

Minutes of: LICENSING HEARING PANEL

Date of Meeting: 28 February 2019

Present: Councillor N Bayley (in the Chair)
Councillors: G Keeley and S Wright

Also in attendance:

Public Attendance: There was one member of the press in attendance

Apologies for Absence: -

1 DECLARATIONS OF INTEREST

No declarations of interest were made in relation to any items considered at the meeting.

2 AN APPLICATION FROM A RESPONSIBLE AUTHORITY FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003, IN RESPECT OF PREMIER OFF LICENCE, 29 CHESHAM ROAD, BURY, BL9 6LY

Prior to the Hearing, the Licensing Authority received an application pursuant to section 51 of the Licensing Act 2003, from a Responsible Authority, namely the Licensing Authority, for a review of the Premises Licence in respect of 29 Chesham Road Bury, BL9 6LY.

The application was outlined in the report presented to members of the Panel by the Licensing Manager.

The application for a review of the licence was received within the appropriate period and complied with the procedural requirements within the Licensing Act 2003.

All written representations were contained within the report to Panel.

All documentary evidence comprising the application, report provided with the agenda and representations were served on all parties in advance of the hearing.

The representative of the Applicant for the Review was invited to explain the reasons for the application and she explained the concerns as to promotion of the licensing objectives namely the prevention of crime and disorder and the protection of children from harm. These related to the findings of underage sales of alcohol and cigarettes, sales of illicit tobacco, the breach of licensing conditions and in particular additional conditions attached to the licence resulting from a previous review.

The Panel heard further oral representations from the representative of the Weights and Measures Authority and GM Police.

The Panel asked questions of the Applicant and the other representatives and all parties were offered the opportunity to question the Applicant.

The Licence Holder's representative and the Licence Holder made oral representations and explained that there had been a number of issues with anti-social behaviour outside the premises and difficulties with staff who had since been sacked. He explained that he was not always resent at the premises and had since arranged for his wife and other members of staff to become personal licence holders.

The Panel asked questions of the Licence Holder and all parties were offered the opportunity to question him.

The Panel heard no other representations.

All parties were allowed the opportunity to sum up their respective cases.

The Panel then duly retired to consider the application and all of the information provided.

The Members of the Panel were advised by the Legal Officer as to their duties under Section 4 of the Licensing Act 2003 to at all times consider the promotion of the Licensing Objectives, these being:

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to:

- a) the Council's published Statement of Licensing Policy
- b) the Guidance issued by the Secretary of State as contained in section 182 of the Licensing Act 2003, which was updated in June 2014

In addition Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives and the representations presented by all parties.

The Panel also had regard to the European Convention on Human Rights and in particular that everyone has the right to peaceful enjoyment of his possessions, respect for his private and family life, his home and his correspondence. A fair balance between competing interests must be considered.

FINDINGS

The following facts were found:

1. Mr Mohammed Ayyaz Khan is the Premises Licence Holder and DPS for the licensed premises and has held the licence since 2008.
2. Additional conditions were attached to the licence in May 2008 as follows:

- a. That all alcohol containers in which alcohol is available for sale from the premises be uniquely marked in a manner approved by GMP,
 - b. That the following alcoholic drinks be kept behind the counter or in a place where customers do not have direct access to those products without the assistance of a member of staff namely:
 - I. All spirits, flavoured drinks, Alco pops (i.e. spirit based drinks mixed with soft drinks/flavoured juice etc, which will include and not be limited to products such as 'Bacardi Breezers' and similar products):
 - II. Cider
 - III. Lager
 - c. That a person who is a Personal Licence Holder or Designated Premises Supervisor be on at the premises at all times when alcohol products are sold:
 - d. That alcohol be sold between the hours of 09:00 and 22:00.
3. In November 2010 condition c. above was amended, so as to require the attendance of a Personal Licence Holder or DPS on Thursday, Friday and Saturday between the hours of 16:00 and 22:00.
4. Complaints have been received by the Responsible Authorities regarding the underage sales of alcohol and cigarettes.
5. A condition of the licence required a 'Refusals Book' detailing instances of refusals to sell alcohol and cigarettes. This was not regularly completed. This was accepted by Mr Khan.
6. Mr Khan is not in regular attendance at the premises and has on a number of occasions not been present during the times set out in paragraph 3 above. This was accepted by Mr Khan.
7. Checks have been made by the responsible authorities as to the requirement to mark alcohol containers. This was found not to have been complied with for all relevant containers. This was accepted by Mr Khan.
8. On 3 April 2018, a 14 year old girl had informed a local PCSO that she had purchased a single cigarette from the premises for 50p.
9. On 16 October 2018, as a result of Trading Standards visits, non-duty paid and counterfeit cigarettes and tobacco had been found on the premises.
10. A condition on the licence requires that CCTV footage be retained for 31 days. However, this was found not to be the case and that although the system was working and recording, the footage was not available on the occasions requested by the Responsible Authorities.
11. Mr Khan had replaced members of staff and that they along with his wife were being trained as personal licence holders.

Delegated Decision:

Having heard from the Applicants for the review and other Responsible Authorities and further having heard from the Premises Licence Holder and his representative, the Panel considered the merits of the case and in accordance with its duties decided as follows.

All of the evidence was considered with care and it was established that having understood the request for review and equally understanding the representations made, on balance, the Panel found there were causes for concern and a lack of responsibility being taken so far as the promotion of the following Licensing Objective was concerned:

- the Prevention of Crime and Disorder
- the Protection of Children from Harm

The Panel was satisfied that in all of the circumstances:

1. Mr Khan as premises Licence Holder was not in sufficient control of the premises
2. There had been several breaches of the licensing conditions
3. There was antisocial and criminal behaviour associated with the premises
4. There was evidence of underage sales of cigarettes to children.

Based upon their findings of fact and in the interests of the wider community the above objectives were found to have been undermined.

The Panel therefore considered it reasonable, balanced, appropriate and proportionate, based on all of the evidence, **to vary the conditions attached to the licence as follows;**

Conditions Consistent with the Operating Schedule

- 1. CCTV system to be maintained and tapes to be safely retained for a minimum period of 3 months for viewing purposes by the authorities, including the Police. Cameras shall encompass both the internal and external areas of the premises.**

Conditions Imposed at a Licensing Panel hearing 29th May 2008 (as amended in November 2010).

- 3. A person who is a Personal Licence Holder or the Designated Premises Supervisor be on the premises at all times at which alcohol products are sold.**

The Chair informed those present of their right of appeal within 21 days of receipt of the written decision to Manchester and Salford Magistrates' Court.

COUNCILLOR BAYLEY
Chair

(Note: The meeting started at 1.00 pm and ended at 3.10 pm)

3

AN APPLICATION FROM A RESPONSIBLE AUTHORITY FOR A REVIEW OF THE PREMISES LICENCE UNDER THE LICENSING ACT 2003 IN RESPECT OF KILLON STREET OFF LICENCE, 26 PRICE STREET, BURY, BL9 7EB

Prior to the Hearing, the licensing authority received an application pursuant to section 51 of the Licensing Act 2003, from a Responsible Authority, namely the Weights and Measures Authority, for a review of the Premises Licence in respect of Killon Street Off Licence, 26 Price Street, Bury, BL9 7EB.

The application was outlined in the report presented to members of the Panel by the Licensing Manager, who explained that at the time of the submission of the review application on 6 December 2018, the Premises licence in respect of Killon Street Off Licence, was held by Mr Raja Naveed Aijaz, who was also the Designated Premises Supervisor (DPS).

On 19 December 2018, the Licensing Authority received an application to transfer the Premises licence with immediate effect into the name of Mr Waqas Mahmood. On the same day, an application to vary the DPS with immediate effect was received to make Mr Mahmood the DPS.

The Licensing Authority did not receive any representations during the representation period in respect of the application to transfer the Premises licence or the application to vary the DPS from Greater Manchester Police (GMP). Therefore the Premises licence has been transferred and the DPS varied into the name of Mr Mahmood.

The Licensing Manager went on to explain that the Licensing Authority and Greater Manchester Police, as Responsible Authorities, had made representations in relation to the application. Further, prior to the hearing, Mr Mahmood the current Premises Licence holder had entered discussions with the said Responsible Authorities regarding the licence, previous issues at the premises and the possibility of further licence conditions being considered. However, Mr Mahmood had been unable to obtain all of the requested documentation and therefore all parties asked the Panel to consider adjourning the matter to enable this to be provided to the Panel.

Delegated decision:

Due to the Premises Licence holder not being able to furnish the Panel with the further documentation, it was agreed unanimously, that to ensure a fair hearing and to enable the Premises Licence Holder to fully explain and provide evidence as to his current position and in addition enable this to be fully considered by the Responsible Authorities, that in the public interest, the hearing be adjourned to a future date.

COUNCILLOR BAYLEY
Chair

(Note: The meeting started at 3.40 pm and ended at 3.50 pm)