

Minutes of a meeting of the
Worthing Licensing & Control Committee B
8 June 2022
at 6.30 pm

Councillor Sally Smith (Chair)
Councillor Rosey Whorlow (Vice-Chairman)

Councillor Roy Barraclough	Councillor Richard Nowak
Councillor Mike Barrett	Councillor Jon Roser
Councillor Russ Cochran	Councillor Dawn Smith
Councillor Cathy Glynn-Davies	Councillor Samuel Theodoridi
Councillor Lionel Harman	Councillor Hazel Thorpe
Councillor Kevin Jenkins	Councillor Andy Whight
Councillor Richard Mulholland	

LCCB/1/22-23 Declarations of Interest

There were no declarations of interest

LCCB/2/22-23 Public Question Time

There were no questions from the public

**LCCB/3/22-23 Licensing Act 2003 - Application for the Review of the Premises
Licence under Section 51 - Om Food & Wine (also known as
Clifton Food & Wine)**

Before the Committee was a report by the Interim Director for Communities, copy attached as item 3. The report before Members detailed a request for a review of a premises licence of Om Food & Wine (also known as Clifton Food & Wine). The review application had been made by West Sussex Trading Standards. Supporting the application was representation from Sussex Police. Evidence in support of the application detailed incidents whereby there had been failed test purchases and witness evidence that there had been underage sales.

The meeting was adjourned 18:36 for member to consider additional information that had been circulated prior to the hearing. The meeting reconvened at 18:51

Presenting Officer Outlines the application

The Licensing Officer introduced the report to the Committee and set out the matters for members to consider.

Questions from Members for the Presenting Officer

A Member asked if still photographs taken from an incident in 2020 and was told that they could be shown during the closed session at the end of the meeting. Members were told that the still images had be shown to the respondent in advance of the hearing.

Presentation by the Applicant

The applicant made a representation which can be summarised as follows:

- Members were asked to determine if it was appropriate to revoke the respondent's licence on the grounds of Crime and Disorder and the Protection of Children from Harm;
- Trading Standards sought to ensure that the breaches were brought to the attention of the Committee and consider actions available to it;
- In 2021 Trading Standards had made a press release about the lack of inspections during the lockdown and announced that there would be crackdown following the relaxation of lockdown restrictions;
- There had been intelligence that a relaxation of inspections had been taken advantage of;
- Following a failed test purchase the DPS had claimed that he had asked for ID a statement that was subsequently changed;
- The DPS had been provided with advice and this had been supported by a translator, a written note of this interaction had been signed by the DPS;
- As part of the test purchase a fifteen year old had been sold WKD blue and had not been asked for their age;
- The test purchase volunteer looked like their age bracket;
- Statements relating to the test purchase were included within the evidence;
- West Sussex Trading Standards were not willing to mediate with the respondent given the nature and reoccurrence of the incidents

Questions for the Applicant from Members

A Member asked if that intelligence provided from a school teacher was from a third party the Trading standards representative confirmed that it was;

A Member asked if the trading standards representative was aware if the press release about a crackdown would be understood by people whose 1st language was not English. Members were told that there had been extensive coverage of the issue in the press

A Member asked if the trading standards representative was confident that the test purchaser looked 15. The trading standards officer told members that the CCTV evidence had not been secured. The incident had been witnessed by a trading standards officer.

A Member asked about the idea that a revocation could send a wider message and asked if the issue should not just be considered on its own merits. The trading standards officer stated that it was for the Committee to decide. There was however a desire to deter other licenced premises from selling licenced products to those underage.

Questions from the Licence Holder for the Applicant

The representative of the licence holder asked if there had been other test purchases at the premises and was told that there had not been as they had not received any specific intelligence previously. Trading standards stated that they did not have the resources to undertake tests without previous intelligence.

Representation by those who had made representations

A representative from Sussex Police made a representation which is summarised as follows.

- Photos that were taken of three children purchasing alcohol in 2020 from the store were important to view;
- Children had been made ill, requiring an ambulance after being sold alcohol by the premises;
- The Applicant had been asked to hand over CCTV footage but was unable to do so which was a breach of the licensing conditions;
- Two unlawful sales had been made by the DPS representations of the matter were well documented in the papers before the Committee;
- The selling of alcohol to minors was a serious matter; children needed to be kept safe and selling alcohol to children was an offence;
- Statutory advice stated that members should seriously consider revocation even after one offence;
- Following the 2020 incident the DPS and PLH had been invited to the police station where matters were discussed and the DPS had admitted sales;
- The DPS had been issued with a formal written warning a copy of the letter had been supplied to the PLH and DPS;
- In the representatives experience 90% of premises would improve their premises after receiving a warning;
- Intelligence was specific and detailed that the premises was making underage sales;
- The Premises had received advice and warning from both the Police and Trading Standards;
- Approaches made by the Respondent's representative for mediation would not be taken as the respondent had demonstrated that they were not capable of upholding the licensing objectives. There would not be a beneficial effect from transferring the licence from the current PLH to the current DPS;
- The financial situation of the business and competition from neighbouring premises would lead to the temptation for underage sales to take place

Questions for the Police representative from Members

A Member asked if failure to revoke the licence would lead to more illegal sales to minors. Members were told that on the balance of probabilities the risk of allowing the premises to continue to operate were too great.

A Member asked why the police had only issued a formal warning in 2020. Members were told that at the time the premises had been given a warning and offered advice the police had been given assurances that the

A Member asked if the police had found the premises in good order during a visit on the 7 April 2022. Members were told that by that point the premises had received notification of a review application from Trading Standards.

Questions for the Police from the Licence Holder

It was asked when and where other premises in the area had received test purchases and where were there failed instances. Members were told that test purchases were carried out where intelligence had been received. There were not the resources to carry out systematic purchases across Sussex.

Representation by the Licence Holder

The representative made a representation which is summarised as follows

- Members were told that the last visit from the Police had shown that the premises was in good order;
- The Licence holder had been shocked and saddened about the incident concerning three children and accepted the facts;
- It was claimed that an application for necessary minor variations that had been missing had been handed into the Council but had not been processed;
- The representative had become involved in the case the previous day and had visited the premises and provided advice as to how the premises could be improved;
- Improvements included moving vape products to behind the counter;
- Revoking the licence in this case was inappropriate;
- The imposition of conditions would help the premises promote the licencing
- Members were asked to impose licensing conditions that gave the licence holder and DPS to run their business and uphold the licensing objectives;
- There was no evidence to suggest that the Licensed premises was persistently making underage sales;
- The representative would help train the DPS and staff to prevent this happening in the future;
- The representative was happy to have a monthly meeting with the DPS to make sure things were working correctly;

Questions to the Licence Holder from Members

A Member asked if the DPS had received training from the PLH prior to the review taking place. Members were told that things were handed over as necessary but there was no form of written form of training.

A Member asked if the DPS had received training as part of receipt of the personal licence. Members were told that the DPS had received training but that it was not good enough at the time.

A Member asked why the Licence Holder had not done more to make sure there had not been a repeat of the incident concerning underage sales. Members were told that the Licence Holder had been in charge of the premises between 2004 and 2014. He had returned to the premises between 2018 and 2019 when he had handed the running of the business to the DPS and he relied on the DPS to run the business correctly.

Questions were asked about the display of posters and arrangement of the shop and were told that the posters were always there but they were now in constant view.

A Member asked if there was a training log and were told that there was a log and it had last been updated on the 28 March 2022. The representative had been subsequently asked to provide the DPS with comprehensive training.

When asked about a witness statement where a 14 year old was sold alcohol under the counter away from CCTV and told to put it in his rucksack the representative stated that there was no further detail that could be commented on the matter.

A Member asked if the problems with the premises could be described as poor management or a language barrier and was told that it was both

A Member asked if previous training had been available in other languages and was told that the representative was not aware of this

Questions to the Licence Holder from the Applicant and those that made representations

Through questioning it was established that there was no sound on the CCTV relating to the event in 2014. That the personal licence exam covered challenge 25. That the representative was aware of the challenge 26 till prompt when selling alcohol.

Summing up of the Licence Holder

Members were invited to consider introducing conditions to the premises licence and that the DPS and PLH would be trained to a good level should the licence not be revoked.

Summing up of the applicant

Members were invited to revoke the licence

Summing up of the Police representative

Section 182 of the guidance was clear on the matter and the licence should be revoked.

The Committee adjourned to consider its decision

In reaching its decision the Licensing Committee has given due regard to the following:

- The statutory licensing objectives
- Worthing Borough Councils Statement of Licensing Policy
- Guidance under section 182 by the Home Secretary and Licensing Act 2003.
- The application, written/oral representations made at the hearing and in writing.
- The Committee also gave regard to human rights legislation and the rules of natural justice.
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In discharging its functions the Committee did so with a view to promoting the Licensing objectives, the relevant objectives here were the prevention of crime and disorder and protection of children from harm.

Resolved: That the premise licence be revoked

The reason for the decision is:

The Committee listened carefully to all written and oral evidence. They determined that the concern raised by the responsible authorities namely Trading Standards and Sussex Police was that alcohol had been sold to children on two occasions and that it would continue to be so. They considered the evidence given by Sussex Police that on 20th June 2020 alcohol was sold to a child of 14 years old. This offence was admitted by the DPS who has been in post and held a Personal Licence since 2019. The Premise Licence Holder, and the DPS attended the Police Station and received a formal warning and education as to the existing conditions of licence. The committee were advised Sussex Police had already attended the premises on the 21st February 2020 and

provided advice as to the licencing conditions. Evidence was given that the licence conditions were further breached on the 12th January 2021 when Sussex Police attended the premise and found no challenge 21 or 25 posters on display and the CCTV was still not compliant. The refusal log showed the last entry was October 2020. The Licensing Committee were concerned to learn that the DPS at this visit was asked whether there was an electronic till prompt (which is a condition of the licence) and that he stated there was not. Sussex Police gave evidence that there was a working electronic till prompt that expressly requires the seller to confirm the buyer is aged 18 every time an age restricted product is scanned through the till. Sussex police confirmed that at the latest visit on the 7th April 2022 the licence conditions were being complied with.

Evidence was then given by Trading Standards who confirmed that as a result of intelligence received, on the 23rd February 2022 a controlled Trading Standards test purchasing exercise was carried out and the DPS sold alcohol to a 15 year old boy. The boy was asked no questions as to his age contrary to the licence condition. The refusal logs last entry was October 2020.

The Personal Licence Holders representative gave evidence and acknowledged that there had been failings and stated that there had been insufficient training the DPS had not understood the challenge 25 regime. The DPS had undertaken training on age verification on the 28th March 2022. There was a training log and refusal log. The Committee were invited to look at the last 2 years and that it had only occurred twice. Not to look at punishment but to look at deter and consider the additional conditions that had been offered. Trading Standards and Sussex Police had given evidence that in their opinion these would not be sufficient to uphold the licencing objectives.

The witness statement of the Police Community Support Worker was referred to and the representative was asked about the allegation that the DPS had told the boy in 2020 to put the alcohol straight into his rucksack. No denial to this was given or explanation given only that this was picked up from CCTV. This was viewed seriously by the Licencing Committee as seemed a deliberate act by the DPS and acknowledgement that he should not have been selling alcohol to the boy. It was acknowledged that there had been poor management but that the business wanted to put things in place now

The licensing committee considered the causes identified and what remedial action was needed to be directed at these causes. They viewed the protection of children from harm extremely seriously and were not persuaded that the licence holder had demonstrated putting in place anything to ensure that licensing objectives of crime and disorder and protection of children from harm would not continue to be undermined. There had been multiple failings of the licencing conditions and sufficient training and advice had been given which had been ignored. Given no assurances and clear demonstrations that this would not occur again. Offers of further conditions put forward by the licence holder such as an electronic till prompt, which was already a condition and explanation of failings such as the reasons for the challenge 21 or 25 posters not being up and present on the visit on the 21st January was because of cleaning of the shop were seen as further examples of why the licencing committee found it proportionate and necessary for them to uphold the licencing objectives was to revoke the licence.

Advice to parties:

Those who have 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.

Interested parties are reminded that they may apply for a review of this licence "after a reasonable interval" pursuant to Section 51 of the Licensing Act.

Any licence granted under the Licencing Act 2003 does not override any planning restrictions on the premises nor any restrictions that may be attached to the lease of these premises.

The applicant is reminded that it is a criminal offence under the Licensing Act 2003 to carry on licensable activities from any premises when you do not have a licence in place and you may be prosecuted.

The meeting ended at 8.53 pm