

GATESHEAD COUNCIL

LICENSING AUTHORITY

SUMMARY OF DECISION OF LICENSING SUB-COMMITTEE

Name of Premises : Ravensworth Food Market 3 Ravensworth Road Birtley DH3 1EE
Address : 3 Ravensworth Road Birtley DH3 1EE
Current licensee : Ishfaq Hussain
Date of Hearing : 19 December 2017
Type of Hearing : (1) Review of premises licence
(2) Determination of application to transfer premises licence
(3) Determination of application to vary premises licence to appoint new Designated Premises Supervisor

The Sub Committee has decided as follows:

- a) To revoke the premises licence
- b) To refuse the variation of the Designated Premises Supervisor; and
- c) To refuse the transfer of the premises licence to Mr Hussain.

Reasons

The Sub Committee had regard to the Licensing Officer's report, the supplemental documents and the verbal representations made at the hearing by –

- Ms Johnson (on behalf of Trading Standards)
- Ms Evans (on behalf of the Director of Public Health)
- Inspector Robson (on behalf of Northumbria Police)
- Mr Bradley (on behalf of the Licensing Authority); and
- Mr Ishfaq Hussain (premises licence holder and Designated Premises Supervisor) who was accompanied by his wife, his solicitor (Mr Taylor) and an interpreter

The application to review the premises licence was brought by the Chief Inspector of Weights & Measures. Representations were also made by the Director of Public Health, the Licensing Authority, the Local Safeguarding Children Board and Northumbria Police.

The Committee noted that at the time of the review application being made, the licence holder was Ms Susan McAlear and the Designated Premises Supervisor was Mr Yassar Khaliq; however following the review application being made, applications were received from Mr Ishfaq Hussain for the licence to be transferred to him and for him to be appointed as the Designated Premises Supervisor, both to have immediate effect.

In considering the review application, the Committee heard from Ms Johnson on behalf of the Chief Inspector of Weights & Measures, that on 24 October 2017 a 15 year old volunteer had been sent to the premises as part of a test purchase exercise, and was sold four cans of Fosters lager. The Committee heard that the seller, Ms Linda Holt, enquired as to the volunteer's age but did not request any proof of age in compliance with the 'Challenge 25' condition on the licence. The Committee heard that the volunteer attempted ten test purchases that day, and was refused in eight premises. Ms Johnson confirmed that review applications had been brought in respect of both premises where underage sales were made. Ms Johnson confirmed that the test purchase had been conducted following BDRO guidance; and that the premises has been identified as part of targeted enforcement action due to concerns regarding the management at the premises and whether there was effective controls in place to comply with the provisions of the licence.

The Committee heard from Mr Bradley on behalf of the Licensing Authority that conditions were added to the licence in 2015 following an underage sale made at that time, and that the further underage sale as above was evidence of non-compliance with those conditions. The Committee heard that there had been three applications to review the premises licence since it was granted in 2005; and that on each occasion there has been a purported change of management arrangements when in fact the business has remained within the same family control. The Committee heard that there has been repeated failures to submit transfer applications in a timely manner, and an apparent lack of regard for the importance of ensuring that the person selling alcohol at the premises is duly authorised to do so.

The Committee also heard that, with reference to paragraph 2.1 of the Home Office Guidance issued under section 182 of the Licensing Act 2003, data had been obtained from the Safer Gateshead Partnership which indicated that the premises were located in an area with increasing levels of alcohol related crime and anti-social behaviour.

The Committee heard from Ms Evans on behalf of the Director of Public Health that there was concern as to the effectiveness of the checks and balances in place at the premises to prevent the sale of alcohol to children either directly or by proxy. The Committee also heard that Public Health England data shows that the average number of alcohol related hospital admissions for children is higher in Gateshead than the rest of the North East and country, emphasising the need for effective controls to be in place to prevent such harm.

The Committee heard from Inspector Robson that there are frequent issues in the vicinity of the premises associated with underage drinking; and that there has been an increase in the visible police presence in the area including the use of mounted officers but that the issues have persisted. Inspector Robson noted that comprehensive conditions were added to the premises licence following a failed test purchase in 2015; and that despite these assurances a further sale has occurred raising concern as to the effectiveness of the management controls.

The Committee heard from Mr Taylor on behalf of Mr Hussain that there had been a total of eight test purchases carried out at the premises since the licence was granted, and that there had been two sales made in that time. The Committee also heard that the child volunteer on this occasion was approximately six feet tall, and that Ms Holt had indicated that she considered him to appear older than her own child who is 22 years old. The Committee heard that when asked if he was 18 years old, the child volunteer had affirmed that he was. The Committee heard, however, that Mr Hussain accepted that no proof of age was sought by Ms Holt; and that this was contrary to training delivered to Ms Holt by Mr Hussain and has resulted in Ms Holt being issued with a written warning regarding her future employment and being retrained in respect of the sale of age restricted products.

The Committee heard that Mr Hussain is the nephew of the previous licence holder, Ms McAlear; and that the business passed to his side of the family in August 2017. The Committee heard that Mr Hussain has worked in the premises for five years, and has sixteen years' experience working in the licensed trade. The Committee heard that Mr Hussain accepted that he should have applied for the licence to be transferred into his name when he took control of the business, but that the failure to do so was an oversight rather than a dishonest act. Mr Hussain stated that he had paid the premises licence annual fee on 9 October 2017, but accepted that the invoice was addressed to Ms McAlear. Mr Hussain stated that when he instructed his solicitor to apply for the transfer of the licence, his solicitor sent the application to the wrong Council.

The Committee heard that Mr Hussain had provided training in the sale of age restricted products to Ms Holt, and that Ms Holt had signed a document confirming that she understood her obligations in this respect. The Committee heard representations that at this juncture no criminal

offence had been proven, however it was accepted as fact that alcohol had been sold to a child. The Committee heard submissions from Mr Hussain that it would be unusual for a child to purchase Fosters.

The Sub Committee received legal advice from the Council's legal officer in open session so that all parties were aware of the content of that advice.

The Sub Committee heard 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 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 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.

The Sub 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 Sub 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 Sub Committee also had regard to paragraph 6.2 of the Council's Statement of Licensing Policy which 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 the most important control measures for the achievement of all of the licensing objectives.

Taking into account that there had been two failed test purchases in the time that Mr Hussain had been working at the premises, and that the most recent underage sale had occurred despite the comprehensive conditions that were added to the licence following the underage sale in 2015 and despite the training delivered by Mr Hussain to the member of staff who made the sale, the Sub Committee found that they were not satisfied that any step short of revocation would be appropriate to ensure the promotion of the licensing objectives, and specifically the prevention of crime and disorder and the protection of children from harm. The Committee did not consider that the management arrangements at the premises were adequate to ensure that these objectives would be promoted in the future if the licence were permitted to continue.

Taking into account the representations made by Northumbria Police in respect of the transfer of the licence to Mr Hussain and the variation of the licence to nominate Mr Hussain as the Designated Premises Supervisor, the Committee found that they were not satisfied that the crime prevention licensing objective would be upheld if the transfer were granted. The Sub Committee found that the police had made credible representations as to the likelihood of the crime prevention objective being undermined, and were guided both by paragraph 9.12 of the Home Office Guidance and paragraph 6.2 of Gateshead Council's Statement of Licensing Policy in this respect.

The Sub Committee noted that as a result of the rejection of the transfer to Mr Hussain, the licence was from that time held by Ms McAlear; and that by virtue of the rejection of the nomination of Mr Hussain as DPS, Mr Khaliq was reinstated as DPS.

Rights of appeal

Should Ms McAlear be aggrieved by the Sub Committee's decision to revoke the premises licence, a right of appeal to the Gateshead Magistrates' Court exists within 21 days of the date of the hearing as Mr Hussain was notified of the decision on the day of the hearing, and the licence had effect as if Mr Hussain were the licence holder until his application for it to be transferred was rejected).

In reaching this decision 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 : 20 December 2017