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GATESHEAD METROPOLITAN BOROUGH COUNCIL

LICENSING SUB COMMITTEE MEETING

Monday, 19 July 2021

PRESENT: Councillor(s): W Dick, H Kelly and M Ord

LSC1 APPLICATION FOR A REVIEW OF A PREMISES LICENCE

RESOLVED – that the decision of the committee as per the attached summary of decision be agreed.

Chair.....

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SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : Jenny Hall's Off-Licence
Address : 4-6 Brinkburn Avenue, Gateshead, NE8 4JT
Premises Licence Holder : Mr Ranjit Singh
Date of Hearing : 19th July 2021
Type of Hearing : Review of premises licence

The Sub Committee has decided as follows:To add conditions to the existing premises licence, namely:

1. A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of the Licensing Authority and in consultation with Northumbria Police. Such a system shall:
 - Ensure coverage of all entrances and exits to the Licensed Premises internally and externally,
 - The till area
 - Ensure coverage of such other areas as may be required by the Licensing Authority and Northumbria Police.
 - Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained (on tape or otherwise) for a period of 31 days, and shall be supplied to the Licensing Authority or a Police Officer on request.
 - Be in operation at all times the premises are in use.
2. Implementing and maintaining a 'Challenge 25' policy, including staff training to prevent underage sales, and ensuring that all members of staff at the premises shall seek credible photographic proof of age evidence from any person who appears to be under the age of 25 and who is seeking to purchase cigarettes and/or alcohol. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a 'PASS' logo.

3. Staff shall refuse to sell age restricted products to any adult who they suspect to be passing age restricted products to under age children (i.e. proxy sales). Details of these refusals should also be kept in the ledger.
4. Staff are to be given sufficient training agreed with the Licensing Authority in the control of age-restricted products, refresher training for existing staff and training for all new staff.
5. Accurate training records are to be kept for all staff involved in sales of age-restricted products.
6. A refusals ledger shall be maintained, and made available to Local Authority enforcement officers on request. Refusals to be supported by the CCTV cameras.

Reasons

The premises licence review was brought by Gateshead's Weights and Measures Authority. Relevant representations were made in support of the review by Northumbria Police, Public Health Gateshead and Gateshead Safeguarding Partnership.

The Sub Committee had regard to the Licensing Officer's report, the supplementary documentation provided by Mr Singh's representative, Ms Gill Sherratt prior to the hearing, the oral representations made at the hearing by –

- Tracey Johnson from Gateshead's Weights and Measures Authority
- Sgt Mick Robson from Northumbria Police
- Julia Sharp from Gateshead Public Health
- Gill Sherratt on behalf of her client Mr Ranjit Singh

A representative from the Gateshead Safeguarding Partnership was not present during the hearing and so their written representation was put forward for consideration.

In considering the application the Committee heard from Tracey Johnson as follows –

- On the 7th May 2021 a successful test purchase was conducted by a 15 year old female at Jenny Hall's Off-licence. The youth purchased two bottles of VK Blue.
- The test purchase was in response to intelligence received from Northumbria Police of alcohol related ASB, by youths, taking place in the area surrounding the store and, in particular, in Saltwell Park. Youths said that they were buying alcohol from Jenny Hall's Off- Licence
- The individual who made the sale was Mr Singh's son. He had, apparently, worked in retail for some time prior to the sale taking place.
- Of particular concern was the fact that the seller initially asked to see the child's identification. This suggests that the seller knew to ask to see identification documents but

went on to sell anyway. He also asked if the child had any identification saved on their mobile phone which is not appropriate as documents can be forged or doctored. It is only appropriate to see the physical document.

- No written records were kept of the sale and no refusals register was used.
- A follow-up visit took place on the 20th May 2021. It was apparent that CCTV facilities were present in the store but only held recorded footage for 7 days. The refusals register was not available to view as Mr Singh had taken it home.
- Cllr Kelly asked questions of Ms Johnson. He asked whether there had been concerns about other off-licences in the local area selling alcohol to children. Ms Johnson responded by explaining that there were several other stores in the area that were all visited.
- He also asked what the proper time-period for retaining CCTV should be. He was told that there is no time period specified on his premises licence.
- Sergeant Mick Robson explained that the intelligence of youths causing anti-social behaviour related problems came from officers 'on the ground'.
- Pages 31 to 33 of the document pack showed maps of anti-social behaviour and crime in the area surrounding Jenny Hall's Off-Licence.
- It was not being suggested that Jenny Hall's Off-Licence was responsible for all of the problems in the area but it was certainly a cause of problems with anti-social behaviour in the area. If a shop owner does not take a 'robust approach' towards tackling under-age sales then it is less likely that their staff will take a robust approach.
- He referred to the statement of PCSO 5571 Telford. This statement dealt with an incident which occurred on the 1st May 2021 on a Saturday afternoon. Alcohol was seized from youths in Saltwell Park. Later the officer visited Jenny Hall's Off-Licence and saw youths congregating outside. The youths had alcohol but no identification. The seller in the shop said that he had refused the youths alcohol but could not show the refusals register to prove this.
- The other statement of PSCO Julie McGow referred to an incident of 200 youths causing disorder and drinking in Saltwell Park and the surrounding streets. Further intelligence was received that the alcohol the youths were drinking was purchased from Jenny Hall's Off-licence. It was this intelligence which led to the test purchase operation being carried out.
- The concern of the Police was the apparent lack of guidance available to shop staff regarding underage sales. It was further concerned by the fact that it would appear that youths consider Jenny Hall's off-licence as the place to go to purchase alcohol.
- Julia Sharp from Gateshead Public Health wished to bring to the attention of the sub-committee the evidence of alcohol abuse on youths and the problems that it causes, not only for the youth themselves but for the wider community. She directed the sub-committee to her statement and the attached evidence.
- Ms Sherratt, in response, began by outlining her client's background in retail.
- Mr Singh purchased Jenny Hall's Off-Licence in July 2020. He has previously held a licence for over 10 years, operating in the Newcastle area. He had an excellent track record in Newcastle and had forged good relationships with the local community. He sold the business and decided to purchase Jenny Hall's Off-Licence.

- He has spent a considerable amount of money renovating the business premises. The whole family work in the shop as well as another shop worker named Tracy. Local residents make up their main client-base.
- It is their only source of income. Losing their licence is a great cause of concern.
- Ms Sherratt said that Mr Singh did not dispute the matter. The underage sale happened, and he didn't want to see it happen again. She did, however, wish to highlight the fact that the seller, Mr Singh's son, did initially ask for identification from the child purchaser. It is acknowledged, however, that he went on to sell alcohol. He didn't follow procedure, and this was completely wrong. His son is only 18 years old and does not have a lot of experience.
- Ms Sherratt reminded that Sub-Committee that their determinations should be 'evidence-based'. The information provided by Sgt Mick Robson was not evidence. PCSO Telford, in his statement, spoke to the youths outside of the store but did not go on to seize the CCTV from the store to confirm that the alcohol they were consuming was from Jenny Hall's Off-Licence. This is not, therefore, real evidence. The Sub-Committee should, therefore, attach appropriate weight to it.
- This is only one blot on Mr Singh's record. He often calls the Police with any issues he is having. He wants to work closely with Police.
- Ms Sherratt explained that it was accepted that conditions should be placed on to the licence and that it should happen.
- Mr Singh has not ignored this warning and has spent the last month trying to put right all of the wrongs.
- The main problem appeared to be the lack of training on underage sales. Mr Singh has now undergone training and so has his staff. Mr Singh has purchased a 'training management system', which allows him to oversee the training of all of his staff.
- Ms Sherratt explained the inherent problems experienced by shop owners and staff with proxy sales however Mr Singh had purchased a new CCTV system which covered both inside and outside the store. He had properly adopted a 'Challenge 25' Policy and had put posters around the store.
- He had also carried out his own test purchase on his staff. They did not make a sale.
- Ms Sherratt agreed that retaining CCTV for only 7 days was not enough and suggested, instead, 31 days as standard.
- Ms Sherratt explained that Mr Singh appreciated the Police and Gateshead Council would still be watching him. She asked that the Sub-Committee take a reasoned approach to the situation.
- Councillor Kelly asked questions of Ms Sherratt. He asked her whether she was questioning the actions of PCSO Telford by not seizing the CCTV from the store. She agreed, saying that he should have obtained the CCTV to confirm the words of the children that they had bought their alcohol from the store. Sgt. Mick Robson responded by explaining that there was no obligation on the PCSO to take the CCTV footage. If it had been a condition on his licence they would have seized it.

- In summing up Ms Sherratt wished to acknowledge the pressures that the Police are under in trying to deal with youth-related anti-social behaviour. However, shopkeepers in these areas are also under significant pressure. It was acknowledged that more robust policies and procedures needed to be put in place within the store if it was to continue to operate properly.

The Sub-Committee then received legal advice in open session so that all parties were aware of the advice given.

The Sub-Committee were advised that in choosing which course of action to take, they should have regard to the Act, the Home Office Guidance, the Licensing Authority's own Statement of Licensing Policy and the individual facts.

The Sub-Committee were reminded of their duty under the Act is to carry out the Licensing Authority's functions with a view to promoting the Licensing Objectives; and that the Home Office Guidance states that they should do so with regard to the overall interests of the local community. They were reminded that they should only have regard to 'relevant representations' which go towards the promotion of the licensing objectives – particularly the prevention of crime and disorder and protection of children from harm.

The Sub-Committee were advised that, as part of their deliberations, they should consider wider issues such as conditions already in place which might mitigate negative impacts on the promotion of the licensing objectives and the businesses' track record.

The Sub-Committee were advised that determinations should be 'evidence-based' and justified as being proportionate for the promotion of the licensing objectives.

In reaching their decision they should seek to establish the cause of the concerns identified in the representations and the action they chose to take should be no more than an appropriate and proportionate response.

The Sub-Committee were advised that where the premises were being used to undermine or further criminal activity, it was expected that revocation of the licence should be seriously considered. They were further advised that considerable weight should be given to representations about child protection matters.

The Committee noted that paragraph 6.2 of Gateshead Council's Statement of Licensing Policy states that –

“The Licensing Authority considers:

- the effective and responsible management of premises
- instruction, training and supervision of staff; and
- the adoption of best practice

to be amongst the most important control measures for the achievement of all the licensing objectives”.

The Committee were reminded of the Judgment in the case of R (on the application of Hope & Glory Public House Ltd) v (1) City of Westminster Magistrates’ Court & Ors [2011] EWCA Civ 31 in which Lord Toulson stated, “Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.”

The Committee were reminded of the Judgment in the case of R (on application of Daniel Thwaites plc) v Wirral Magistrates’ Court and Others (2008) EWHC 838 (Admin), in which the Honourable Mrs Justice Black said:

“[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act’s approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.”

The Committee were reminded of the Judgment of Mr Justice Jay in the case of East Lindsey District Council v Hanif (t/a Zara’s) (2016) EWHC 1265 (Admin) with regard to the approach to be taken to determining the appropriate and proportionate action in light of the salient Licensing Objectives; and in particular their approach should involve –

- consideration of the antecedent facts; and
- a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence.

The committee explained that they felt the licensing objectives could be properly promoted through the addition of conditions to the premises licence.

In light of that, it was agreed that the licence would be amended to include the following conditions:

Rights of appeal

Should Mr Singh be aggrieved by the Sub Committee's decisions to modify the premises licence through the addition of conditions, a right of appeal to the Gateshead Magistrates' Court exists within 21 days of the date of service of this notice of decision.

In reaching these decisions the Sub Committee has been persuaded by the individual circumstances of this Application and does not intend to create a general exception to its Policy or to create a precedent.

Dated : 19th July 2021,

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