

**Minutes of a Meeting of the
WBC Licensing and Control Committee 'B' of
Worthing Borough Council**

Gordon Room, Town Hall, Chapel Road, Worthing

Wednesday 17 June 2015

Councillor Paul High (Chairman)

Joan Bradley	Joshua High
*Keith Bickers	Susan Jelliss
Callum Buxton	*Mary Lermite
Michael Cloake	Sean McDonald
Edward Crouch	Louise Murphy
Norah Fisher	Vic Walker
Diane Guest	Tom Wye

*Absent

LCCB/15-16/01 Declarations of Interest /

There were no declarations of pecuniary interest

LCCB/15-16/02 Confirmation of Minutes

Resolved: that the minutes of the Licensing and Control Committee B meeting of held on the 9 April 2015 and the minutes of the Licensing and Control Sub Committees of the 29 April 2015 and the 13 May 2015 be approved as the correct record

LCCB/15-16/03 Public Question Time

There were no questions or statement made by the public

LCCB/15-16/04 Items Raised Under Urgency Provisions

There were no urgent items

**LCCB/15-16/05 Licensing Act 2003 - Application for a review of a premises licence
under section 51 - 'The Shop' - 71 chapel Road, Worthing, BN11 1NU**

Before the Committee was a report by the Director for Communities, a copy of which was circulated to all Members, a copy of which is attached to the signed copy of these minutes as item 5. The Committee was asked to consider and determine a review application made by Sussex Police in relation to 'The Shop' - 71 Chapel Road, Worthing BN11 1NU.

The report before Members detailed the circumstances of the application which centred around a failed test purchase of alcohol that was carried out by two volunteer test purchasers under the supervision of Sussex Police. This failed test purchase had followed shortly after the Committee determined an application for review of the Licence on the 9 April 2015 at which a 7 day suspension and additional conditions on the licence had been imposed following two failed

test purchases for age restricted products. Additional witness statements were circulated by the Police and the respondent prior to the meeting, copies of which are attached to the signed copy of these minutes.

Applicant's presentation

Mr Peter Saville, the barrister for the police made a representation on behalf of his clients. Members were told that the applicant was not behaving in a responsible manner and was not actively promoting the licensing condition Protection of children from Harm. Members' attention was drawn to guidance concerning the persistent sale of alcohol to children due to a lack of due diligence and advice that the authority should consider revocation in these instances. It was the Police's contention that the respondent had failed to provide due diligence which had led to three failed test purchases of age restricted sales. Members were told that the review carried out on the 9 April 2015 was a 'stark warning' to the respondent that underage sales would not be tolerated, despite this the premises had failed a test purchase not two weeks from the hearing which had demonstrated a failure of due diligence.

Mr Saville addressed representations made by residents in support of the premises which extolled the premises function as a community asset. Members were told that this was not relevant to the licensing objectives, which had been undermined. It was Sussex Police's contention that underage sales were a serious issue that could not be tolerated.

Jean Irving, Head of Licensing for Sussex Police. Stated that prior to the last review hearing she had believed that the applicant had shown genuine remorse and would uphold the licence objectives and prevent future underage sales. The Head of Licensing for Sussex Police stated that she should have applied for full revocation at the last occasion and apologised to the Committee for agreeing to mediation prior to the hearing in April. Members were told that following the latest failed test purchase the Police were not willing to consider any mediation and that protection of children from harm was an important objective.

Sgt Bulmer of Sussex Police made a representation to the Committee regarding the situation of the test purchase. Members were told that contrary to a statement supplied by the shop assistant who sold the alcohol there were no other members of the public in the shop at the time of the failed test purchase and the shop was not busy at all.

Questions for the applicant from Members

Members asked questions around the intelligence that had led to a further test purchase following the review. It was established that the test purchase on the 23 April had been organised following an earlier failed test purchase (the subject of the review on the 9 April) and reports from local anti-social behaviour officers and local residents of underage drinking in the area.

A Member asked for the definition of 'persistent' within the terms of the act. Mr Saville explained that the 'criminal' definition under section 147a to the act was three sales within three months although guidance in relation to the review of a premises did not make such a definition and referred to the everyday common use of the word 'persistent'.

Members asked whether other conditions on the licence had been adhered to. Sgt Bulmer confirmed that training registers had been kept up to date and a refusals register was present with entries made. Members were told that a full licensing check on the premises had revealed that all other Licensing conditions were being met at the premises.

Questions for the applicant from the respondent

Mr Gibson, the respondent's representative, asked if the how many test purchases the respondent's premises had passed in the eight years preceding the failed test purchase. The Licensing for Sussex Police informed Members that there had been no previous test purchases at the premises.

Mr Gibson questioned Sgt Bulmer on the contents of a statement made concerning the failed test purchase and it was established that it contained a factual inaccuracy concerning the issuing of a fixed penalty notice.

Questions for the applicant from those making representations

Mr Smith questioned the Head of Licensing for Sussex Police regarding other premises within the area and asked if a test purchase was made at those premises at the same time as the respondent's, he noted that this was relevant because if intelligence had been received concerning underage drinking in the vicinity it could have been linked to other premises. The committee was told by the Head of Licensing that this was avoided because in her experience shops would warn other local premises should a test purchase become known.

Mr Smith also sought to establish the age of the test purchasers and it was established that both test purchasers were well under the age of 18.

Mr McQuarrie noted that the process of revocation of the respondent's licence appeared to be a punishment. Mr Saville informed Members that the Licensing Objectives needed to be promoted and it was clear from legislation and guidance that the Committee had a duty to take steps to protect the community over the individual. Steps had to be taken to stop the selling of alcohol to children.

Mr McQuarrie asked for details about test purchasing and it was established that about 30% fail the test purchase and premises who pass the test are informed after the test has been carried out.

The representative from West Sussex Trading Standards had no questions for the applicant

Statements by those making representations

Mr Smith told Members that he had been using the shop one a day for 8 years and had witnessed refusals of sale and asking for ID. The respondent was hard working and responsible. He asked the Committee to show leniency, revocation of the premises licence would render the shop inviable.

Mr McQuarrie told Members that the respondent had run the shop in a an exemplary fashion and had made just two mistakes in 11 years of operation. Mr McQuarrie pointed out that the failed test purchase was made by an inexperienced member of staff and asked the Committee for clemency in determining the application.

The representative from West Sussex Trading Standards offered his support for the application as the Licensing objectives had not been promoted.

Questions for those making representations

Upon questioning from a Member It was established that Mr Smith and Mr McQuarrie had made representations to the Committee as patrons of the premises and local residents.

Statements by the respondent

Mr Gibson, the respondent's representative made the case for his client as summarised below:

- Mr Soni was not disputing that the underage sale took place;
- an attempt at mediation was made and concern was expressed that the Police were not willing to accept any proposal from the respondent;
- Revocation was not the correct response to promote the licensing objectives;
- Increased competition had led Mr Soni to increase hours of operation that had precipitated fatigue further causing a failed test purchase in April 2014. To prevent fatigue and at the Committee's advice he sought to hire a new member of staff so he could take a break. At the time of the failed test purchase a relative was ill so Mr Soni's wife was at the hospital caring for a sick relative and Mr Soni had been working between 6am and 9 pm. At 9 pm Mr Soni went upstairs for something to eat and instructed his assistant to call him down should the shop get busy. It was during this time that the failed test purchase took place.
- Members were told of the induction training and training on the sale of alcohol that the member of staff had received. It was explained that the member of staff in question had been distracted by people she believed to be shoplifters and had been confused by the feeling of the shop being busy which caused her to make a mistake
- Members were told that following the review held in April the respondent had behaved diligently in making sure that all of the additional conditions placed upon his licence were being met. Within two weeks he had made sure all had been put in place other than the installation of a new till which he had placed on order. It was submitted that this was evidence of the respondent's due diligence, commitment to upholding the Licensing Objectives and following the instructions of the Committee
- Members were told that the respondent had ordered a new till system that would make it unlikely for underage sales to happen in the future, it was purported that this added to evidence that the respondent was committed to upholding the licensing objectives and protecting children from harm.
- The respondent's representative stated that tobacco sales to a minor should not be being considered at the hearing for it was not a licensable activity under the licensing act 2003.
- The Committee was quoted guidance to the 2003 act which states 'licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol in quick succession of one and other (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures.)' It was claimed by Mr Gibson that this related directly to his client's case.
- Mr Gibson informed the Committee that after the failed test purchase the respondent was contacted by the police who warned him not to buy a special till because they would take his licence away. It was claimed that this was both pre- judging the Committee's decision and encouraging the applicant to break a condition of his licence.

Questions for the respondent from members

Members sought clarification from the respondent concerning the financial loss that would be incurred by the should he lose his licence.

The respondent explained the circumstances around the employment of the new member of staff, responding to comments that 12 days was a quick amount of time to employ someone the respondent related that the process of searching for a new member of staff had began sometime before the start of the review that took place in April.

Questions for the respondent from the applicant

The respondent was questioned regarding contact with the police following the test purchase. It was put to the respondent that as a courtesy the police contacted the respondent they suggested that he put on hold the purchase of the till in the event of the licence being revoked and that he knew he had until November 2015 to install the till. The respondent repeated that he was told that the police 'were going to take his licence away' he went on to say that the police had told him 'to save time and money and come in and hand in your licence'. The applicant stated that they had suggested to Mr Soni that this could be a cost effective way of dealing with the matter.

It was put to the respondent that he had not carried out necessary due diligence by leaving an inexperienced shop assistant alone in the shop and by not employing someone with the necessary experience. The respondent explained that he had left the shop for a short time to get something to eat as he had been working all day without a break. Members were told that it was difficult to get an experienced shop worker to work just four hours a day for a minimum wage.

Questions for the respondent from those making representations

There were no questions from those making representations.

Summing up from the applicant

The applicant put it to members that the respondent was irresponsible and had failed to show due diligence in leaving an inexperienced shop assistant alone. Members were told that the guidance referred to by the respondent's representative related to sales made in quick succession (i.e one immediately after another) rather than persistent sales as in the case before members. Members were told that tobacco sales were relevant in this instance because selling tobacco to those underage constituted as use of premises to carry out criminal activity.

Summing up from those making representations

Mr McQuarrie told members that the shop had been run in an excellent manner in the past and there had been a few mistakes made recently which should be taken in the context of the previous eleven years where he had operated without a problem.

Mr Smith related that the Committee should take into account the degree of intent in the matter and the installation of an advanced till system and other visual aids in the shop before making their decision.

Summing up from the respondent

The respondent's representative argues further that underage sales of tobacco should not be taken into account as a licensing act 2003 matter.

Members were told that the new till ordered by the respondent would eliminate the mistakes that had happened in the past. the respondent was not irresponsible and the Committee were asked to not revoke the respondent's licence.

The meeting adjourned at 8.23pm to consider its decision

The meeting reconvened at 9:07pm

The meeting was told that in reaching its decision, the Licensing and Control Committee 'B' had given due regard to the Home Office guidance, the Council's own Licensing Policy and relevant licensing legislation. The Committee also gave regard to Human Rights legislation and the rules of natural justice. Due consideration was given to all representations made at the hearing and in writing. In discharging its functions the Committee did so with a view to promoting the Licensing Objectives, the relevant objectives here was the protection of children from harm.

Resolved: that the premises licence should be revoked.

Reasons for decision:

The Committee found that the current operation of the premises is not promoting the licensing objective of protection of children from harm and that revocation of the licence was an appropriate and proportionate response. The Committee was particularly concerned that the licence holder, Mr Soni, was previously before them on the 9 April 2015 following a failed test purchase on the 15 January 2015 for alcohol. On that day the Committee imposed a 7 day suspension as well as imposing an additional condition. On the 23 April 2015 another test purchase operation took place at the premises and again there was another sale of alcohol to children. The Committee viewed this as particularly serious as it was only two weeks after the first Committee hearing which should have acted as a significant deterrent. The Committee accepted that Mr Soni was not the person who sold the alcohol however he had employed an assistant and then left them unsupervised after only two days employment. The Committee also accepted that Mr Soni had adhered to conditions that were previously set. The Committee consider that the detrimental financial impact that will occur as a result of revocation is appropriate and proportionate to the promotion of the licensing objectives.

Advice to parties

The licence holder and those who had made representations in connection with this application are reminded that they may appeal against this decision within 21 days by giving notice to the Magistrates Court.

The parties will be notified in writing of this decision within five working days.

The meeting was declared closed at by the Chairman at 9:10pm, it having commenced at 6.30pm.

Chairman