

BATH AND NORTH EAST SOMERSET

LICENSING (GAMBLING AND LICENSING) SUB-COMMITTEE

Friday, 9th July, 2010

Present:- Councillors:- Tim Warren (Chair), Bryan Chalker and Carol Paradise

Also in attendance: Andrew Jones (Environmental Monitoring & Licensing Manager), Shaine Lewis (Senior Legal Adviser) and Sean O'Neill (Democratic Services Officer)

1 EMERGENCY EVACUATION PROCEDURE

The Clerk read out the procedure.

2 ELECTION OF VICE-CHAIR (IF DESIRED)

RESOLVED that a Vice-Chair was not required on this occasion.

3 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

4 DECLARATIONS OF INTEREST

There were none.

5 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

6 MINUTES: 17 JUNE 2010

These were approved as a correct record and signed by the Chair.

7 LICENSING PROCEDURE

The Chairman drew attention to the licensing procedure, copies of which had been made available to members of the public attending the meeting.

8 APPLICATION FOR REVIEW OF A PREMISES LICENCE FOR BRIGHT STORES, 16A WINDSOR VILLAS, LOWER WESTON, BATH BA1 3DJ

Applicant for Review: Trading Standards, represented by Robin Wood, Senior Trading Standards Officer

Responsible Authority: the Police, represented by Martin Purchase (Police Liquor Licensing Bureau) and Inspector Steven Mildren,

Witnesses for the Police: PC Andrew Grabowski, Mrs Catherine Wilson

Bright Stores, represented by Zaheer Hussain (Licence Holder and Designated Premises Supervisor), Aftab Hussain

The parties confirmed that they had received and understood the review procedure.

The Environmental and Licensing Manager introduced the application. He explained that Bright Stores was currently authorised to sell alcohol for consumption off the premises between 10:00 and 23:00 every day. The review application had been brought by Trading Standards, who were seeking the revocation of the licence on the grounds that the licensing objectives of the protection of children from harm and the prevention of crime and disorder were being undermined by sales of alcohol to persons under the age of 18. The Police had made a representation to the application, and had also requested that the licence be revoked.

Robin Wood, Senior Trading Standards Officer, stated the case for the Applicant for Review. He said that the premises had failed test purchases on three occasions, once on 16 February 2010 and twice on 17 May 2010. He explained the procedure for test purchases. He stated that these were governed by strict Home Office guidelines and that only children who looked their age could be used to conduct them. Trading Standards worked closely with the Police in relation to test purchases. They were sometimes random, sometimes more targeted and related to intelligence received. He stated that this was only the second time that Trading Standards had initiated the review of a licence and the first time that they had sought the revocation of a licence. Trading Standards usually found that fixed penalties or prosecution were sufficient to bring about a change of behaviour. But in the case of Bright Stores further complaints had been received after a fixed penalty had been imposed following a failed test purchase in February 2010 and after the Designated Premises Supervisor had attended a meeting at Bath Police Station in March 2010, at which he had been given advice about requiring ID from those who appeared to be under age. A report had been received in April 2010 that alcohol was being sold to children, and further test purchases were made on 17 May 2010, which were both failed, resulting in the sale of a bottle of cider and a bottle of vodka to two 16-year old boys. Test purchases made at four other premises on the same day with the same boys had been refused. A further complaint about selling alcohol to children at the premises was received two weeks later. Mr Wood said that a picture had emerged of a premises that was regularly flouting the law. There was evidence that the premises had acquired a reputation among children as being a place where it was easy to buy alcohol. The application contained plentiful evidence of the serious harm that had been caused to children by alcohol sold to them at the premises. Trading Standards did not think that a prosecution would be effective in protecting children from further harm, but that only the revocation of the licence would be.

In reply to a question from a Member, Mr Wood stated that it had been difficult to assess the attitude of the Licence Holder to underage sales. On the one hand he had expressed regret, but it did not seem that he made efforts to prevent them happening again.

The Licence Holder had no questions to put to Mr Wood.

Martin Purchase stated the case for the Police. He invited PC Andrew Grabowski to make a statement. PC Grabowski referred to the incident log attached to the Police's

representation and to the note of a meeting with the Licence Holder held at Bath Police Station on 17th March 2010. He stated that he had issued a fixed penalty notice to Mr Shaznad Hussain, brother of the Licence Holder, on 9th February 2010 after a failed test purchase. He referred to the statement attached to the review application from a mother of a 13-year old boy, who had come home intoxicated on 1st May 2010. PC Grabowski had attended to take statements and had seen the boy, who in his opinion could not have been taken for an 18-year old. The boy had later identified the premises from which he had bought a bottle of cider as Bright Stores. The boy's friend, who was also 13, had purchased a bottle of cider from the premises at the same time. He had said that when he told the person serving that he wanted cider, he had been asked if he had a bag to put it in, and when he replied that he had, it was sold to him. On the 20th May 2010 the premises had been reported for summons. On 3rd June 2010 PC Grabowski had taken statements following the admission of a 14-year old boy to the Royal United Hospital on 1st June 2010 after he had consumed alcohol. Following a visit to the premises on 3rd June, Mr Purchase had written to the Licence Holder advising him of the extremely serious nature of the incident. PC Grabowski stated that many reports had been received from residents about problems involving young people occurring in the vicinity of the premises. There was an alley near the premises, which led to a play area next to the river. The play area was supposed to be for the use of children under the age of 14, but had become a gathering place for older youths. Reports had been received of groups of up to 20 youths drinking there. There were always empty drink cans and bottles scattered there. In June there had been a report that youths had bought drink from the premises and gone to the play area to consume it.

In reply to questions from Members, PC Grabowski and Mr Purchase stated:

- the next nearest premises selling alcohol was in Chelsea Road, about a quarter of a mile from Brights Stores
- they had not asked to see CCTV recordings made at the premises

Mr Purchase invited Mrs Catherine Wilson to make a statement. Mrs Wilson said that her son had been admitted to the Royal United Hospital on 1st June 2010 after consuming alcohol. He had gone out that night to attend an alcohol-free nightclub for young people in Bath. Her son was 14, did not shave, and his voice had not broken. She thought that there was no way that he could be mistaken for an 18-year old. On the evening of 1st June, she received a phone call from her friend's son, who told her that her son was about to be taken by ambulance to hospital and that he was unconscious but still breathing. She went immediately to Bath to see her son, who was covered in vomit, being put into the ambulance. She followed the ambulance to the RUH. Her son was put on a drip and remained unconscious for several hours. His blood pressure was low and he vomited several times during the night. She was told by her son's friend that they had gone skating in Victoria Park and then gone to Bright Stores. They knew that if they took their own bag, they would be able to buy drink from the store. Her son had drunk three quarters of a bottle of vodka. The nurse had said that she thought that if she had drunk that much she would probably have died. Her son had no access to alcohol at home.

Mr Purchase invited Inspector Steve Mildren to make a statement. Inspector Mildren submitted that Members had before them evidence of repeated disregard for

licensing law and for the authorities. A 14-year old boy's life had been put at risk, and residents in the vicinity of the premises had had their lives blighted by anti-social behaviour. There was evidence that the premises had a reputation among young people as being somewhere they could buy alcohol. The licence holder and his staff had totally disregarded their responsibilities, and had adversely affected the lives of a significant number of young people. He believed that there were no conditions that could be attached to the licence that would be effective, and therefore urged the Sub-Committee to revoke the licence.

In reply to a question from a member, Inspector Mildren stated that there was evidence that alcohol was sold to children with a mark-up of £1 or £2 on the usual selling price.

The Licence Holder had no questions to put to the Police or either of the witnesses.

Mr Zaheer Hussain stated his case. He apologised for what had happened and acknowledged that it had been unacceptable. He wished to retain the licence. He had appointed a new manager for the store with effect from 7th June 2010 and a challenge 21 policy had been introduced. He would try his best to work with the new manager to resolve any problems. He believed that there had been no problems since the new manager had been appointed. The CCTV was now working properly.

A Member asked what specific measures would be implemented to prevent underage sales. Mr Aftab Hussain replied that no sales would be made without proof of age. The Member asked why it had taken so long before positive measures to prevent underage sales had been introduced. Mr Zaheer Hussain replied that CCTV recordings had not revealed any problems. He had built on what had been agreed at his meeting with the Police. He stated that the local residents liked his store and that he had received a lot of support. He said that he sponsored local charities. In reply to further question from Members, he said that he had been involved with other businesses and had not been able to give his exclusive attention to Bright Stores. He remained as Designated Premises Supervisor, but was now there all the time and no longer visited just once a week. He said that staff would receive licensing training. He would work with the staff to resolve any problems. He apologised that he had not taken action sooner.

The parties were invited to sum up.

Mr Zaheer Hussain said that he had nothing to add.

Mr Wood said that Mr Hussain had made promises, but he had made promises in the past and not kept them. The overwhelming priority was the protection of children from harm. It would send a weak message to the licensed trade if the License Holder were allowed to retain the licence despite the evidence that the Sub-Committee had heard.

Mr Purchase said that the Sub-Committee had heard plentiful evidence of a total disregard of the law. There had been numerous interventions from the authorities, which had not produced any improvement. This was the worst case that he had been involved in during his ten years with the Police.

Following an adjournment, the Sub-Committee **RESOLVED** to revoke the premises licence for Bright Stores. Authority was delegated to the Licensing Officer accordingly.

REASONS

Members have determined an application for a Review of a Premises Licence at Bright Stores, 16a, Windsor Villas, Bath. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act 2003 is to be reluctant to regulate in the absence of real evidence. Further, they must only do what is necessary and proportionate to promote the licensing objectives based on the evidence presented to them.

Members listened carefully to the applicant, took account of the representations from the Police, the Interested Parties and also took account of the representations made by the licence holder. Members were careful to balance the competing interests of the parties.

Members heard that there were numerous calls to Trading Standards alleging that that the premises were selling alcohol to children. This led to a Trading Standards investigation and during a test purchase on the 10/02/10 cider was sold to a 16 year old boy by the store manager witnessed by a Trading Standards Officer. On the 17/03/10 the Premises Licence holder/Designated Premises Supervisor attended Bath Police Station where the operation of the premises was discussed and the suggestion made that the DPS should exercise more day-to-day control. It was agreed that a proof of age scheme was to be adopted and that the DPS exercised better day-to-day management of the premises. On the 17/05/10 further test purchases were carried out and underage sales witnessed; a 500ml bottle of cider was sold to a 16 year old boy and a 2ltr bottle of cider sold to another 16 year old boy.

Members heard that the premises have become known in the locality as being premises where young people can purchase alcohol and this has resulted in a steady increase in alcohol related crime and disorder amongst young people as they are attracted to the premises and remain in the vicinity of the premises to consume their purchases. Members further heard that a Fixed Penalty Notice had been issued for underage sales, criminal proceedings have been issued by the police, a child had been hospitalised after consuming alcohol he had purchased from the premises and numerous other complaints had been received by Trading Standards and the Police about underage sales.

Members noted that the Premises Licence holder did not challenge any of the evidence they were presented with.

The Premises Licence holder said he was very sorry and wanted to keep his licence. He accepted that improvements could be made but said he did not know anything about the problems until he was told about them by the Police. He said that in the past he could only visit the shop about once a week but intended to exercise better

management control of the premises. He further stated that he had appointed a new manager, had adopted a proof of age scheme and given training to staff.

Members found the applicant's evidence compelling that despite numerous interventions and advice from Trading Standards and the Police the premises continued to disregard the law. Members therefore revoked the Premises Licence because they do not consider a suspension would protect children from harm in the long term and further were not satisfied in the light of the evidence from all parties that the Premises Licence holder would be able to abide by any further conditions.

9 APPLICATION FOR A PREMISES LICENCE FOR SOLO BURGER, 10 RIVERS STREET PLACE, JULIAN ROAD, BATH BA1 2RS

Applicant: Mr Kambiz Shayegan Zadeh, represented by David Holley (Licensing Agent)

Interested Party: the Circus Residents Association, represented by Henry Brown

Witnesses for the Interested Party: Mrs Rothwell and Mr Plumstead

The Environmental and Licensing Manager introduced the application, which was for a new premises licence authorising the sale of alcohol, with food orders only, for consumption off the premises between the hours of 11.00 and 23.00 Monday to Sunday. Representations had been received from Interested Parties relating to the licensing objectives of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

Mr Holley stated the case for the applicant. He said that the applicant, who had owned and operated a takeaway in Julian Road for six months, wished to offer his customers the option of buying wine or beer to consume with the food they purchased from him. He did not wish the premises to become an off-licence. Food was served at the shop or could be ordered for delivery to customers' homes. There were no other premises selling hot food in Julian Road, though there were other premises in the road selling alcohol up to 23.00. He said that the applicant had taken time to discuss the application with him before submitting it. As a result, he had decided not to store alcohol in the ground floor shop; customers would be able to consult a wine and beer list from which they could make their selection. He had also decided that it was best at present not to open beyond 23.00. Following an incident where a pile of rubbish left outside a shop in the road had been set on fire, the applicant had decided that no rubbish would be left outside the premises, but would be removed every day. Mr Holley noted that there had been no representations from residents living in Julian Road or neighbouring roads. He drew attention to the fact that the premises were on the very edge of the cumulative impact area, and referred to paragraph 16.11 of the Council's Statement of Licensing Policy, which states that applications will be decided in accordance with the individual circumstances of the case.

In response to questions from Members, Mr Holley and Mr Zadeh stated:

- there would be a minimum charge of £10 for food purchased at the premises
- the drinks sold would be wine and beer, but not cider or canned beer
- the strength of the beer sold would be 3.5-4%
- if people wanted cheap beer, they would be more likely to go to another outlet

In response to questions from Mr Brown, Mr Holley and Mr Zadeh stated:

- wine and beer would be sold in bottles
- it was expected that the sale of drink would account for 10% of the turnover of the premises
- the applicant had not sought support from local residents for the application

Mr Brown stated the case for the Circus Residents' Association. He introduced his witnesses, Sally Rothwell and John Plumstead, local residents who shopped regularly in Julian Road. Mr Brown said that Julian Road was a small shopping area, situated in a mixed residential inhabited by both the young and the elderly. There was a primary school nearby. A good deal of motor traffic used Julian Road as an alternative route. He noted that an Interested Party had said in his representation that Julian Road could be intimidating at night because of noise and disturbance from people gathering there. Mr Brown said that residents were concerned that more people would be attracted to the premises if they could buy alcohol there, and that there would be an increase in noise nuisance, litter and broken bottles. He referred to the information he had circulated to the parties before the meeting, which gave figures provided by the Police about crime and disorder in the area. This revealed that 23% of crime incidents around Julian Road were crimes against the person and that 57% of anti-social behaviour occurred between 18:00 and 02:00 and that there was a higher-level of anti-social behaviour between 18:00 and 00:00 on Friday to Sunday. There was already crime and disorder in the area, and residents feared that another outlet selling alcohol would make this worse. He suggested that customers who had bought food and drink from the premises would be likely to sit down nearby to consume them, which could lead to increased litter. Glass bottles which had they left behind might be broken by other people and become a hazard to children and dogs. He called his first witness, Sally Rothwell. She said that went to Julian Road two or three times a day. She often felt intimidated by people hanging around in the road for no obvious purpose and avoided going there at night. There was always a great deal of paper litter and broken glass in the road. Mr Brown then called Mr Plumstead, who said that he also went to Julian Road two or three times a day. With the consent of the applicant and by leave of the Chair, Mr Plumstead submitted a photograph showing a group of people sitting on the pavement by a building in Julian Road. Ms Rothwell said that this would not have been seen five years ago. Mr Brown said that he hoped that the Sub-Committee would reject the application. If Members felt unable to do this, he asked them to consider attaching the following conditions to the licence:

1. No special offers to be permitted.
2. Sales of alcohol to be with deliveries only.
3. Drink not to be supplied in glass bottles.

Mr Holley asked Mr Brown whether there was any evidence linking anti-social behaviour in Julian Road to the consumption of alcohol. Mr Brown replied that this might be inferred from the fact that most anti-social behaviour occurred between 18:00 and 00:00 and was worse at weekends.

The parties were invited to sum up.

Mr Brown said that the premises appeared to have few customers at present, but residents were concerned that if an alcohol licence were granted, many more people would be attracted to them. There was a fear that the premises might try to attract customers by selling cheap drink and that there would be an increase in anti-social behaviour in the area. He urged the Sub-Committee to reject the application, or if they felt unable to do so, to impose the conditions he had suggested.

Mr Holley submitted that the representations contained a lot of opinion, but very little hard evidence. The Co-operative Store in Julian Road, which sold alcohol, had been there a long time and there was little to suggest that it had contributed to anti-social behaviour. The Council's Statement of Licensing Policy said that the impact of different kinds of premises would be different and that decisions should reflect the individual circumstances of each application. The premises were only just within the cumulative impact area. A good deal of thought had been given to the application before it was submitted and appropriate conditions had been included in the operating schedule.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the licence, subject to the mandatory conditions, to conditions consistent with the operating schedule, and to the following conditions imposed by the Sub-Committee:

- There shall be no irresponsible drinks promotions
- Alcohol shall only be sold with food
- Alcohol shall only be provided with a minimum food order of £10
- Beer shall not be sold in glass bottles

Authority was delegated to the Licensing Officer to issue the licence accordingly.

REASONS

Members have determined an application for a Premises Licence at Solo Burger, Rivers Street Place, Bath. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy, which includes the cumulative impact policy, and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act 2003 is to be reluctant to regulate in the absence of real evidence. Further, they must only do what

is necessary and proportionate to promote the licensing objectives based on the evidence presented to them.

Members listened carefully to the applicant, took account of the representations from the Police, the Interested Parties and also took account of the representations made by the licence holder. Members were careful to balance the competing interests of the parties.

The applicant stated that the business had been operating successfully as a take-away food outlet for the last 6 months but in response to demand for deliveries of wine with food he wanted to be able to offer the off sale of alcohol. He suggested that the sale of alcohol with food raised only minor risks to the licensing objectives and that conditions would be able to deal with these. So far as the protection of children from harm was concerned a number of conditions relating to deliveries and the age of recipients were suggested.

Members noted that there were no representations from the Police regarding crime and disorder or from Children Services on the protection of children from harm. However, Members heard representations from interested parties who stated that Rivers Street is a densely populated area and anything that encouraged people to hang around with alcohol in glass bottles would lead to an increase in crime and disorder, public nuisance, litter and broken glass as residents already felt intimidated by people hanging around on Julian Road.

Members do not consider that these premises will add significantly to cumulative impact and grant the licence as applied for with conditions consistent with the operating schedule and as suggested by the applicant this morning. Members also add the following conditions as necessary and proportionate to promote the licensing objectives.

- There shall be no irresponsible drinks promotions
- Alcohol shall only be sold with food
- Alcohol shall only be provided with a minimum food order of £10
- Beer shall not be sold in glass bottles

Delegated authority to the licensing officer to issue the licence.

The meeting ended at 1.20 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services