

Licensing Sub-Committee – 18 July 2016

Minutes of the meeting of the **Licensing Sub-Committee** held on **18 July 2016** when there were present:-

Cllr B T Hazlewood
Cllr Mrs L Shaw

Cllr M J Webb

OFFICERS PRESENT

L Wilcockson - ECC Legal Services Officer
J Fowler - Senior Licensing Officer
S Worthington - Committee Administrator

ALSO PRESENT

S Sparrow - Essex Police
M Howlett - Principal Environmental Health Officer
G Nunn - ECC Trading Standards
L Yarnell - ECC Trading Standards

25 APPOINTMENT OF CHAIRMAN

Cllr M J Webb was appointed Chairman of the Sub-Committee.

26 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed in hearing the review.

27 LICENSING APPLICATION

The Sub-Committee considered an application for a review of a premises licence made under section 51 of the Licensing Act 2003. The application related to premises known as Rochford News, Westminster Drive, 67-69 West Street, Rochford, SS4 1BE. Members had before them the report of the Assistant Director, Legal Services setting out the details of the application and the representations received from the Responsible Authorities and the premises licence holder and interested parties.

The Trading Standards officers outlined the following:-

- On 25 January 2010 an under age tobacco test purchase was carried out at the premises and no sale made.
- On 17 March 2011 intelligence was received that cigarettes were being sold to 14-year-olds at the premises.
- On 3 August 2011 a Trading Standards advice visit was made to the premises.

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- On 28 November 2011 intelligence was received relating to under age sales of alcohol and tobacco at the premises.
- On 26 February 2013 further intelligence was received relating to under age sales of tobacco and alcohol at the premises.
- On 4 March 2013 intelligence was received relating to further under age sales of alcohol and tobacco at the premises.
- On 4 April 2013 a Trading Standards advice visit was carried out at the premises.
- On 6 April 2013 Trading Standards carried out an under age test alcohol purchase at the premises; alcohol was sold to a 16-year-old.
- On 13 June 2013 the premises licence holder attended a formal interview relating to this test purchase, at which he confirmed he was the Designated Premises Supervisor and that he had been for ten years and had also been a premises licence holder for 20 years. He also confirmed that he had not undergone any under age sales training for 12 years and that he did keep a refusals book, although evidence of this has not been provided to date.
- The premises licence holder was successfully prosecuted on 22 January 2014.
- Intelligence was received on 28 November 2013 relating to under age sales of alcohol at the premises.
- On 5 February 2014 intelligence was received relating to under age sales of alcohol and tobacco at the premises.
- On 29 March 2014 an under age test purchase of alcohol was made at the premises; no sale was made.
- On 2 September 2015 an under age test purchase of tobacco was made at the premises; no sale was made.
- On 27 November 2015 intelligence was received relating to counterfeit DVDs and illicit tobacco being on the premises.
- On 7 December 2015 illicit cigarettes were sold to a Trading Standards officer at the premises and illicit tobacco, counterfeit and pornographic DVDs were taken from the premises.
- On 6 April 2016 a warning letter was hand delivered to the premises licence holder in relation to counterfeit items being found on the premises; a further search was conducted of the premises, but no counterfeit items

were found.

- On 13 April 2016 intelligence was received relating to the under age sale of alcohol.
- On 3 June 2016 a Trading Standards test purchase of alcohol was conducted at the premises; alcohol was sold to a 16-year-old. The premises licence holder has been asked to attend an interview relating to this latest incident.

In response to a question from the representative of the premises licence holder, Trading Standards officers confirmed that full details of the above were included in appendix D to the officer's report.

The representative of the premises licence holder stated that allegations of illegal immigrants being present at the premises were unfounded; two worked in the nearby kebab shop and the other two worked in a nearby car wash.

The representative made reference to page 1.5 of appendix A to the officer's report, which claimed that the premises licence holder had sold vodka to a minor in April 2016. He stated that this statement was erroneous as the premises had, for some considerable time since before that, only stocked beer and wine. He referred to the witness statement included on page 3.3 of appendix C to the officer's report, which referred to the sale of wine, rather than vodka, and questioned the accuracy of the Police's evidence in relation to this alleged incident.

The representative further stated that allegations regarding the cultivation of drugs at the premises were linked to one of the premises licence holder's tenants, who had since vacated the premises.

The representative stated that an allegation of rape made against the premises licence holder was completely unfounded and related to a patient of the nearby mental health unit and that the room in which the attack was alleged to take place could be easily accessed by anyone at any time.

The representative stated that there were mitigating circumstances in respect of the first failed test purchase relating to the premises licence holder's ill health, following hospitalisation for septicaemia.

The representative stated that in the case of the latest under age test purchase of alcohol on 3 June 2016 the young boy appeared to be with a woman; the premises licence holder asked the woman if the boy was with her; she didn't reply, but nodded, which the premises licence holder took as affirmation.

The premises licence holder stated that, in respect of the failed test purchase on 3 June 2016, the boy entered his premises with a woman; he thought they were together. It appeared as though she indicated to the boy what beer to

purchase, and she nodded when he asked her whether the boy was with her, which was why he sold the beer to the boy. He emphasised that he had always been very careful to ask for I.D. since his earlier prosecution for a failed test purchase.

The representative for the premises licence holder stressed that a letter from one of the customers who, he claimed, was present at the time of the test purchase (having entered the shop after the trading standards officer and the boy), confirmed that it appeared as though the boy and the woman were together when alcohol was sold to the boy on 3 June 2016. The trading standards officers stated, however, that there were no other customers present on the premises. The representative of the premises licence holder advised that, unfortunately, the customer was unable to attend today's hearing. The representative confirmed, in response to a question relating to the potential adjournment of the hearing until a later date, that the hearing should continue.

The premises licence holder accepted that he had previously failed a test purchase, but claimed he had been unwell at the time and been watching films on his laptop at the time of the purchase, and had believed the boy wanted to purchase Coke, not alcohol. He accepted that he had previously had counterfeit DVDs and illicit tobacco on the premises, but had destroyed all this and asked that the Sub-Committee not suspend his premises licence as his business relied heavily on the sale of alcohol. He sold wine and beer to local people, often on credit; his business had suffered since the Sainsbury's had opened nearby and he relied on these alcohol sales to sustain his business.

In response to questions the following points were noted:-

- The premises licence holder claimed that wine was not sold to minors on 8 April 2016.
- Trading standards officers advised that LACORS guidance stipulates that test purchasers enter licensed premises in advance of trading standards officers, select alcohol to purchase and then hand over money in payment. In respect of the incident on 3 June 2016 it was only when the boy was walking towards the door to leave the shop that the premises licence holder asked the trading standards officer if the boy was with her. The premises licence holder should have asked the boy for I.D. and should not have accepted money from him for alcohol as he was a minor; as such, it was not relevant whether or not he was with an adult.
- There was CCTV at the premises, however this was not working.

The Police officer advised that page 3.3 of appendix C to the officer's report provided details of the events referred to earlier on 8 April 2016. In summary, two patients, aged 14 and 16 at Rochford Hospital were given permission to visit Rochford News and returned to the hospital very intoxicated, which was

reported to the Police by hospital staff. The Police were very concerned about the operation of this licensed premises. The Police officer emphasised that trading standards officers are always very professional and do not operate in the manner described by the premises licence holder in respect of the failed purchase incident on 3 June 2016. He further reiterated that this was the second failed test purchase at the premises. The Police consider that the premises licence holder fails to promote the licensing objectives in relation to the prevention of crime and disorder and the protection of children and the Police seek revocation of the premises licence.

In response to further questions the following points were noted:-

- The premises licence holder claimed that Rochford Hospital patients were not allowed to enter Rochford News; he did not sell alcohol to 14 and 16-year-old patients on 8 April 2016.
- Ongoing Police investigations relating to drugs and rape were not relevant to this application for the review of a premises licence.

In conclusion, the representative of the premises licence holder drew attention to the letter from one of customers detailed on pages 5.6 and 5.7 of appendix E of the officer's report. He claimed that the sale of alcohol would not have taken place on 3 June 2016 if the woman had not nodded when asked if she was with the boy wishing to purchase the alcohol. The premises licence holder further emphasised that when he disputed the sale, the Police and trading standards officers would not listen to him and the Police officer shouted at him and told him he was under caution.

The trading standards officers, in concluding, stated that despite the original failed test purchase on 6 April 2013, and advice meetings and warnings, a further test purchase was failed this year. Trading standards officers considered that there was a high possibility that the premises licence holder would continue to sell alcohol to minors.

The Police, in conclusion, stated that they took this matter very seriously. The premises licence already contained a mandatory condition relating to age verification, with which the premises licence holder did not comply. They considered that there was no option other than to revoke the premises licence in order to ensure that the licensing objectives were promoted.

The Sub-Committee retired from the Chamber with legal officers to consider the decision, returning for its announcement.

Members, having carefully considered all the written evidence provided by all parties in advance of the hearing and the representations made at the hearing by the Police, trading standards officers, the premises licence holder and his representative, did not consider that the premises licence holder was a fit and proper person to promote the licensing objectives of the prevention of crime and disorder and the protection of children from harm. The Sub-Committee

therefore deemed it appropriate to revoke the premises licence with immediate effect.

Resolved

That the premises licence be revoked with immediate effect. (ADLS)

The hearing adjourned at 11.35 am and reconvened at 1.00 pm.

28 PROCEDURE FOR LICENSING HEARING

The Sub-Committee noted the procedure to be followed in hearing the application.

29 LICENSING APPLICATION

The Sub-Committee considered an application for a variation of a premises licence made under section 34 of the Licensing Act 2003 in respect of a premises known as Brandy Hole, Kings Man Farm, Pooles Lane, Hullbridge, Essex. Members had before them the report of the Assistant Director, Legal Services setting out the details of the application and the representations received from various interested parties and Responsible Authorities.

Mrs Bass, a resident living in close proximity to Brandy Hole, expressed concern about the proposed extension to operating hours, the possible future erection of a marquee, further noise from the premises carrying on later at night, and the potential for additional traffic using a private, unadopted road, which is maintained by residents. She emphasised that Brandy Hole no longer had access to the river.

Ms Provan expressed the view that the proposed extension in operating hours would lead to issues relating to public nuisance and public safety. She emphasised that Kingsman Farm Road is a private, unadopted road which is narrow and already struggling to cope with current use associated with residents, Brandy Hole customers, caravan access points and a public footpath. This was already a difficult access road, narrow and in poor condition. She stated that there was no indication that the Brandy Hole premises would contribute to the maintenance of the access road in the event of the application being granted.

Ms Proven stated that the premises was located in an open, secluded residential area. Her residence was, she advised, in close proximity to Brandy Hole, and while indoors last weekend she could hear noise emanating from Brandy Hole until 1215 hours. It was often the case that guests from Brandy Hole sit on the sea wall, congregate on the footpath, leave glasses out on the venue boundaries. Residential gardens in close proximity to Brandy Hole can, she advised, be accessed easily from the sea wall; it was thus easy for Brandy Hole customers to access residential properties. Litter was often left on her property and noise travelled at night, given the quiet, open location.

In her view the building, which was an old structure, was not designed in such a way that noise could be contained.

She further pointed out that there was an issue in this secluded location with public transport; it was very difficult to get a taxi in this part of Hullbridge, particularly late at night. She considered that this could result in the potential for increased noise and disturbance if the application was granted.

She also emphasised that there was no visible Police presence in that part of Hullbridge and that there had been some attempted burglaries recently, which had prompted some residents to have CCTV installed at their properties.

In response to questions, the following points were noted:-

- The footpath was a public right of way; however, people often sat on the sea wall late at night, with drinks and tended to be loud and boisterous.
- The erection of a marquee at Brandy Hole could lead to increased traffic.
- The Hullbridge Community Centre had not been permitted to extend its operating hours, however Brandy Hole was in a more open, secluded location.
- There was no evidence that the attempted burglaries were linked to Brandy Hole customers.
- It was difficult to believe that Brandy Hole would be able to adhere to the conditions required by the Environmental Protection Unit, given that customers ignore signs located at the premises asking them to be mindful of noise.
- There is no evidence to link increased noise levels with Brandy Hole.
- Any noise-related issues could be controlled by means of the conditions attached to the premises licence and via the statutory noise regime which gives Local Authorities the powers to investigate noise issues and via review of the premises licence.~
- Noise limiters could either cause the sound system to cut out if noise exceeded a set level, or could ensure that noise did not exceed a pre-programmed level. The installation of a noise limiter would, however, need to be proportionate to an existing problem. The Environmental Protection Unit was satisfied that, in respect of the current premises set up, the lobby to the external decked area and the condition requiring doors and windows to be kept closed, and the condition relating to the first floor function room being the sole location for music events, was sufficient to control any noise issues.

The representative of the premises licence holder advised that the intention was that the venue be developed for private hire and restaurant trade. Conditions requested by the Police and Environmental Protection Unit in respect of this application had all been agreed to promote the licensing objectives. Staff were always on site until after the last customer had vacated the premises. The venue had plenty of toilet facilities, drinking glasses were not permitted outside and Brandy Hole did not sell alcohol in cans; litter was not attributable to Brandy Hole.

He further emphasised that use of the public footpath had increased recently with increased caravan lettings in this vicinity. Brandy Hole did not wish to host stag or hen parties, rather weddings, wakes and corporate events. He stated that the two attempted burglaries referred to by one of the residents occurred at times when Brandy Hole was not open for business. There had been a steady increase in traffic along Kingsman Farm Road, with boats being transported to and from the river, caravans and mobile homes coming and going. Brandy Hole's business had, however, decreased during the past year; the increased traffic was not generated by Brandy Hole.

He stressed that it was not possible to stop people using the public footpath. He had not observed people on the footpath with glasses, although people did smoke on the footpath. The external decked area was contained by a 2-metre glass barrier, which served to attenuate noise. He further emphasised that Brandy Hole had been a club since 1960, when all night parties used to take place. The premises licence holder/owners were responsible, wanting to run a venue for weddings. It was not open to the public, other than for hire for such events and people would therefore not be able to buy drinks from Brandy Hole after leaving public houses post-closure.

In response to questions the following points were noted:-

- Brandy Hole's capacity was 200 persons and the car park could accommodate up to 150 cars.
- Events were booked in predominantly on Saturdays and occasionally on Fridays. Mid-week events often comprised wakes, which did not go on until late at night. However, there were instances of weddings taking place during the week, as costs were cheaper mid-week and Brandy Hole therefore wanted the flexibility to be able to accommodate these in future.
- The venue has not been a private club for the past five years; however, the intention is not to open to the general public, but to private hire functions.
- Brandy Hole had arranged for some pot holes in the private road to be filled in during recent weeks.

In conclusion, residents emphasised that Brandy Hole was located in a completely open area where noise would travel; the glass barrier by the

external decked area would not be able to attenuate noise.

They confirmed that they did not object to the extension in operating hours on Saturdays and Fridays to accommodate functions, but did not consider that operating hours should be extended to 0100 hours during the week, in a private residential area, which could subject residents to noise late at night, when they had to get up to go to work the following day.

The Sub-Committee retired from the Chamber with legal officers to consider the decision, returning for its announcement.

Members, having carefully considered all the written evidence provided by all parties in advance of the hearing and the representations made at the hearing by residents, the applicants and clarifications provided by the Environmental Protection Unit officer considered that the business needs of Brandy Hole should be balanced by the concerns raised at the hearing by local residents. The Sub-Committee therefore deemed it appropriate to grant part of the application.

Resolved

- (1) That the premises licence be varied, as follows:-
 - Activities to be extended to include provision of live and recorded music and dancing on Thursdays to Saturdays inclusive and on Bank Holidays, Christmas Eve and New Year's Eve from 0900 – 0100 hours.
 - Late night refreshment to be permitted on Thursdays to Saturdays inclusive and on Bank Holidays, Christmas Eve and New Year's Eve from 2300 – 0100 hours.
 - Hours for the sale of alcohol to be extended on Thursdays to Saturdays inclusive and on Bank Holidays, Christmas Eve and New Year's Eve from 0900 to 0100 hours.
 - The provision of live or recorded music, performance of dance or late night refreshment will not be permitted at any time on Sundays, Mondays, Tuesdays or Wednesdays.
- (2) That the additional conditions, as set out on pages 4.1 to 4.5 in appendix D to the officer's report be added to the premises licence. (ADLS)

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The meeting closed at 2.30 pm.

Chairman

Date

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