

APPLICATION FOR REVIEW OF THE PREMISES LICENCE IN RESPECT OF ORMSKIRK SUPERSTORE, 16 AUGHTON STREET ORMSKIRK L39 3BW

On the 28th February 2022 the Licensing Sub-Committee (Sub-Committee) considered an application for a Review of the Premises Licence submitted by Lancashire County Council Trading Standards (the Applicant) under Section 51 of the Licensing Act 2003 (the Act). This application was in respect of Ormskirk Superstore, 16 Aughton Street, Ormskirk L39 3BW (the Premises).

The Applicant was represented by Mr Sam McConnell, Trading Standards Officer.

The Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS), Mr Farhad SALEHI (the Respondent) represented himself.

Councillor Dowling, a local Ward Councillor who had submitted representation also addressed the panel. Lancashire Constabulary had previously submitted a representation in support of the application for Review.

Having fully considered the representations (written and oral), the Sub-Committee retired to reach its decision.

In reaching its decision the panel took into account the following:

- Both written and oral evidence presented in connection with the hearing
- Licensing Act 2003
- S182 Amended Guidance of the Licensing Act 2003 and taken into account the references to the guidance made by both parties (S182 Guidance)
- West Lancashire Borough Council's Licensing Policy 2020 (the Policy)

Consideration was also given to the report of the Corporate Director of Place and Community as contained on pages 43 to 70 of the Book of Reports.

Evidence

When considering whether any of the four Licensing Objectives had been undermined, the Committee concluded that on the evidence presented the 'Prevention of Crime and Disorder' and 'Protection of Children from Harm objectives' may have been undermined.

Crime and Disorder

Grounds for Review

The Trading Standards Service has received a number of complaints in relation to underage sales and the supply of illicit tobacco from this shop. A packet of counterfeit Mayfair cigarettes was purchased by a 15 year old test purchaser on 9th August 2021, and 78 illicit tobacco products subsequently seized by Trading Standards on the same day.

Despite this enforcement visit, Trading Standards have continued to receive complaints alleging underage sales and the sale of illicit tobacco. A test purchase

of e-cigarettes was attempted on 22nd December 2021. The 14 year old test purchaser was sold 2 'Geek Bars' containing nicotine.

Therefore, the Licensing Committee is encouraged to consider revocation of the relevant premises licence for Ormskirk Superstore.

A. Complaints

The Sub-Committee accepted that there had been numerous complaints from different complainants regarding concerns of illegal/underage sales of mainly tobacco/tobacco products but also alcohol since the Premises opened. It was noted that some of these complaints had been anonymous.

The Applicant stated that on the 29/03/21 the Applicant received a complaint from a member of the public regarding images and paraphernalia including bongos and grinders in the shop window. The Applicant subsequently visited the Premises on the 12/04/21 when advice was given, and the items were removed from display by the Respondent and/or his staff. The Applicant also provided advice regarding other issues such as the display of cigarettes, relevant signage, Challenge 25, training and refusal registers. The Sub-Committee accepted the Applicant had provided the Respondent with a pack of information to assist him with the operation of the business in the future.

The Sub-Committee noted that the Premises Licence was only granted on the 12/04/21 (the day of the initial visit) and as such the Respondent would not have been in possession of Premises Licence at the time of inspection so would have been unable to have it on display as required under the legislation. They therefore gave no weight to the evidence relating to this issue.

They noted that the Respondent had stated that he had not held a Premises Licence previously and although he had operated a Barbers Shop in the Southport area, he had not had prior experience of running a licensed premises.

The Sub-Committee noted that there had been two failed test purchases for the sale of tobacco or tobacco products on the 09/08/21 and 21/12/21 and a quantity of 78 tobacco products had been discovered which were believed by the Applicant to have been illicit. The Sub-Committee noted that investigations were ongoing and no formal criminal proceedings had been concluded. That said, they accepted that this did not stop them taking the issues into account.

They noted that the Respondent had not been present on the premises when either of the test purchases had taken place and at the time of the hearing no action was being proposed to be taken against the Respondent directly. Trading Standards had not yet decided whether to pursue a Prohibition Order to prevent the sale of tobacco/tobacco products from the Premises.

The Respondent advised the Sub-Committee that, after opening the Premises, his mother (who lives abroad) had become very ill and had had to have both her legs amputated. As such, he had had to go home to be with her on more than one occasion and had left other staff in charge of the premises. He confirmed that he was out of the country at the time of the second failed test purchase and on returning to the UK he had been required to self-isolate for two weeks, which had meant that he had spent more time away from the business than he would have liked.

He said that all members of staff had received training and he had reminded them of their responsibilities regarding sales to underage persons. He stated that he was initially unaware of the problems and was only presented with all the paperwork when he returned to the business. He stated that on finding out about the issues he had sacked all members of staff who had been involved. He stated that he was not aware that illegal cigarettes were being sold, that he had trained staff to deal with underage sales and felt that they had tried to take advantage of his situation and make extra money for themselves. He said that he now worked full time in the store and his cousin's girlfriend would be helping him in the future as he would not be able to work 7 days a week.

The Respondent apologised to the Committee for the incidents that happened at the Premises and said that he would ensure that it will never happen again. He would make sure that staff were properly trained and would continue to remind them of their responsibilities. The Respondent asked the Committee not to revoke his licence as he had worked hard to start the business and did not want to see it closed.

The Sub-Committee noted that at the time of the hearing the Respondent had provided evidence of staff training records, refusals register and an accident log. They felt that this indicated that the Respondent had acted on advice given by Trading Standards and other professional bodies. That said, the Sub-Committee did have some concerns about the validity of some of the entries in the registers as some of the records appeared to have been pre-populated and gave inconsistent/questionable information. For example, one entry referred to a refusal on the basis that the person did not look 30 years old when the Premises operated a Challenge 25 policy.

The Sub-Committee felt that, although the Respondent had complied with the conditions of the Premises Licence and followed advice from the Applicant, he must ensure that the various registers in respect of refusals, training and accidents are properly kept, and that staff are trained to ensure a true and accurate record is kept in each register.

The Sub-Committee considered the evidence provided by the Ward Councillor and noted his concerns regarding the two failed test purchases, complaints regarding the sale of tobacco to children (or any age restricted product) and the potential harm that could be caused if it was allowed to continue. The Sub-Committee noted the allegation regarding the potential intimidation of witnesses and their reluctance to provide direct evidence at the hearing, but noted that no evidence had been provided to substantiate the allegations of intimidation either against the Respondent directly or any of the other staff involved with the Premises.

The representation from Lancashire Constabulary stated that they did not have any incidents reported against the Premises and as such there was no evidence of intimidation or criminal/illegal behaviour. The Police had not objected to the grant of the Premise Licence or the Respondent's appointment as DPS less than a year previously. Their representation stated that the sale of products to underage persons did raise concerns and as such they supported the application for Review.

At the conclusion of the hearing the Applicant advised the Legal Advisor to the Sub-Committee that if the Sub-Committee were minded not to revoke the licence, then he would ask that conditions be attached to the licence to cover the following:

1. Refresher training every 6 months for the DPS and any staff.

2. That if the DPS is to be absent from the premises for a period of 1 week or more that he informs the Licensing Authority of the name address and telephone number of the person responsible for the premises in his absence.
3. That the DPS and all staff undertake the Lancashire County Council Check 25 online training. The Applicant stated that the training is monitored and would allow them to check that training was being undertaken in accordance with the proposed condition.

B. Legislation/Policy/Guidance

The Sub-Committee considered all references to the Legislation, S182 Guidance and the Policy. They noted that their primary consideration was the promotion of the four Licensing Objectives. They gave particular weight to the following:

S182 Guidance

Licensing objectives and aims

1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

1.3 The licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

1.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the **promotion of the four objectives is a paramount consideration at all times.**

Crime and disorder

2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

Protection of Children from Harm

Offences relating to the sale and supply of alcohol to children

2.32 Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers (who can carry out test purchases under section 154 of the 2003 Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. Licensing authorities, alongside the police, are prosecuting authorities for the purposes of these offences, except for the offences under section 147A (persistently selling alcohol to children). Where, as a matter of policy, warnings are given to retailers prior to any decision to

prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given

11.16 – Sub-Committee had a wide range of powers which it may exercise where it considers it appropriate for the promotion of the licensing objectives.

11.19 – The steps available to the Sub-Committee (in respect of an application for Review) when action is deemed necessary which include:

- Do nothing
- Modify the conditions on the premises licence which includes adding new conditions or any alteration or omission of an existing condition
- Exclusion of a licensable activity
- Removal of the DPS Suspend the Licence for a period not exceeding 3 months
- Revoke the licence.

11.20 When deciding what action to take the licensing authority should seek to establish the cause or causes of the concerns that representations identify. **The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response** to address the causes of concern that instigated the review.

11.23 – Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence

Reviews arising in connection with crime

11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending

the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered

The Policy

Prevention of Crime and Disorder

4.11 Whilst the Authority considers the Police to be the main source of advice on crime and disorder, it will also seek to involve the Community Safety Partnership (CSP) in its holistic approach to licensing. The duty of the Authority under Section 17 of the Crime and Disorder Act 1998 is in addition to its duty under Section 4 of the Act to promote the prevention of crime and disorder. The Authority is therefore committed to supporting its partnership work in the fight against crime and disorder in West Lancashire

4.15 The Authority will pay equal regard to relevant representations from Responsible Authorities, but will pay particular regard to relevant representations from the Police to

determine if the proposed measures are sufficient to reduce the risk of crime and disorder.

4.17 The issues in the following list, which is not exhaustive, are particularly relevant to the exercise of the Authority's licensing functions and ones which applicants and existing licensees need to consider:

- The capability of the Designated Premises Supervisor (DPS) or any other person appointed to be in charge of the premises to ensure effective and responsible management of the premises;
- Provision of sufficient numbers of staff and managerial support to run the premises effectively;
- The training given to staff in crime prevention measures.

Protection of Children from Harm

Under age / proxy sales

4.40 Applicants and existing licensees must have satisfactory arrangements in place to prevent underage alcohol sales. The issues in the following list, which is not exhaustive, are particularly relevant to the exercise of the Authority's licensing functions and ones which applicants and existing licensees need to consider ...

Licensing Principle 1

8.8 The Authority expects to see evidence of the effective and responsible management of the licensed premises, the effective instruction, training and supervision of staff and the adoption of best practice being specifically addressed within the Operating Schedule.

Reviews associated with crime

12.7 A review may arise in connection with crime that is not directly connected with Licensable Activities. In such cases, the Authority will not judge the criminality or otherwise of any issue. Its role is not to establish the guilt or innocence of any individual, but to ensure the promotion of the crime prevention objective. Reviews therefore need not be delayed pending any court action, but where such action has been taken, it will not be for the Authority to attempt to go beyond any finding by the courts, which will be treated as a matter of undisputed evidence. To this end, it will treat those criminal matters listed in the Guidance particularly seriously.

12.8 Conversely, it is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the Authority still has the option to take any appropriate steps to remedy the problems.

Persistent sales of alcohol to children

12.9 Where there are systems in place designed to prevent underage sales, the Authority will take a proportionate approach toward any identified breaches. However, where persistent sales of alcohol to children have occurred, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, the Authority would expect Responsible Authorities to consider taking steps to ensure that a review of the licence takes place. This is particularly the

case where there has been a prosecution for the offence under Section 147A or a Closure Notice has been given under section 169A of the Act. In determining the review, the Authority will consider revoking the licence if it considers this appropriate.

C. Decision

The Sub-Committee concluded that the evidence of two failed test purchases for the sale of tobacco/tobacco related products and allegations of underage sale of alcohol indicated that Prevention of Crime and Disorder and Protection of Children from Harm objectives had been undermined.

The Sub-Committee went on to consider their options and whether anything could be put in place to redress the balance. They considered revocation and whether such a step was appropriate and proportionate.

The Sub-Committee noted that, although there had been two failed test purchases for the sale of tobacco/tobacco related products, there was no evidence to substantiate the allegations of underage sales of alcohol. The Police had no incidents of any kind reported against the Premises.

The Sub-Committee noted that the revocation of the Premises Licence under the Licensing Act 2003 would not prevent the Premises from selling tobacco which was the substantiated grounds for the review. The business would continue to operate but would merely be prevented from selling alcohol.

In addition, the Sub-Committee concluded that at this present time there was no evidence to substantiate that the Respondent was on the premises when the underage sales took place or that he was complicit in the illegal activity. They noted that the Respondent had had some family issues which had taken him away from the day to day running of the premises and accepted that he only became aware that that staff were not complying with the legislative requirements/training provided when he returned to the business and was presented with the paperwork. They believed he had acted appropriately by sacking all the staff involved in the illegal activity and ensuring that only trusted people be allowed to work within the Premises in the future.

The Sub-Committee accepted that it would be unreasonable to expect the Respondent to be on the Premises at all times licensable activities were taking place, but they would expect the Respondent to ensure that the conditions on the licence were adhered to and that proper provision was put in place to ensure that the licensing objectives were not undermined.

The Sub-Committee noted that the Applicant had other powers available to them including obtaining a Prohibition Order which would be more effective in preventing the illegal sale of tobacco/tobacco related products.

They therefore felt that the revocation of the licence would not address the unlawful sale of tobacco and would not be an appropriate and proportionate response to the issues.

The Sub-Committee felt that the evidence showed that there were other measures rather than revocation available to redress the balance, which in turn was a more appropriate and proportionate measure to stop the cause of the issues.

They considered the conditions on the current licence which they felt were robust, but the Respondent should ensure compliance even when he is not present at the Premises.

The Sub-Committee went onto consider the conditions proposed by the Applicant in the event that revocation was not deemed to be appropriate or proportionate.

The Sub-Committee concluded that further conditions would be required to redress the balance on the four licensing objectives. It was felt appropriate that the sale of age restricted products should be undertaken in the presence of someone with a Personal Licence to give additional reassurance that any sales will be undertaken in accordance with the legislation.

The Sub-Committee expected the Respondent to adhere to all the licensing conditions and ensure that all staff including the Respondent were regularly trained in respect of Challenge 25 and completed all registers/records correctly. They also felt that provision should be put in place to ensure that any of the Responsible Authorities (not just the Licensing Authority) could be made aware of who was responsible for the sale of alcohol and/or age restricted products in the absence of the Respondent.

If it subsequently transpired that there were further complaints/evidence of non-compliance, the Review process could be initiated again and/or consideration could be given to prosecution.

CONCLUSION

On hearing evidence from the Respondent, the Applicant, the Ward Councillor and the Police and taking into account all the above, the Sub Committee decided to impose the following additional conditions to the Premises Licence:

RESOLVED:

- A. Whenever licensable activities are taking place at least one member of staff present within the premises must hold a Personal Licence.
- B. All staff, including the Designated Premises Supervisor (DPS) must undertake Challenge 25 refresher training at least every 6 months the details of which must be recorded in the training manual and disclosed to any Responsible Authority on reasonable request.
- C. All persons (including the DPS) involved in the sale of licensable products shall undertake the Lancashire County Council Check 25 online training (whilst available).
- D. A notice must be displayed on the Premises providing details of all persons authorised to sell alcohol including their name, address and up to date contact telephone number.