

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

MINUTES OF THE MEETING HELD ON 13 JUNE 2013

Present: **Councillor Parvin (Chairman), and
Councillors Barned and Mrs Gibson**

1. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members or Officers.

2. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

3. EXEMPT ITEMS

RESOLVED: That the items on the Agenda be taken in public as proposed.

4. APPLICATION FOR REVIEW OF A PREMISES LICENCE FOR CAPITOL
EXPRESS, 11 SNOWDON PARADE, VINTERS PARK, MAIDSTONE, KENT,
ME14 5NS

The Chairman requested those present to introduce themselves, explained the procedures and Members confirmed that they had read all the papers.

It was noted that Kent Trading Standards had requested various conditions to be added to the Licence and that no agreement had been reached prior to the hearing.

Mrs Bolas explained that the hearing was regarding an application for a review of the Premises Licence of Capital Express, 11 Snowdon Parade, Vinters Park, Maidstone applied for by Kent Trading Standards on the grounds of protection of children from harm. The application was made following the failure of a test purchase on 7, March 2013 on the sale of alcohol to volunteers. Trading Standards were requesting a 3 month suspension of the Premises Licence, the addition of 15 further conditions, restrictions on the hours for sale and the removal of the current Designated Premises Supervisor ("DPS") – Mr Ok.

Mr Strawson, representing Kent Trading Standards, stated in his opening remarks that Kent Trading Standards are designated a responsible authority under the Licensing Act 2003 and in such a capacity can make a submission to the licensing authority for a licence review where it is deemed appropriate. He informed the Committee that Miss Gillian Powell, one of the investigating officers, was available as a witness to answer any questions regarding the conduct of the test purchase or subsequent investigation.

Mr Strawson then put forward his case. He stated that it is demonstrated in the detail of the review application and supporting documents that the test purchase in March 2013 was carried out following extensive and repeated intelligence, received by Kent Trading Standards, that youngsters were purchasing alcohol from the premises. Kent Trading Standards carried out numerous advisory and supportive visits to the premises prior to the test purchase where detailed advice was given to the DPS, Mr Ok, on how to avoid selling to those under age. He emphasised that the advice given was repetitive, comprehensive and detailed and included the provision of training material, folders, refusal books and letters all aimed at the premises being able to operate a robust system to prevent sales to minors. During a recent visit to the premises, 3 of the refusals books were found on the premises and unused.

Despite these visits and the advice given, intelligence continued to be received regarding the sale of alcohol to minors and it was considered by Kent Trading Standards that the premises would only sell in circumstances where the minor was known to them or there was no other customer in the premises at the time. Kent Trading Standards therefore undertook a test purchase using covert surveillance equipment to allow the volunteers to enter the premises unaccompanied to record the sale being made. A copy of the recording was available should Members wish to view it.

Mr Strawson stated that given the history of these premises and the circumstances of the sale, Kent Trading Standards strongly felt it appropriate for the Committee to consider imposing the conditions suggested, together with a suspension of the licence for 3 months and the replacement of the DPS. They felt these were reasonable steps to ensure that changes are made to the operation and management of the premises to ensure that future sales are unlikely to those under age and that the protection of children from harm is achieved.

Mr Strawson informed the Committee that a report into the criminal offence in relation to the sale of alcohol to a person under the age of 18 was currently under active consideration.

Mr Ok was then given the opportunity to ask questions of the applicant but he had none.

Members were then given the opportunity to ask questions of the applicant. In response to questions, the applicant stated that their primary route for the first incident in 2006 was criminal prosecution, which they did. Since then it has been their approach to gain evidence themselves, however, test purchases had failed previously as the business was aware of their normal procedure. Therefore, it was felt appropriate to use covert equipment which succeeded capturing evidence of a sale and therefore this review was applied for.

Mr Ok was then given the opportunity to present his case. He stated that at the time of the test purchase his brother was helping him run the shop as his wife had just given birth. He stated they had worked together in

the past and that his brother knows the rules and regulations regarding the sale of alcohol. He stated it had been a very busy day and it was near closing time when the volunteers entered the premises and the sale was made by his brother.

Mr Strawson was then given the opportunity to ask questions of Mr Ok. In response to questions, Mr Ok stated that as it was a small shop and that he knew the majority of his customers and therefore he did not feel there was a need to use a refusal book. He stated that since this incident, he has taken steps to ensure he is more careful and always in the shop, he tells his staff every day that they must make sure they adhere to the rules.

Members were then given the opportunity to ask questions. In response to questions, Mr Ok stated that he and his wife worked in the shop, that he did not serve alcohol to youngsters and that it was only when his brother helped him for 2 weeks that the sale was made. He was not aware of the complaints received and felt that they should have been addressed at the time. He stated the shop closed at 9pm.

Mr Strawson was then asked to sum up. He stated that he hoped the Committee believe there is a necessity for the actions requested and that he was concerned that Mr Ok did not understand the seriousness of the incident and the responsibility of himself as the Licensee. He believed that a change was required at the premises in order to eradicate the problems.

Mr Ok was then asked to sum up. He said he took his job seriously and that he is now writing in the refusal book. He said the suspension of his licence will have a big impact and that he must be responsible at all times.

Members were then given the opportunity to ask any questions of clarification. Mr Ok was asked if he accepted all the proposed extra conditions should Members wish to impose them to which he agreed. He did, however, state that stopping alcohol sales at 6pm would not suit the residents of the estate as they bought their hot food from the local restaurants, bought beer or wine from his shop and then went home.

Mr Strawson responded that all the complaints received were regarding evening sales and as this appeared to be a particularly vulnerable time, the earlier closing time had been suggested.

The Committee then retired to consider the application and

RESOLVED:

1. That the conditions on the Licence be modified permanently.
2. That the Designated Premises Supervisor not be removed.
3. That the Premises Licence be suspended for a period of 3 months.

Reasons for determination:

■ **Prevention of Crime and Disorder**

Reasons (state in full):

■ **Protection of children from harm**

Reasons (state in full):

Modification of conditions by addition of:-

Conditions set out at pages 15 and 16 of the Agenda.

Nos. 1 to 5 and 7 – 15 inclusive proposed by Trading Standards amended as follows:-

- 4: inserted after "premises" "as approved by the Licensing Authority".
- 9: after "Challenge 25" insert "and general responsibilities of responsible alcohol retailing".
- 10: delete "age restricted goods" and insert "alcoholic products".
- 14: insert after "and", "written records of all training given".
(see attached)

Reasons:- Members carefully considered the application for review and evidence from Mr Strawson of Kent County Council Trading Standards and the evidence given by Mr Ferhat Ok one of the premises licence holders and DPS for the premises.

Members were concerned that there was evidence of a conviction in 2006 when Mr Ferhat Ok pleaded guilty to selling to underage volunteers on a test purchase operation. Since that time there were numerous intelligence reports and complaints, from reliable sources, in every year to date, involving underage sale of alcohol from the premises. Kent Trading Standards have carried out at least 10 advisory visits to the premises and on numerous occasions have spoken to Mr Ok. There have been written information packs provided, 3 being found on the premises following a failed test purchase operation on 7 March 2013. On 9 visits it was noted that no refusals book was in use despite advice that it should be used.

There were 5 test purchase operations where sales were not made between June 2006 and March 2013, however, intelligence indicated that sales were made to underage where they were known to the licence holder or when no adults were present. The test purchase operation on 7 March 2013 was made by volunteers aged 15 and 16 with a covert camera. A sale of WKD Blue, alcohol, was made and it was accepted this sale was by Mr Ok's brother. Whilst it was noted Mr Ferhat Ok was not present, members are of the view that it was for the premises to ensure all staff selling alcohol are appropriately trained and operational practices are in place to ensure all licensing objectives are promoted.

Sale of alcohol to underage is an offence and should be treated seriously. For this reason, Members decided to suspend the premises licence for a period of 3 months in order to provide a period in which additional

conditions can be complied with, training and new practices embedded and to provide a break to deter any future underage parties seeking to purchase alcohol.

All of the additional conditions are added to secure promotion of the licensing objectives of protection of children from harm and prevention of crime and disorder (the crime concerned being sale to underage persons), all are both appropriate and proportionate to the level of seriousness and history of this case. Condition 6 requested was not added as no evidence was heard relating to noise or public noise nuisance arising from the premises.

Members did not consider it appropriate or proportionate at this time and on the basis of the current evidence to remove the DPS, Mr Ok. It was felt that in view of the suspension imposed and the additional conditions the opportunity should be allowed for Mr Ok to act on these and provide satisfactory management systems and comply with conditions when alcohol sales recommence.

Members have not at this stage and on the basis of the current evidence restricted the current licensed times for alcohol sales. It was felt that had suspension for 3 months not been appropriate and proportionate, then this would have been appropriate for a temporary period. In view of the seriousness in this case, suspension was required.

Informative:- The licence holder should be aware that if any future issues arise, including underage sales and breach of licence conditions a further review can be brought by any responsible authority or other person at any time.

FURTHER CONDITIONS TO BE ADDED TO THE LICENCE

1. CCTV will be fitted to a standard agreed by Kent Police and Local Authority Officers. The system must comply with The CCTV Code of Practice (2008 edition) produced by the Information Commissioners Office (or subsequent revisions.)
2. The CCTV system will be maintained and serviced on a regular basis
3. Any recording made via the use of the CCTV will be retained and stored for a minimum of 31 days and made available to any police officer, Local Authority Licensing Officer or any Trading Standards Officer on request or in any case within 48 hours of a request being made.
4. CCTV coverage will include areas inside and outside of the premises, as approved by the Licensing Authority, in accordance with advice from Kent Police and may include reasonable requests to reposition cameras.
5. Signs to be displayed to inform the public passing the premises and customers that CCTV is in use at the premises
6. The only forms of identification acceptable will be photographic driving licence, passport or a 'PASS' approved identification card.
7. A policy of Challenge 25 will be adopted and publicised in the shop including at the entrance, till point and around the alcohol display areas to the agreement of Kent Police and Local Authority Officers.
8. All staff will be trained in Challenge 25 and general responsibilities of responsible alcohol retailing and this training will be auditable as per condition 12
9. The electronic point of sale (EPOS) system to include the facility to prompt cashiers when scanning alcoholic products to positively confirm that they have checked the purchaser's age.
10. A written refusals and challenges book will be kept at the premises and all staff fully trained in its use. As well as refused sales a record should be kept where customers are challenged and subsequently served as per the Challenge 25 policy of condition 8. The following information will be recorded in this book: -
 - a. Time of refusal or challenge
 - b. Item refused
 - c. Description of person refused sale
 - d. Reason for refusal
 - e. Name of staff member making refusal

11. The premises licence holder must audit the refusals and challenges log weekly to identify current trends or members of staff who may require further training to challenge customers.
12. The refusal book will be made available for inspection to any police officer, Local Authority Licensing Officer or Trading Standards Officer at any reasonable time.
13. All staff training will be auditable and written records of all training given will be available to any police officer, Local Authority Licensing Officer or Trading Standards Officer at any reasonable time.
14. The sale of alcohol may only be transacted by a personal licence holder or under the direct supervision of a personal licence holder at all times. When no personal licence holder is present on the premises a sign will be prominently displayed to make all purchasers aware that there are to be 'NO ALCOHOL SALES'.

5. DURATION OF MEETING

10.00 a.m. to 12.01 p.m.