-Committee accept Mr Kyran's apology and not look to take any action in relation to the premises licence.

Finally, in relation to compliance with the licence Mr Kyran wished to assure the Sub-Committee that the staff within the shop received proper training, the failure on his part was that appropriate records were not kept. Unfortunately, with the pandemic that had taken over everyone's lives, it was something that Mr Kyran had lost focus on as other matters took over.

In terms of the refusals log which was covered in Mr Kyran's statement, it was clear that Mr Kyran had not been in trouble with the police before the initial visit and he was unnerved by the experience. Mr Kyran had effectively panicked and the licensing folder that he kept at the premises was in disarray due to being in its form as a loose leaf ring binder, however a number of the documents had subsequently been provided to the Police and the Sub-Committee had had sight of these. Mr Sutherland therefore was proposing an additional condition (Condition 7) in order that the refusal book could be examined on a regular basis. Going forward the refusal book would be checked on a weekly or monthly basis.

In terms of the allegation relating to under age sales, Mr Kyran was aware that two females had been to the store on a number of occasions and had provided ID for proof of age. However, on looking at the CCTV there was clearly no request made at that stage for ID and whilst the individuals looked over 18 they were not over 25. The Challenge 25 policy would have required for them to have been asked for ID. The Challenge 25 system was now reinforced in the proposed conditions put to the Sub-Committee. Furthermore, conditions 4 and 8 were added to ensure that all staff were capable to confront and challenge under 18s attempting to purchase alcohol.

In summary Mr Sutherland considered that for all the allegations put forward, there may or may not be an explanation, however he and his client proposed the way of dealing with this in the future was by modifying the licence with the conditions enforced.

It was confirmed that the Sub-Committee had no questions.

The Police were invited to ask questions of the Licence Holder and his Solicitor.

The following information was confirmed:

- Initially Mr Kyran had been informed by his Solicitor that he would receive a penalty of £15k for employing an illegal worker; this was subsequently challenged resulting in no penalty.
- Mr Sutherland accepted that there had been contact from Mr Kyran following the initial visit from the Police due to concerns relating to the allegations being made. Mr Kyran was also very concerned for his licence. The initial contact made did indicate that Mr Kyran had placed the priced products up on the central isle. Also, his understanding was that the Police attended the premises and indicated that they were happy with the display of the prices.
- Mr Sutherland clarified the dates when the vapes were ceased by the Police on the basis that they believed they were not legitimate. It was confirmed that the vapes were found to be legitimate and returned to Mr Kyran.
- The training that Mr Kyran had used was in written form contained in a folder produced by the Council, which staff were required to read. In relation to other training, this would have been delivered by himself. In relation to up to date training that dealt with the review hearing, Mr Kyran had now engaged the services of Mr Sutherland and Mr DeVere to monitor and manage the training.
- The information being referred to was the information given out by Trading Standards at Lincolnshire County Council (a separate body).
- The staff member that had made the under-age sale had received training, however had since left the shop.

Mr Sutherland assured the Sub-Committee that the premises would tighten up its procedure with regard to Challenge 25 and underage sales and as such, had since barred two individuals from the shop.

Following which it was Proposed and Seconded that Committee moved into exempt session granted under Regulation 14 (3) of the Licensing Act 2003.

(N.B The Sub- Committee entered into Exempt Session at 11:25am).

(N.B The Committee returned to Open Session at 12:01pm)

All parties were invited to make their closing statements.

In Summary PC Tilford reinforced that there were two licensing objectives that were considered to be undermined these being; the Crime and Disorder Licensing Objective and the Protection of Children from Harm. The product pricing element was a key issue and showed whether the licensing conditions were being taken seriously. CCTV had identified two underage females purchasing alcohol and furthermore the staff member that made sale was not named on the staff list provided to the Police. Therefore, the Police considered that records were being inadequately kept and highlighted the importance of this in illustrating that the premises were complying with its licence conditions. In conclusion, given the number of issues that were apparent in the premises and the undermining of the said licensing objectives the Police were suggesting revocation of the licence.

In summary Mr Sutherland referred to Mr Kyran's statement which stated that immigration was not taking the matter any further relating to the illegal worker. Furthermore, it was highlighted that the issues around what an individual did when they left the premises was irrelevant and this did not relate to the principle of the licensing objectives. Mr Kyran accepted that there should have been pricing on his products. Mr Kyran had since indicated that he would ensure products were labelled appropriately going forward. In terms of training it was acknowledged that this aspect was important and suggested it be addressed through further conditions. Mr Sutherland further outlined the conditions which he was seeking to amend.

(N.B The Sub-Committee retired to deliberate at 12:35pm)

(N.B The Sub-Committee returned from their deliberations at 1:45pm)

The Legal Advisor stated that the Sub-Committee heard from Lincolnshire Police and the premises licence holder's legal representative. In reaching its decision the Sub-Committee had due regard for all that they read and heard (which included a witness statement in the public session from the premises licence holder), the licensing objectives, the Home Office Section 182 Guidance and the Council's Licensing Policy Statement.

For the avoidance of doubt in reaching their final decision, the Sub-Committee did not take into account any of the information supplied to them during the private session.

Of particular concern to the Sub-Committee was the fact that a person with no right to work in the UK was encountered at the premises, along with the admission on the part of the premises licence holder that he found record keeping and management to be difficult. Additionally, the Sub-Committee had strong regard that on 11th June 2022 alcohol was sold to individuals who appeared to be under 25 years of age (and who are now known to be underage) without first asking for ID.

The Sub-Committee did note however, there was evidence of having passed a test purchase, but this was not dated.

In considering all of the above, the Sub-Committee had grave concerns about the current day to day management of the premises and the promotion of the licensing objectives. The Sub-Committee concluded that the issues encountered at the premises were largely down to the management of the premises by the premises licence holder, who was also the Designated Premises Supervisor (DPS).

Accordingly, the Sub-Committee decided that it was reasonable and proportionate to remove the Designated Premises Supervisor from the premises licence, to allow someone new to be brought in to assist with the management and day to day running of the premises. Additionally, the Sub-Committee decided that it was reasonable and proportionate to amend the premises licence to add (or where relevant replace) conditions as shown at Appendix A of this decision notice.

The Sub-Committee decided that the modification of the licence conditions was an appropriate step for the promotion of the licensing objectives.

Finally, in order to allow for changes to the day to day running of the premises and to dissuade children from the premises to purchase alcohol and age restricted products, the Sub-Committee considered that it was reasonable and proportionate to suspend the premises licence for 3 months.

The Sub-Committee also issued the premises licence holder with a strict warning as to his future conduct and advised him that should the current issues encountered at the premises not be resolved then any future appearance before the Sub-Committee would result in the revocation of the premises licence being strongly considered.

RESOLVED

- 1) That the premises licence in respect of Arcade Mini Market, 2 Sandbeck Arcade, Drummond Road, Skegness be suspended for 3 months.
- 2) That the Premises Licence Holder be issued with a strict warning as to his future conduct.

The Meeting closed at 1.50 pm.