

Licensing Sub-Committee – Meeting held on Thursday, 30th January, 2014.

Present:- Councillors Sohal (Chair), Rasib and Wright

Officers Present:- Slough Borough Council
Mr Mick Sims, Licensing Manager (The Applicant)
Ms Tara O'Keefe, Assistant Licensing Officer
Ms Melanie Sagar, Licensing Officer
Mr Dean Cooke, Senior Trading Standards Officer
Ms L Corcaran, Neighbourhood Enforcement Officer

Thames Valley Police
Ms D Pearmain, Licensing Officer

Apologies for Absence:- None

PART 1

27. Declarations of Interest

None declared.

28. Guidance on Predetermination/ Predisposition - To Note

Members confirmed that they had read and understood the Guidance note.

29. Minutes of the Last Meeting held on 28th November, 2013

Resolved – That the minutes of the last meeting held on 28th November 2013, be approved as a correct record.

30. Review of Premises Licence: Roshni Food and Wine, 18 High Street, Slough, SL1 1EQ

Following introductions the procedure for the hearing was outlined. The Chair confirmed that all parties had received a copy of the relevant paperwork.

Introduction by Melanie Sagar, Licensing Officer, Slough BC

The Officer highlighted that the report circulated prior to the meeting contained two errors:

Para 5.4 of the report-Licensable activities should have read Monday – Sunday 09:00 – 23:00.

Para 6.3 of the report- the para numbering was duplicated and the second para 6.3 should be taken as para 6.3a.

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The Officer advised that the Licensing Manager, had brought a Review of the premises licence for Roshni Food & Wine, 18 High Street, Slough, on behalf of the Licensing Authority, Slough Borough Council. Members were referred to the options available to the Sub Committee when determining the review as set out in the report, and reminded of the amended guidance issued under Section 182 of the Licensing Act 2003 which detailed matters that the Sub-Committee must have regard to.

The Licensing Officer confirmed that Mr Jagmohan Singh Chopra was the premises licence holder and Designated Premises Supervisor for Roshni Food & Wine and that the premises licence authorised the sale by retail of alcohol for consumption off the premise only, Monday to Sunday between the hours of 09:00 –23:00. It was highlighted that the premises had previously been subject to a premises licence review brought by Thames Valley Police in 2011 following the sale of alcohol to a person under the age of 18. The subsequent review hearing on 14th November 2011 had resulted in the Licensing Sub-Committee imposing 11 additional conditions on the premises licence (details set out in the report), the suspension of the premises licence until all 11 conditions had been implemented to the satisfaction of Thames Valley Police and the issue of a yellow card.

Mr Chopra was subsequently prosecuted and convicted at Maidenhead Magistrates Court in relation to the underage sale. He was fined a total of £600 and ordered to pay £750 costs.

On 26th July 2013 Slough Borough Council Trading Standards and Licensing teams conducted an underage sales test purchase at the premise and observed 2 underage sales made to persons under the age of 18. Members were reminded that the sale of alcohol to an underage person was an offence under section 146 of the Licensing Act 2003. On that occasion the Assistant Licensing Officer, was able to purchase a single can of alcohol from Roshni Food & Wine. This was in breach of condition 11 of the conditions imposed by the Licensing Sub-Committee on 14th November 2011.

Slough Borough Council Trading Standards Officers conducted a premises inspection of Roshni Food & Wine on 26th July, 2013 and illicit cigarettes and tobacco were discovered at the premises.

The Trading Standards Officer was requested to view CCTV footage at the premises but none was available. The Officer was provided with older footage but this showed no footage of the previous test sale.

It was noted that representations to the review application were received from Linda Corcoran, Enforcement Officer, Neighbourhood Enforcement Team who requested that Roshni Food & Wine take part in the Smart Water Alcohol Product Marking Scheme and that this be imposed as an additional condition on the premises licence.

The Applicant, Mr Sims, on behalf of the Licensing Authority maintained that in light of the recent under age sales, the seizure of illicit cigarettes, breach of

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conditions and the previous history and management of the premises, there was no other alternative than to issue the premises with a “Red Card” and for the Premises Licence to be revoked.

Questions to the Licensing Officer

A Member asked why a Trader pack had not been offered to Mr Chopra and was advised that a pack was given to the previous Licence Holder. It was also highlighted that when the previous review was brought in 2011, Mr Chopra was made fully aware of his responsibilities. There were also several signs posted within the premises which confirmed that the Licensee was engaged in Licensing schemes including ‘Challenge 25’.

Officers gave witness statements and made representations to the Sub Committee as follows:

Representations made by Mr Cooke, Senior Trading Standards Officer, Slough BC

The Officer advised that Slough Trading Standards participated in a Crime Reduction Enforcement Day on 26th July 2013 when trained under age volunteers (aged 15 yrs and 16 yrs) visited a number of premises in the Chalvey Ward. Two volunteers were able to purchase two cans of alcohol from the Roshni Food and Wine premises. Ms O’Keefe, Assistant Licensing Officer was also successful in purchasing a single can of alcohol from the premises and this was prohibited by the conditions of the licence.

Mr Cooke advised that he requested to view the Refusals Register but this contained no entries. When Officers inspected the store, illegal cigarettes and tobacco products were found and removed from the premises. The Sub-Committee was advised that a legal prosecution would be instigated. The Officer supported a revocation of the Licence in view of the seizures, the failed test purchase and having regard to the previous history and management of the premises.

Representations made by Ms O’Keefe, Assistant Licensing Officer, Slough BC

Ms O’Keefe summarised her witness statement (set out in report) and confirmed the events relating to the test purchase exercise when alcohol was sold to underage volunteers. She also confirmed that she was able to purchase a single can of alcohol in the premises on 26th July, 2013 and advised that she had prevented the shop assistant from selling a further single can to a customer.

Questions to Ms O’Keefe

A Member questioned whether the single can of alcohol was priced and Ms O’Keefe was unable to confirm this.

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Representations made by Ms Pearmain, Thames Valley Police (TVP)

Ms Pearmain, Licensing Officer, TVP, advised that on 6th November, 2013, she was on duty with two colleagues. She witnessed a man who appeared to be a street drinker purchase 2 cans of beer from Roshni Food and Wine. The man then walked away from the shop with a friend and was later observed drinking the alcohol on the street. Ms Pearmain approached the shop assistant who had purchased the alcohol to discuss this matter but was unable to pursue her questions as the vendor (Mr Kapoor) did not understand her. Ms Pearmain was concerned that Mr Kapoor was unable to converse with customers or challenge anyone that was drunk or under age.

Representations made by Ms Corcoran, Neighbourhood Enforcement Officer, Slough BC

Ms Corcoran discussed issues around the prevention of public nuisance and disorder which had arisen since 2010. Police had patrolled the surrounding area of Roshni Food and Wine due to on going resident's concerns which included anti social behaviour and empty cans and litter. There had also been concerns raised that the number of street drinkers had increased particularly in the Burlington Road area.

Representations made by the Premises Licence Holder

Mr Singh, on behalf of Mr Chopra, stated that the reported issues had arisen due to problems with staff at the premises. Mr Chopra advised that staff had purchased goods against his wishes. This was also due to the inability of a family member to speak English.

The Sub-Committee was asked by Mr Chopra to take into account the fact that he had a mortgage to pay and ran a business. He requested that Members give him a second chance for a three month period.

Questions to Mr Chopra, the Licence Holder.

Mr Chopra was asked why he had not complied with the previous warning, the issue of the yellow card and why he had not fulfilled his responsibilities. He stated that this was due to staff failings and family members.

Summing Up

The Trading Standards Officer submitted that the Licence Holder was obliged to take reasonable precautions to fulfil the obligations of his licence. This included the provision of appropriate staff training and ensuring due diligence at all times. He reminded the Sub-Committee that the refusals register had not been completed as required and that selling cheap illegal cigarettes was a disadvantage to other Traders. It should not be necessary to break the law to compete.

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The Licensing Officer reminded the Sub-Committee of the options available when determining the application.

The Licensing Officer, TVP, was concerned that Mr Chopra appeared to be laying the blame with his staff when he was personally responsible as the Designates Premises Supervisor. She highlighted that a yellow card had been issued previously but Mr Chopra had failed to adhere to the conditions imposed.

Mr Mick Sims, Applicant

Mr Sims was satisfied that the evidence clearly showed that Mr Chopra and his staff did not observe the requirements of the Licensing Act and had failed to adhere to the conditions applied following the previous review. The Sub-Committee was reminded that the under aged sale of alcohol and the sale of illegal tobacco were serious incidents. He re-iterated that Mr Chopra was the Licence Holder and Designated Premises Supervisor. It was therefore his responsibility to comply with the conditions of his Licence and not the responsibility of his staff.

Mr Sims reminded the Sub-Committee that guidance from the Secretary of State indicated that failures which could lead to the prevention of children from harm were completely unacceptable. Mr Sims therefore concluded that the Sub-Committee should issue a red card and revoke the Licence.

Mr Chopra, Licence Holder

Mr Chopra requested that the Sub-Committee allow him three months to improve the areas at fault.

Following the summing up, the parties left the meeting at 11.00 am in order for the Sub-Committee to deliberate and reconvened at 11.25 am.

Decision of the Licensing Sub-Committee

The Sub-Committee carefully considered all of the evidence submitted. In reaching its decision the Sub-Committee had regard to the following Licensing objectives:

- The Prevention of Crime and Disorder
- Public Safety
- The Protection of Children from Harm

The Sub-Committee was mindful that it was an offence under Section 146 of the Licensing Act 2003 if a person sold alcohol to a child under 18. In regard to the finding of illicit cigarettes bearing no English health warning, Members were mindful that supplying such products was an offence under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, as amended by the Consumer Protection Act 1987. The Sub-Committee was

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also concerned that a single can of Lager was sold to a Licensing Officer in breach of a specific condition placed on the Premises Licence.

The Sub-Committee was mindful that a total of six breaches of the Licence conditions were identified, some of which may also have constituted offences under the Licensing Act 2003, and that Thames Valley Police had instigated a previous Review of the Premises Licence in 2011, resulting in the Licensing Sub-Committee imposing 11 new conditions on the Licence, and a suspension of the Licence. Members were also mindful that a yellow card was issued and the Licence Holder was advised that if a further review was necessary and matters had not improved then the Licence could be revoked in future.

The Sub-Committee noted that when the premises were visited in July, 2013, a member of staff was unable to produce CCTV footage or an up to date refusals register and the retention of these was a required condition of the Licence.

The Sub-Committee was satisfied that the application for a review had been brought on legitimate grounds and noted the Applicant's submission that in view of the recent under aged sales, seizure of illicit cigarettes, breach of conditions and the history and management of the premises that there was no alternative sanction other than the premises being issued with a Red Card and the revocation of the Premises Licence. Although the Appellant had highlighted that he had not been provided with a Trader Pack, Members were mindful that since the Licence was transferred into his name, Mr Chopra would have been fully aware of his legal responsibilities, following the suspension of his Licence and imposition of conditions in 2011.

The Sub-Committee considered the Appellant's request that the Sub-Committee afford him a further three months opportunity to address the issues which had led to the Licence Review and noted that the only defence submitted by the Appellant was that the highlighted breaches were the result of actions taken by members of his staff.

The Sub-Committee was satisfied that as the Premises Licence Holder, Mr Chopra was the individual who had the legal responsibility to ensure that the terms and conditions of the Licence were adhered to. Members were also mindful that the illegal sale of alcohol to minors was a criminal offence and that Guidance from the Secretary of State stipulated that it was completely unacceptable to sell alcohol to children. The Sub-Committee decided that in view of the continued disregard shown by Mr Chopra and his staff in complying with the conditions of the licence, there was no alternative but to issue a red card and revoke the Licence with immediate effect.

The Sub-Committee considered the penalty imposed to be appropriate, necessary, reasonable and proportionate in order to meet the Licensing Objectives.

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Resolved- That the premises be issued with a red card and that the Licence be revoked with immediate effect.

Chair

(Note: The Meeting opened at 10.00 am and closed at 11.28 am)