

Minutes of: LICENSING HEARING SUB COMMITTEE

Date of Meeting: 5th August 2024, 3.00pm

Present: Councillor I. Rizvi (in the Chair)
Councillors G. Marsden and G. McGill

J. Ashworth (Democratic Services)
M. Bridge (Licensing Unit Manager)
M. Cunliffe (Democratic Services)
C. Riley (Legal Services)

Also in attendance: Mr G Dixon (Applicant's representative)
K. Halligan (Trading Standards)

Public Attendance: The Hearing was held virtually and interested members of the public were provided with a link to access the hearing online via Microsoft Teams or could be telephoned into the meeting via audio only. No other members of the public or press were in virtual attendance.

1 APOLOGIES FOR ABSENCE

Apologies for absence were submitted by C. Smith (Head of Public Protection) and B. Thomson (Assistant Director of Operations Strategy).

2 DECLARATIONS OF INTEREST

There were no declarations of interest made.

3 APPLICATION FOR A PREMISES LICENCE TO BE GRANTED UNDER THE LICENSING ACT 2003 IN RESPECT OF BEST LOCAL, 62 BOLTON STREET BURY, BL9 0LL

The Licensing Authority received an application for a Premises Licence to be granted under the Licensing Act 2003 in respect of Best Local, 62 Bolton Street Bury, BL9 0LL.

The applicant for the licence is Best Local Limited and the proposed Designated Premises Supervisor (DPS), in respect of the above premises, is Mr Kosrat Ali Faqe Mohammed, 88 Lewis Drive, Heywood, OL10 3NB. The application was attached at Appendix 1 in the agenda pack.

The Applicant had complied with all the necessary procedural requirements laid down by the Act.

The Licensing Unit Manager presented the report and as part of the statutory process the Responsible Authorities and interested parties are entitled to make representations in relation to the grant of a licence. Where representations are made and not withdrawn Members are required to determine them

Representations must be relevant to the licensing objectives defined within the Act.
The objectives are:-

- the prevention of crime and disorder

- public safety
- prevention of public nuisance and
- protection of children from harm

The application is for the grant of a Premises Licence under Part 3 of the Licensing Act 2003.

Opening Times:

Monday to Sunday – 06:00 till 23:00

Supply of Alcohol (off the premises):

Monday to Sunday– 08:00 till 23:00

The conditions contained in the operating schedule submitted by the applicant were contained at Appendix 2 in the agenda packs.

One representation had been received from Trading Standards Service in their capacity as a Responsible Authority against this application. The Responsible Authority had been invited to make their representations at the hearing. The representation was attached at Appendix 3 in the agenda packs.

After hearing the representations made and the evidence presented, Members are obliged to determine the application with a view to promoting the licensing objectives and having regard to the Authority's Licensing Policy and National Guidance.

The Licensing Unit Manager reported that extra documents had been circulated after publication of the agenda packs, these included:- Witness statements of test purchases, photographs of products purchased and confirmation of counterfeit products following examination.

The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

In making its decision with regard to this application hearing, the steps the Sub-Committee can take are:

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions

- To refuse the application

All licensing determinations should be considered on the individual merits of the application.

The Sub-Committee's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.

It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

The Sub-Committee was asked to determine what steps, as set out above, are appropriate for the promotion of the licensing objectives.

The Licensing Unit Manager sought clarification that the applicant was not attending the meeting and the extra paperwork circulated after publication of the agenda pack had been received. Mr G Dixon was in attendance to represent the applicant and confirmed he had seen the extra paperwork provided.

Mr G Dixon stated to the committee that the application was for alcohol sales between 8.00am - 11.00pm with the store open between 6.00am and 11.00pm. He reported that there were no representations from environmental health or GMP.

Kelly Halligan, Trading Standards Unit Manger reported:-

The business is a limited company by the name of Best Local Ltd, and the previous company name was Booze Just For You. The director of this business is Zerian Walidbagi, and he is also a director of another limited company called Local European Mini Market Ltd, with the registered office address as 87 Beresford Road, Manchester.

Intelligence on the Trading Standards national database, showed that the director was working in October 2023 at Zloto Polski, 2 Church Road, Manchester. The shop was owned by a different limited company called Church Superstore Ltd, when a seizure of 232 illegal vapes and 280 illicit cigarettes was carried out by Manchester Trading Standards, whilst Mr Walidbagi was present in the premises.

On the 18th June 2024, a test purchase was carried out at 62 Bolton Street. Purchase was an illegal vape, that exceeded the maximum capacity.

On the 26th June 2024, a test purchase was carried out again at 62 Bolton Street. Purchase was an illegal vape, that exceeded the maximum capacity.

On the 30 July 2024, a test purchase was carried out at 62 Bolton Street. Purchase was 2 packets of illicit tobacco. Trade mark representative confirmed the items to be counterfeit.

Supplying illicit tobacco and illegal vapes undermines the Licensing Objectives in relation to the Prevention of Crime and Disorder.

Due to the fact that the director of this business has been caught supplying illicit products before and 2 test purchases of illegal vapes have been made from this premises already, a request was made that this licence isn't granted.

Should Members choose to grant the licence, a number of suggestions were contained in the representations by Trading Standards.

For clarity Kelly Halligan confirmed she had asked on the 25th June for a test purchase to be conducted but this was actioned on the 26th June.

Mr Dixon questioned a visit and search of the store by 2 trading standards officers along with GMP who had tried to access private accommodation above the store without a search warrant and confirmed no illegal items were found on the premises.

Kelly Halligan informed the committee that the visit on the 25th June was conducted with GMP and Trading Standards stayed in the front part of the store with the police dealing with the rear location.

Mr Dixon enquired after 3 failed test purchases why had there been no interview process conducted with anyone from the store which had continued to trade with no actions taken. Kelly Halligan reported that an invite to interview under caution had been made.

Mr Dixon addressed the sub committee and told Members that on all three test purchase visits the male member of staff had left the premises and been away for several minutes. This could have allowed for the product to be purchased from another store or the employee supplying their own vapes as Trading Standards found nothing on their search of the store. A request was made to grant the licence on the lack of evidence and if any was found it could be called back under review.

The Sub-Committee then duly retired to consider the application.

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:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to the relevant provisions of the national guidance and the Council's licensing policy statement.

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

Delegated decision

All of the evidence was considered with care, and it was established that having understood the application and equally noting and understanding the representations, the Sub-Committee found there were causes for concern so far as the promotion of the licensing objectives were concerned.

It was therefore agreed unanimously that the Sub-Committee **refuse the application for a Premises Licence.**

The Sub-Committee was therefore satisfied that on the balance of probability there was sufficient evidence presented that had demonstrated the following licensing objectives had not been met and failed the:-

- the prevention of crime and disorder

The reasons by the sub-committee, included:-

- Three failed Trading Standards test purchase operations in the store.
- An association with other stores that had also sold illegal vapes and cigarettes.

The Sub-Committee found the situation concerning with the premises operating in such a way to undermine the licensing objectives. The evidence and supporting documents presented were deemed sufficient evidence to refuse the licence.

COUNCILLOR IRIZVI
Chair

(Note: The meeting started at 3.00 pm and ended at 3.45pm)