



Charnwood

LICENSING SUB COMMITTEE

Members Record of Decision

Review Premises Licence - Mini Market, 113 Wanlip Lane, Birstall

Hearing: 23 June 2023 (Public)

Constitution of the Panel:

CHAIR: CLLR LOWE

Other Panel Members: CLLR WORRALL
CLLR O'NEILL

Legal Advisor: KERRY N WOOLLETT


Licensing Manager Present: GRACE DOWSON

Parties Present:

Premises Licence Holder: Premises Licence Holder, Karundana Jeyaradna (represented by Frank Fender of FJF Licensing Consultants) and Thushyanthan Kathiravepillai

For Leicestershire Police: PC Ady McCaffrey and PC Jeff Pritchard

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| Signature: |  |
| Chair: | Cllr Lowe |
| Date: | 23 June 2023 |

FINDINGS OF FACT

Charnwood Borough Council, as the Licensing Authority granted a Premises Licence for Mini Market, 113 Wanlip Lane, Birstall, Leicestershire, LE4 4GL on 15 February 2006.

On 20 October 2008 the Premises Licence was transferred to Karunaradna Jeyaradna. Mr Karunaradna Jeyaradna was already the DPS at the premises from 23 May 2007.

Leicestershire Police submitted a review application on 2 May 2023 on the grounds prevention of crime and disorder, public safety and protection of children from harm.

A number of test purchases were carried out at the Premises and on three occasions alcohol was sold to underage persons, there were:

- On 17 November 2022 a 200ml bottle of Smirnoff Vodka was sold to a person under 18. At no point was the test purchaser challenged or asked for ID by the member of the staff who served them. The member of staff that sold the alcohol was Praveen Vijayaretna. Mr Vijayaretna was the only person working in the Premises at the time. He stated to officers that he had been asked to stand in whilst the owner had gone to a Cash and Carry. Neither the licence holder or the DPS was made aware of this incident by either the police or the staff member.
- On 19 January 2023 a single can of Guinness was sold to a person under 18. At no point was the test purchaser challenged or asked for ID by the member of the staff who served them. The member of staff that sold the alcohol was Praveen Vijayaretna. Mr Vijayaretna was the only person working in the Premises at the time.
- On 23 March 2023 four cans of Strongbow Cider were sold to a person under 18. At no point was the test purchaser challenged or asked for ID by the member of the staff who served them. The member of staff that sold the alcohol was Mohit Prajapata. The shop owner and licence holder, Mr Jeyaradna, was also present in the Premises at the time the sale was made.

On 4 May 2023, Mr Jeyaradna was interviewed under caution and admitted to the offence under section 147 of the Licensing Act 2003 - Allowing the sale of alcohol to children, namely on 23 March 2023 at 19:00hrs at Mini Market 113 Wanlip Lane, Birstall, Leicester.

He said he was present during the sale on 23 March 2023 but was busy sorting some stock/vapes when the underage person attended. He said that he did ask Mr Prajapata, when the underage person left the store but before police identified themselves, if he had asked for ID as he thought the person looked underage. He admitted that he does maintain a refusal register, however, he had not added an entry for around 3 months, nor has he checked/reviewed the register.

Mr Prajapata was interviewed under caution and admitted to the offence under section 146 of the Licensing Act 2003 - Sale of alcohol to children, namely on 23 March 2023 at 19:00hrs at Mini Market 113 Wanlip Lane, Birstall, Leicester.

He said he did not even look at the customer, he just scanned the Strongbow, as he was busy with another task. He said he did receive one to one training but also said that he didn't have a very good understanding of the refusal register and stated that the DPS uses it but he has not.

On 6 June 2023 Mr Jeyaradna was given a Community Resolution by Leicestershire Police in respect of section 147A(1) of the Licensing Act 2003 - persistently selling alcohol to children in respect of the sales on 17 November 2022 and 23 March 2023.

Mr Jeyaradna, as a personal licence holder, authorised both Mr Vijayaretna (on 30 October 2022) and Mr Prajapata (10 March 2023) to sell alcohol.

Mr Jeyaradna has also authorised Suvarnalatha Sritharamoorthy (on August 2020) and Jay Amitkumar Upadhyay (on 24 May 2023) to sell alcohol. Both Sritharamoorthy and Upadhyay have completed Licensing Law Awareness courses with High Speed Training (Upadhyay certificate issued 14 June 2023 and Sritharamoorthy certificate issued on 3 June 2023).

A test purchase was conducted on 14 June 2023. On this occasion the appropriate ID was requested and when this wasn't provided, the sale was not made.

The police and the licence holder had agreed 11 conditions to be added to the licence.

REASONS FOR THE DECISION

In reaching its decision the Sub-Committee has had regard to the report prepared by the licensing officer along with the appendices and the further information submitted by the licence holder and the police. The Sub-Committee has also listened carefully to what has been said today by the police and the licence holder's representative, Mr Fender. The Sub-Committee also had regard to the Council's Statement of Licensing Policy and Guidance issued under Section 182 of the Licensing Act 2003 as well as the Human Rights Act 1998.

The police submitted that there had been a serious breach of licensing laws in that there had been three sales of alcohol to underage persons. However, the police also recognised that there had been another test purchase carried out on 14 June 2023 and on this occasion, ID was requested and when it wasn't provided the sale was not made.

The police also submitted that they had agreed conditions with the licence holder and if these conditions were added to the licence, it would be possible for the premises to continue to operate without undermining the licensing objectives. The police were, therefore, no longer seeking revocation of the licence. However, the police were still of the view that it would be appropriate to suspend the licence to allow a period of time for these conditions to be implemented.

Mr Fender explained that the licence holder was sorry for the situation and that he does take his responsibilities seriously. The licence holder did not dispute that the sales had taken place and Mr Fender explained that previously the licence holder provided verbal, one to one training to staff members. Since the underage sales had taken place, he has changed this to using an online, nationally accredited service. Furthermore, the staff members that made the underage sales have been dismissed. Mr Fender also explained that the licence holder has complied with all the requirements of the community resolution, which he was given by the police as a consequence of the under aged sales.

Mr Fender explained that the licence holder and the police had agreed 11 conditions which should be added to the licence and that these conditions would ensure that the licensing objectives would be adhered to for the life of the business.

Mr Fender explained that there was already CCTV at the premises, which addressed conditions 1 to 5; staff are already receiving training, which addressed condition 6; a challenge 25 policy has already been implemented, addressing condition 7; and that notices are already being displayed, addressing conditions 8 and 9. Mr Fender also explained that the EPOS till prompt system was implemented last week, which addressed condition 10; and that the refusal register, whilst already in place when the underage sales took place, is now being maintained and checked, which addressed condition 11.

As such, Mr Fender submitted that, in accordance with paragraph 11.20 of the guidance, all that was necessary to ensure the promotion of the licencing objectives was the imposition of these 11 conditions. It was not appropriate or proportionate to impose a period of suspension as the requirements in the conditions have already been implemented.

The Licensing Manager queried condition 5 and whether all staff should be able to provide CCTV to responsible authorities. Mr Fender agreed on behalf of the licence holder that the condition could be amended to include training of all staff and that all staff be able to provide CCTV to responsible authorities.

The Sub-Committee was mindful that there had been a serious breach of licensing law and that the licensing objectives, particularly the protection of children from harm, had been undermined.

However, having listened to what was said by the police and Mr Fender, the Sub-Committee was of the view that the reason for this, was because the licence holder had not fully understood his obligations and had not provided sufficient training to his staff.

It was clear that the licence holder had taken this seriously and it was also clear that he had now sought the appropriate advice from his representative.

The Sub-committee was of the view that condition 6 should be amended to include a requirement to keep a record of the training given to staff on the operation of CCTV. The Sub-Committee was satisfied that the conditions proposed, including this amendment and the amendment agreed during the hearing, would ensure the licensing objectives would be promoted. The Sub-Committee was also satisfied that the requirements under the conditions had been implemented, though did note that the police would be visiting the premises imminently to satisfy themselves of this as well. As such the Sub-Committee was of the view that imposing a period of suspension would not achieve anything further and was not necessary to ensure the promotion of the licensing objectives.

DECISION ON THE APPLICATION

The Sub-Committee therefore decided to amend the licence to add the following 11 conditions:


1. The licensee will ensure that CCTV is installed following advice from the Leicestershire Police Crime Reduction Officer and maintained in accordance with the Information Commissioner's CCTV Code of Practice.
2. A high definition, colour, HD CCTV camera system shall be installed at the premises, operational and recording whilst the premises is open to the public. The system must permit the identification of individual(s) in all lighting conditions.
3. CCTV cameras must cover all areas that the public have access to, including the entrance, exit and pavement area immediately outside the premises.
4. The CCTV system images must be securely stored, display an accurate date/time stamp and retained for a minimum of 31 days.
5. The licence holder must ensure that all staff are trained on the operation of the CCTV and the licence holder and all staff will ensure the premises CCTV is provided to an officer from a responsible authority in either a down loadable or up loadable and viewable format within 14 days of being requested.

6. Staff will be trained with regard to their responsibilities in the retail sale of alcohol, other age restricted products, the operation of the CCTV, premises licence conditions, and the measures necessary for compliance with those conditions. A record shall be made of the training provided, kept on the premises and this record shall be made available to authorised officers upon request. Such training will be given prior to any staff member being allowed to sell alcohol or other age restricted products.
7. A 'Challenge 25' scheme will be implemented and maintained, whereby any person that appears under 25 years of age has to prove they are over 18 by providing acceptable identification (as per Home Office Guidance on acceptable ID – ID must contain a photograph, date of birth, holographic mark or ultraviolet feature).
8. A notice shall be displayed in a prominent position at the premises to advise customers that Challenge 25 is in operation at the premises.
9. A notice shall be displayed in a prominent position informing customers that it is an offence to buy alcohol on behalf of persons under the age of 18 (proxy sales).
10. An electronic point of sale (EPOS) system shall be installed at the tills on the premises and it shall be configured to prompt the operator to check proof of age when an 'age restricted' product is scanned. The prompt shall require the operator to confirm that the purchaser is over 18 (or any other age required by the relevant law for the products) before the next item can be scanned or the transaction completed.
11. A register of refused sales of alcohol, tobacco products or other age restricted products shall be maintained in order to demonstrate effective operation of the Challenge 25 policy. The register shall be clearly and legibly marked on the front cover as a register of refused sales, with the address of the premises and with the name of the premises licence holder. The register shall be kept / be accessible at all times. On a monthly basis, the Designated Premises Supervisor (DPS) shall check the register to ensure it is being properly completed. The DPS shall sign and date the register to that effect and where appropriate take corrective action in a timely manner if the register is not being completed correctly. The register shall be made immediately available for inspection at the premises to council or police officers on request.

RIGHT OF APPEAL

There is a right to appeal to the Magistrates' Court within 21 days from the date on which the party is notified of the determination of the decision of the Sub-Committee.

CHARNWOOD BOROUGH COUNCIL

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| Signature: |  |
| Chair: | Cllr Lowe |
| Date of Decision: | 23 June 2023 |

