

SHEFFIELD CITY COUNCIL

Licensing Sub-Committee

Meeting held 30 January 2018

PRESENT: Councillors David Barker (Chair), Neale Gibson and Cliff Woodcraft

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1. APOLOGIES FOR ABSENCE

- 1.1 No apologies for absence were received. Councillor Neale Gibson attended the meeting as a Member, but was not required to stay.

2. EXCLUSION OF PUBLIC AND PRESS

- 2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

- 3.1 There were no declarations of interest.

4. LICENSING ACT 2003 - SHEFFIELD CONVENIENCE STORE, 111 WEST STREET, SHEFFIELD, S1 4EQ

- 4.1 The Chief Licensing Officer submitted a report to consider an application made by South Yorkshire Police, under Section 51 of the Licensing Act 2003, for the review of the Premises Licence in respect of the premises known as Sheffield Convenience Store, 111 West Street, Sheffield, S1 4EQ (Ref No. 07/18).
- 4.2 Present at the meeting were James Ketteringham (Solicitor, South Yorkshire Police, for the Applicants), Ian Armitage (South Yorkshire Police Licensing, Applicants), Patrick Robson (John Gaunt and Partners, Solicitors, for the Premises), Senthil Periyasamy (Premises Licence Holder), Julie Hague (Sheffield Safeguarding Children Board), Clive Stephenson (Licensing Strategy and Policy Officer), Samantha Bond (Legal Adviser to the Sub-Committee) and John Turner (Democratic Services).
- 4.3 Samantha Bond outlined the procedure which would be followed during the hearing.
- 4.4 Clive Stephenson presented the report to the Sub-Committee, and it was noted that representations had been received from the Sheffield Safeguarding Children Board, and were attached at Appendix 'D' to the report.
- 4.5 James Ketteringham stated that there had been three failed test purchases at the premises, on 14th June, 17th July and 28th November

2017, which had all involved underage police volunteers entering the premises and purchasing alcohol without being challenged. He raised specific concerns with regard to the third test failure, which had occurred following additional staff training being undertaken after the two previous failures. Mr Ketteringham stated that the three failed test purchases, together with issues in terms of the agreed Action Plan not being followed and problems with regard to the CCTV system, had amounted to poor management of the premises. Mr Ketteringham referred to the suggested conditions, included in the bundle circulated by Patrick Robson in advance of the meeting, indicating that, with an amendment to the final condition, relating to the presence of the Premises Licence Holder on the premises, the conditions would help improve the operation of the premises. He believed that the requirement for a Personal Licence Holder to be on the premises, during the times indicated, should refer to the premises in general, and not just if Mr Periyasamy was the Premises Licence Holder (PLH) or Designated Premises Supervisor (DPS). The police had requested this amendment on the basis that they were aware that Mr Periyasamy was looking to sell the premises, and were concerned that he could still have some involvement in the operation of the premises following the sale. The police had concerns that the premises could gain a reputation as the place for underage children to purchase alcohol and other age restricted products, therefore considered that such a condition should relate to the premises, and not just if Mr Periyasamy was the PLH or DPS. Mr Ketteringham stressed that there was always the possibility that, if a new PLH took on the premises, and there were no further problems in terms of its management, this condition could always be removed, or amended, in the future.

- 4.6 In response to questions from Members of the Sub-Committee, Samantha Bond and Patrick Robson, Ian Armitage stated that he was not aware of any passed test purchases at the premises since he started his current job in June 2017. It was not usual for there to be three failed test purchases at a premises such as this. A similar premises had recently had its Premises Licence revoked for having a similar number of failed test purchases, although there had been other contributing circumstances regarding those premises. Whilst the police did not consider the number of failures unusual, on the basis of the number of test purchases undertaken, it was rare for premises to fail three in a row and more so, in this case, as steps had been taken in terms of additional training for staff at the premises, following the first two failures. As a result of the failed test purchases, together with the issues with regard to the CCTV, the police and Julie Hague attended the premises in September 2017, offering assistance to the Manager, and suggesting that an Action Plan be put in place to address their concerns. The Manager was also reminded about the free training which was available to him and his staff. A further meeting was held in October 2017, at which Patrick Robson and Mr Periyasamy attended, with the intention of Mr Periyasamy signing up to the proposed Action Plan. Despite this level of intervention, the

premises still failed the test purchase on 28th November 2017. The police would have expected the Manager to listen to, and to take notice of, the help and advice provided. It was accepted the occasions when the Premises Licence Holder was not in attendance at the premises, in October and November 2017, referred only to those occasions when Ian Armitage had visited the premises.

- 4.7 Julie Hague made representations on behalf of the Sheffield Safeguarding Children Board (SSCB), indicating that she concurred with the views of the police in terms of amending the suggested condition relating to the presence of a Personal Licence Holder at the premises, to the extent that the condition should refer to the premises, and not the management or staff. She stated that this would make sense on the basis of the premises' location, in that it was very accessible to young people, and in the light of the history of the failed test purchases.
- 4.8 Patrick Robson referred to the application for the review, indicating that two of the four licensing objectives – the prevention of public nuisance and the prevention of crime and disorder – should be removed from the application as grounds for the review as they were not relevant in this case. He also indicated that the late night refreshment element of the business should not be affected by any decision made at this hearing. Mr Robson referred to the duties of the Sub-Committee, under the Licensing Act 2003, indicating that any decision needed to be proportionate, and the least onerous in terms of the level of intervention. He stated that Mr Periyasamy was looking to sell the premises, and had, very recently, received an offer, but which had now fallen through. In terms of the failed test purchases, the first failure had occurred three days after the member of staff involved had completed his training, and it was the first sale of an age-restricted product that the member of staff had undertaken on his own. The member of staff was asked to leave following the failure. With reference to reports of other people being in the shop at the time of the first failed test purchase, it was confirmed that such people were not staff members, and Mr Robson made specific reference to an email from Dr Felixallen, who had confirmed that he was merely visiting his friend's brother's shop, and had been asked to assist the police at the time, due to communication issues regarding the members of staff. The second failure involved a member of staff who, despite having previous experience of working in a Spar store for six months, and had received relevant training in connection with working in Sheffield Convenience Store, was only three hours into his shift when the test was made. Mr Periyasamy was very frustrated and upset at the failure, and immediately removed that member of staff.
- 4.9 Mr Robson referred to the allegations of an unknown person using a stolen bank card, on eleven occasions, to purchase goods from the store on 6th August 2017. In the light of these allegations, the police visited the premises on 8th August, 2017, to request to see the CCTV

images. They were told that they would be downloaded onto a memory stick, and asked to return. On their return, on 28th August, 2017, the police were informed that the memory stick had been misplaced. In an effort to assist the police, a member of staff tried to download the images, but ended up altering the settings, reverting the images into high definition, thus reducing the number of days' coverage from 30 to 7, thereby wiping out 23 days' worth of coverage, which included the period in question. Mr Robson stressed that such problems were common with CCTV systems, given their technical makeup, but this incident had been a one-off at the premises. Mr Robson referred to copies of receipts relating to the alleged purchases, which indicated that only three of the transactions involved the use of a contactless card, with only two involving the same card. He concluded therefore that such allegations could not be substantiated. Following further meetings and discussions between the Responsible Authorities and the premises, an Action Plan was drafted, and subsequently signed by Mr Periyasamy on 20th October 2017. Mr Robson stated that, following a visit to the premises by Mr Armitage on 25th October 2017, to check points on the Action Plan were being adhered to, there were a number of Challenge 25 signs in place, but it was accepted that there should have been more signs around the sale point. It was also accepted that there were some gaps in the Refusals Log, but this issue had now been resolved. In terms of Mr Periyasamy not being present on the premises during the visit, it was stated that he had been stuck in traffic, and that this had been a one-off incident, and out of his control. It was highlighted that all the other issues on the Action Plan had been adhered to. Mr Robson considered that, whilst appreciating the serious nature of the three failed test purchases, Mr Periyasamy had listened to the advice provided by the Responsible Authorities, as well as ensuring that management and staff had received a sufficient level of training. He believed that Mr Periyasamy had gone over and above in terms of his responsibilities with regard to staff training, referring specifically to the underage sales quiz that staff members had been asked to take part in, and which, apart from one staff member, had resulted in a 100% pass rate. He stated that there was an adequate refusals system in place, with approximately 60 entries made in the Refusals Log since March 2017, with 12 of these being entered by the member of staff who failed the final test purchase in November 2017, and with seven of these entries being made before the failure. Mr Robson pointed out that there was now adequate signage relating to age restricted products in the premises, and highlighted the fact that staff had been asked to sign to confirm they had received the training. Mr Robson concluded by referring to the list of suggested conditions, indicating that with regard to refresher training, he would be happy to reduce the period in which staff were required to be trained in the prevention of underage sale of alcohol, from at least every six, to every three, months. He also circulated suggested amended wording in respect of the condition regarding the presence of a Personal Licence Holder on the premises.

- 4.10 In response to questions from Members of the Sub-Committee and the representatives of the Responsible Authorities, it was stated that it was accepted that there had been issues at the premises, some being the result of poor management, and if the Sub-Committee was minded to agree to the amendment to the suggested condition relating to the presence of a Personal Licence Holder on the premises, this would address the issues. It was, however, requested that the Sub-Committee be mindful of implementing such a condition on the grounds that it could have an adverse impact on Mr Periyasamy's efforts to sell the lease to the premises. Mr Periyasamy had always offered a comprehensive training package for his staff and, following the failed test purchases, and the subsequent intervention of the Responsible Authorities, he had looked to strengthen the level of training, as well as looking to employ more experienced staff. Mr Periyasamy undertook the majority of the staff training, assisted by his brother, who undertook the training when he was not around. In the light of the failed test purchases, it was planned that the number of days staff would be required to work prior to selling age restricted goods would be increased. The premises were generally busier on Friday and Saturday, and Mr Periyasamy or his brother would ensure that they were always on the premises at these times. There was no need to amend the conditions regarding CCTV on the basis that the staff did not have access to the system. Mr Periyasamy would recruit staff members by placing adverts in the Job Centre Plus building, which was very close to the premises. In terms of enforcing the suggested condition regarding the supervision of new members of staff, Mr Periyasamy planned to add such details to the premises' training record, and sign it off personally. There was a basic level of training available for staff when the premises first opened, which had now been strengthened considerably. It was accepted that there had been two errors by a staff member in connection with the CCTV, in that a memory stick had been lost and the staff member, in trying to assist the police, had affected the system settings, thereby deleting some images covering a period of time. In terms of the receipts relating to the alleged purchase of goods by a customer using a stolen card, the receipts included in the bundle now circulated had not been offered to the police. The reference to the volunteer, who took part in the test purchase on 28th November 2017, having a beard, was made in the statement made by the member of staff involved in the failure, in a statement. It was believed that the member of staff involved in the failed test purchase on 17th July 2017, was not telling the truth, during an interview with the police following the incident, when he stated "I didn't know that wine was an age-restricted product", and was merely trying to avoid being punished.
- 4.11 James Ketteringham summarised his case on behalf of South Yorkshire Police.
- 4.12 Patrick Robson summarised his case on behalf of the premises.

- 4.13 Clive Stephenson presented the options available to the Sub-Committee.
- 4.14 RESOLVED: That the public and press and attendees involved in the application be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.15 Samantha Bond reported orally, giving legal advice on various aspects of the application.
- 4.16 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.17 RESOLVED: That, in the light of the information contained in the report now submitted, the additional information now circulated and the representations now made, the Sub-Committee agrees to modify the conditions of the Premises Licence in respect of the premises known as Sheffield Convenience Store, 111 West Street, Sheffield, S1 4EQ (Ref No. 07/18), as follows:-

- (a) A refusals book (or equivalent) shall be kept at the premises to record all instances where sale of alcohol is refused. Such records shall show:
- The basis for the refusal
 - The person making the decision to refuse
 - The date and time of the refusal

Such records shall be retained at the premises for at least 12 months, and shall be made available for inspection by the police, or any other authorised person on request. The refusal log will be checked and signed off regularly by management.

- (b) The premises will operate a proof of age scheme, and will require photographic identification from any person who appears to be under the age of 25 years, and signage to this effect is to be prominently displayed within the premises, including the premises entrance and behind the service counter.
- (c) New members of staff involved in selling alcohol will not be permitted to sell alcohol unsupervised for a period of five days from their commencement of employment. This will be recorded in the staff training records as detailed below.
- (d) New members of staff shall not be permitted to sell alcohol unsupervised until they have undertaken training on prevention of under-age sales. The training must include:
- What age restricted products are sold at the store

- The Challenge 25 policy and what this means
 - What forms of ID the business will accept as proof of age
 - How to complete the refusals book
- (e) The trainee must also sign a declaration confirming that they have undertaken and understood the training. The declaration document shall be made available for inspection by the police, or any other authorised person, on request, and shall be retained for at least 12 months.

Details of training will be recorded in an electronic or paper record, and this information shall be made available for inspection by the police or any other authorised person on request, with all such records being retained for at least 12 months. Training records must specify:

- The name of the trainee
 - The name of the trainer
 - The date the training was delivered
 - The nature of the training, i.e. induction/initial or refresher
 - Date of the first unsupervised shift
- (f) All members of staff involved in the retail sale of alcohol shall be trained in the prevention of under age sales of alcohol at least once every three months. Details of training will be recorded in an electronic or paper record, and this information shall be made available for inspection by the police, or any other authorised person on request, with all such records being retained for at least 12 months. Training records must specify:
- The name of the trainee
 - The name of the trainer
 - The date the training was delivered
 - The nature of the training, i.e. induction/initial or refresher
- (g) Other than a member of a Responsible Authority, no person shall be allowed behind the service counter unless they are a member of staff, member of management, someone with a proprietary interest in the premises, or their presence relates to the ordinary course of business, is due to exceptional circumstances, or because of an emergency.
- (h) A record of employed staff will be kept on the premises to include their name, address, date of birth, nationality and work permit details (where relevant). Management will review original documents relating to staff members' right to work in the UK and keep photocopies of that documentation, with follow-up checks made on an annual basis. No breach of this condition will occur if such purported breach is due to any limitations imposed under data protection laws relating to the checking, retention and production of the aforementioned documents or any other

relevant law in force at the time.

- (i) Unless in the event of an emergency or an occasion as notified to the police (anticipated no more than once a month):
- A Personal Licence Holder will be on site (subject to the required/normal work breaks) from 20:00 until 04:00 the following mornings on Fridays and Saturdays; and
 - Either a Personal Licence Holder will be on site, or a minimum of two non-Personal Licence Holders with the appropriate internal underage sales prevention training, will be on shift (subject to the required/normal work breaks) between 18:00 and 23:00 Wednesdays and Thursdays.

(The full reasons for the Sub-Committee's decision will be included in the written Notice of Determination.)