

**SHEFFIELD CITY COUNCIL**

**Licensing Sub-Committee**

**Meeting held 16 February 2017**

**PRESENT:** Councillors David Barker (Chair), Gail Smith and Bob Pullin

.....

**1. APOLOGIES FOR ABSENCE**

1.1 No apologies for absence were received. Councillor Andy Bainbridge attended the meeting as a reserve 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 - SHOP LOCAL, 166 ABBEYDALE ROAD, SHEFFIELD, S7 1FH**

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 a review of a Premises Licence in respect of Shop Local, 166 Abbeydale Road, Sheffield, S7 1FH.

4.2 Present at the meeting were Cheryl Topham (South Yorkshire Police, Applicant), Robert Clark (Counsel for the Applicant), Sarfraz Bhatti (Premises Licence Holder/Designated Premises Supervisor (PLH/DPS)), Patrick Robson and Paul Henocq (John Gaunt and Partners, Solicitors, on behalf of the PLH/DPS), Julie Hague (Sheffield Safeguarding Children Board (SSCB)), Sarah Bevan (Complainant), Clive Stephenson (Licensing Strategy and Policy Officer), Marie-Claire Frankie (Solicitor to the Sub-Committee) and John Turner (Democratic Services).

4.3 Marie-Claire Frankie 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 a member of the public, and were attached at Appendix 'B' to the report.

4.5 Robert Clark stated that there had been a long history of complaints and breaches of conditions in connection with the operation of the premises, both before and after Mr Bhatti had become PLH/DPS. This had included a number of failed test

purchases, which equated to around 46% of the total number undertaken at the premises since Mr Bhatti was in position. Mr Clark made reference to the extensive work undertaken by the SSCB, in terms of engagement with Mr Bhatti, which had included the offer of free safeguarding training for Mr Bhatti and his staff, and advice in terms of the implementation of an age verification scheme and the use of a refusals log. He also referred to the non-compliance with the condition regarding CCTV at the premises, the recent hospitalisation of a young person, due to the effects of alcohol purchased from the shop, together with the failed test purchase on 8<sup>th</sup> December 2016, which had highlighted that the licensing objectives were clearly not being met, such events having culminated in the police submitting the application for the review. Mr Clark stated that it was apparent, in the light of the failed test purchases and complaints received, referring mainly to underage sales, and the extensive work of the SSCB, in conjunction with the police, less onerous interventions had obviously failed, and that the only reasonable course of action now would be to revoke the Premises Licence.

4.6 In response to questions from Members of, and the Solicitor to, the Sub-Committee, it was stated that it was clear that action was taken, either by the SSCB or the police, following each complaint made against the premises, comprising either a test purchase or a visit to the premises. It was accepted that a number of the test purchases were passed, and that following all the engagement undertaken with Mr Bhatti, the application for the review had been made as a last resort. A responsible authority would only start the review process if the percentage of failed test purchases was high, as in this case, and the police had only made three applications for reviews in the last 18 months, which was a very small number in the light of the number of licensed premises in the City. The applicants would have to have a considerable amount of evidence, including details of complaints and statements, for them to reach the application for review stage. When the police first visited the premises, with Julie Hague, there was no evidence of an age verification scheme, including a lack of adequate signage, and Mr Bhatti was unable to produce a refusals log. In fact, a refusals log had only been produced shortly after the date scheduled for the original hearing of the review, on 2<sup>nd</sup> February 2017, which had been postponed. The alcohol was on the wall behind the counter, with such wall running all the way down one side of the shop, and was easily accessible. It was also considered that there was a considerable amount of alcohol for sale in relation to the size of the shop. In terms of the nature of the complaints, if there had only been one such complaint, due consideration would be given to this, but as there had been a number of complaints, with a number not being made anonymously, and the fact that so many people had taken the trouble to contact either the police or the Licensing Service, and including one from a school, such complaints had been considered genuine. Mr Bhatti had been sent details regarding places on the multi-agency 'Safeguarding Children at Licensed Premises' training workshop on at least two occasions during the last two years, but had only attended such training on 15<sup>th</sup> February 2017. It was believed that Mr Bhatti may have attended a training course after the receipt of a Fixed Penalty Notice following a failed test purchase.

4.7 Sarah Bevan stated that her son, who was 14 years of age, and did not look any older, had been served alcohol at the shop by a lady, without being asked to prove his age. He consumed the alcohol in a park and when he returned home, it was

obvious he was intoxicated. When questioned in the morning, he told his parents that he had travelled to the premises, specifically as it was easy to buy alcohol without being asked for proof of age. Mrs Bevan stated that she had complained immediately, and indicated that she was aware of a number of other parents, whose children had also purchased alcohol from the shop, but for whatever reason, had not made a formal complaint, or wished to remain anonymous. She expressed serious concerns at the fact that Mr Bhatti did not appear to have sufficient knowledge in terms of running an off-licence, particularly in terms of underage sales, prior to being granted a Premises Licence. Mrs Bevan concluded by stating that she had visited the premises herself, and had found what her son purchased was on sale at the premises, as well as noting that the description of the lady who served her son the alcohol matched the description made by her son.

- 4.8 Julie Hague stated that her representations focused on the licensing objective regarding the protection of children from harm, and indicated that the premises had been evidenced to be operating in an illegal way that undermined the core objectives of the Licensing Act 2003, resulting in children and young people being at risk of significant harm, including hospitalisation. She stated that there had been a number of complaints about the premises, mainly focusing on underage sales, which she believed to be genuine. There had been a mixed history in terms of the test purchases, and whilst it was accepted that a number of these had been passed, children and young people continued to disclose to friends, school staff and parents that they were easily able to purchase alcohol from the shop. Despite the involvement of the Board, who had engaged with Mr Bhatti since 2013, there was concern that he had not attempted to improve the operation, resulting in recurring underage alcohol sales and serious incidents. Ms Hague made specific reference to one young person being hospitalised after consuming alcohol purchased from the shop, and the incident of 8<sup>th</sup> December 2016, when children purchased alcohol from the shop, without being asked for any ID, despite the vendor having a time to insist that they placed the alcohol in a bag provided by him before leaving the shop, in an attempt to ensure that it was concealed from view. As part of its involvement, the Board had undertaken numerous visits to the shop, some in conjunction with the police, in order to advise Mr Bhatti of his responsibilities with regard to the protection of children from harm. Despite being provided with such support, advice and offers of free training, Mr Bhatti has continued to show a persistent disregard of the responsibility to implement an age verification scheme in order to protect children, which was a breach of a mandatory licence condition. It was not until 15<sup>th</sup> February 2017, when Mr Bhatti, and two other members of staff, attended the safeguarding training. Ms Hague stated that she was fully aware of the impact of such a review and, similar to the police, would only consider, or support, a review, when it was fully justified. She stated that, in most cases, the Board's interventions had been successful, but Mr Bhatti had not shown any willingness to engage with any of the responsible authorities, despite all the offers of help and assistance.
- 4.9 In response to questions from Members of the Sub-Committee and the applicant's representative, Ms Hague stated that although there had been some signs of improvement following visits to the premises, including signage and evidence of staff training, it was believed to be insignificant in the light of the seriousness of the problems. Although it was accepted that there may well have been a refusals log

at the premises during a visit made in October 2013, Ms Hague stated that she had not seen it herself, as had been the case during the last 18 months as part of her visits to the premises. Again, whilst it was accepted that there was a Challenge 25 poster displayed at the premises during the visit made on 10<sup>th</sup> October 2013, this was not deemed sufficient in order to promote the scheme.

- 4.10 Patrick Robson made reference to legal guidance, namely European Justice Case Law, which indicated that any decision of the Sub-Committee needed to be evidence-based and proportionate, and that the Sub-Committee was obliged to follow the least onerous course of action. He made reference to the evidence contained in the report, stating that, in his opinion, the statements and reports were assertive and not corroborated. He stated that there was a whole number of circumstances that could have occurred, and which should be considered, such as the young people could have used fake or borrowed ID which, in the staff's eyes, appeared genuine, and the alcohol could have been stolen from the premises, or been purchased from another off-licence in the area. Mr Robson also stated that, for whatever reason, the complaints could have been of a malicious nature. He circulated a timeline, which contained a chronological list in terms of test purchases and reports in respect of the premises, and made the point that the pass rate in terms of test purchases was 62%, which highlighted that Mr Bhatti and his staff were not persistently selling alcohol to underage people. Mr Robson made reference to a petition, containing signatures of customers and other shop keepers in the locality, offering support to Mr Bhatti in the light of the review application.
- 4.11 Sarfraz Bhatti became the PLH/DPS in October 2012 and, although there were some complaints and some failed test purchases in his first few years as PLH/DPS, there were systems in place. This included CCTV, but at this time, the Council had no right to view the footage, therefore this could not be classed as a breach of condition, particularly as there was no evidence to prove that the system was not working at the time. Prior to Mr Bhatti being PLH/DPS, although working there, there were two visits to the premises by Julie Hague and the police. In November 2014, the premises were burgled, and part of the CCTV system was stolen, with a temporary system being installed straightaway. On 18<sup>th</sup> August 2015, Andrea Marsden, from the police's Licensing Team, attended the premises, in order to discuss the failed test purchase that had taken place the previous night. During the visit, Mr Bhatti confirmed that he had received training, but had failed to follow the relevant practice on this occasion, in that he had left a friend in charge of the shop as he had to pick a family member up from the airport. On 20<sup>th</sup> September 2015, there was a further test purchase operation, which was passed, with this being the third pass in an 11-month period since Mr Bhatti last failed an operation. On 1<sup>st</sup> November 2015, the police received a report from a concerned parent, whose 15 year old daughter had been to the shop on two occasions she knew about, and purchased vodka. Mr Robson stated that, in his opinion, the evidence was unverified and should be deemed as hearsay. The fourth test purchase in a row was then passed, and following this, Mr Bhatti had a new CCTV system installed at the premises, comprising an upgrade from four to eight cameras. There were then further reports in terms of underage purchases from the shop by school children from Birkdale which again, were unverified.
- 4.12 On 22<sup>nd</sup> January 2016, the police received an anonymous call from a member of

the public, indicating that staff at the premises were selling alcohol and cigarettes to children and further to this, a test purchase was undertaken at the premises on 24<sup>th</sup> February 2016, which was passed. Since the failed test purchase on 17<sup>th</sup> August 2015, this was the fifth test purchase in a row which had been passed. A further complaint had been received on 23<sup>rd</sup> January 2016, relating to a group of girls aged 15/16 years old purchasing alcohol from the premises, but again, such allegations were unverified, and it was deemed that there could have been some confusion in terms of the actual shop the alcohol was purchased from as there was another off licence in the area, with a similar name. At a visit to the premises on 13<sup>th</sup> July 2016, by Cheryl Topham and Julie Hague, Mr Bhatti was informed about the complaints, and requested to attend safeguarding training but, in the light of the number of test purchases passed during the past 12 months, he did not consider it necessary to attend. The police received a further anonymous report on 10<sup>th</sup> October 2016, stating that staff were selling alcohol to underage people, which again, was unverified and uncorroborated. Following this, a further test purchase was passed on 1<sup>st</sup> November 2016, which was the seventh in a row since the last test purchase failure by Mr Bhatti, over a period of two years. Mr Bhatti then took steps to improve the CCTV system, by upgrading the resolution of the cameras, and also had increased memory installed to the system to ensure that images were being recorded for the required timescales. Mr Robson concluded by referring to the failed test purchase operation on 8<sup>th</sup> December 2016, indicating that Mr Bhatti made sure all glass bottles purchased from the shop were placed in a bag as there had been a number of incidents of customers dropping bottles in and around the shop premises.

- 4.13 RESOLVED: That the public and press and Sarah Bevan, Mr Bhatti's wife and Clive Stephenson 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 2 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.14 The Sub-Committee considered witness statements of the father of a young person who had purchased alcohol from the premises, and a statement from the young person himself. Mr Robson stated that the father's statement was unverified and uncorroborated, and similarly the same applied to the young person's statement, particularly on the basis that, in his opinion, it contained a number of inconsistencies.
- 4.15 At this stage in the proceedings, the meeting was re-opened to the public and press and Sarah Bevan, Mr Bhatti's wife and Clive Stephenson.
- 4.16 Patrick Robson circulated a list of additional conditions, which he believed the Sub-Committee could add to the Premises Licence, as a suitable course of action.
- 4.17 In response to questions from Members of, and the Solicitor to, the Sub-Committee, and Clive Stephenson, it was stated that Mr Bhatti had operated the Challenge 25 age verification scheme since the end of 2012, and Mr Bhatti provided an explanation as to how he believed the scheme should be operated. Mr Bhatti confirmed that he had undertaken some form of safeguarding children

training, but had not attended training courses, at the request of Julie Hague, on the basis that he had CCTV in operation, held and maintained a refusals log at the premises and in the light of the number of test purchases which had been passed. In terms of promoting the licensing objective regarding the protection of children from harm, Mr Bhatti stated that all existing and new staff had received training in terms of the Challenge 25 scheme, and that he had a refusals log which, at first, he wasn't sure exactly how to complete, but once he found out, he took steps to maintain it. After filling it, there was then a period he did not have a log as he was not sure where he could get a new one. When Mr Bhatti became the PLH/DPS of the premises in October 2012, this was the first experience he had had of being in charge of licensed premises, and he confirmed that he had not received any complaints of underage sales, or any other matters, directly from customers or members of the public. Patrick Robson stated that it was difficult to provide an explanation in terms of the number of complaints, but he believed some could be malicious, and all were either unverified or uncorroborated. It was confirmed that the CCTV system, comprising eight cameras, had a 30 day recording capacity. Mr Bhatti confirmed that, in connection with the Challenge 25 scheme, he would require ID including a picture and date of birth, such as a passport or a driving licence. In terms of staffing, Mr Bhatti stated that it was usually either himself or his wife working in the shop, with another woman helping out on occasions, and a family friend helping out as and when required.

- 4.18 In response to questions from Robert Clark, whilst it could not be confirmed, it was believed that the petition supporting Mr Bhatti had been organised by one of his regular customers, and Mr Bhatti believed that the complaints made against the premises, as referred to in the petition, were either false, malicious, or both. Mr Bhatti had not given serious consideration to joining the Responsible Retailer Scheme on the basis that he already believed himself to be a responsible retailer. Whilst Mr Bhatti could not recall seeing the letters from Julie Hague, inviting him to attend a safeguarding training course, he did not dispute that requests had been made by Ms Hague, during her visits to the premises, but did not consider it necessary for him, or his staff, to attend. Whilst not very detailed, due to there only being himself and his wife working in the shop, Mr Bhatti had maintained records of in-house training since he started in October 2012, but had never produced such records to any of the responsible authorities as he cannot recall having been asked to do so. Mr Bhatti stated that he had maintained a refusals log, which he kept near the till, and would always produce it to the responsible authorities on request. Although there was reference to a relatively high number of refusals in the log, Mr Bhatti did not believe that this high figure was as a result of young people visiting the shop, believing they could be served. Whilst not being able to provide evidence at the hearing as to whether there had been any refusals on those days when allegations of underage sales had been made, Mr Bhatti stated that he would always log details of all refusals. Mr Robson and Mr Bhatti indicated that they were not able to comment as to whether the incident referred to in Cheryl Topham's statement, relating to a young person being hospitalised after drinking alcohol purchased from the shop, was malicious or not.
- 4.19 In response to questions from Julie Hague, Mr Bhatti stated that he could not recall receiving the letter she had sent him, dated 18<sup>th</sup> October 2013, advising him, amongst other things, to join the Responsible Retailer Scheme. Mr Bhatti also

stated that he could not recall being advised to display a poster, which was enclosed with the same letter, warning young customers that it may be an offence to use false ID. Mr Robson confirmed that his doubts about the evidence provided referred to the fact that it was mainly hearsay, unverified and uncorroborated. He also considered that some of the comments made as part of the complaints and statements appeared odd. Mr Robson accepted that sixth formers at secondary schools had free periods during the day, and would be able to travel to the premises, and that there were likely to be free spaces on the safeguarding training courses on the basis that attendance on such courses was voluntary. Mr Robson stated that the suggested conditions he had circulated should provide sufficient assurances that Mr Bhatti would comply with the conditions of his licence in future.

- 4.20 In response to questions from Sarah Bevan, Mr Robson confirmed that both Mr Bhatti and his wife had received the relevant training prior to her son being served alcohol at the shop in September 2013, and stated that the actions of Mrs Bhatti in terms of serving Mrs Bevan's son on this day, was a one-off misjudgement.
- 4.21 Robert Clark and Patrick Robson summarised their cases.
- 4.22 Clive Stephenson outlined the options open to the Sub-Committee.
- 4.23 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.
- 4.24 Marie-Claire Frankie reported orally, giving legal advice on various aspects of the application.
- 4.25 At this stage in the proceedings, the meeting was re-opened to the public and press and attendees.
- 4.26 RESOLVED: That in the light of the information contained in the report now submitted, and the representations now made, the Sub-Committee agrees to revoke the Premises Licence in respect of the premises known as Shop Local, 166 Abbeydale Road, Sheffield, S7 1FH.

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

This page is intentionally left blank