



LICENSING SUB-COMMITTEE

MEETING : Thursday, 29th October 2015

PRESENT : Cllrs. Randle, Lugg and Pullen

Officers

Richard Barnett, Licensing and Enforcement Officer

Darren Mountford, Senior Licensing and Markets Officer

Also in Attendance

APOLOGIES : Cllrs.

5. ELECTION OF CHAIR

Councillor Randle was appointed Chair for the meeting.

6. DECLARATIONS OF INTEREST

There were no declarations of interest.

7. INTRODUCTIONS AND PROCEDURES

The Chair invited those present to introduce themselves. The Chair outlined the procedure which would be followed during the meeting.

8. APPLICATION FOR THE REVIEW OF A PREMISES LICENCE UNDER SECTION 51 OF THE LICENSING ACT 2003 FOR COSTLESS, 82 EASTGATE STREET, GLOUCESTER, GL1 1QN

1. Presentation by Licensing and Enforcement Officer.

The Licensing and Enforcement Officer presented Members with a report which outlined an application from Gloucestershire County Council Trading

LICENSING SUB-COMMITTEE
29.10.15

Standards Service for the review of an existing premises licence held by Costless, 82 Eastgate Street, Gloucester, GL1 1QN.

The Licensing and Enforcement Officer summarised the key points in the report; the application received from Gloucestershire County Council Trading Standards Service; and two letters of representation which had been received from local businesses.

Questions of clarification to the Officer by the Applicant

There were no questions from the Applicant (Gloucestershire County Council Trading Standards Service).

Questions of clarification to the Officer by the Other Persons

There were no questions from the Other Persons (the Premises Licence Holder and his supporter).

Questions of Clarification to the Officer by Members

There were no questions from Members.

2. Presentation by Applicant (Gloucestershire County Council Trading Standards Service)

The Applicant addressed the Sub-Committee in support of the application. Members were advised that the actions of the Premises Licence Holder undermined the licensing objective relating to the prevention of crime and disorder. The Applicant stated that the Premises Licence Holder did not appear to be fully aware of the seriousness of the implications of the seizure of illegal tobacco and the test purchases made.

Members' attention was drawn to a correction on page 25 of the report relating to the number of tobacco pouches seized on 2 September 2015 which should have read 22 instead of 31, resulting in a correction to the liable amount of excise duty to £834.

The Applicant further advised Members that on the evening of 28 October 2015 there had been a multi agency exercise and that a Trading Standards colleague had visited Costless and observed the Premises Licence Holder raking gravel at the rear of the shop to reveal the storage of illegal tobacco. No test purchase had been made on this occasion, but it was clear from the behaviour of the Premises Licence Holder that he continued to act illegally despite advice and warnings from the Trading Standards Service.

The Applicant advised the Sub-Committee that the Guidance recommends that these matters are taken seriously and that this is an ongoing problem at this premises and that the Premises Licence Holder had not taken heed and was carrying on regardless.

Questions to the Applicant by the Other Person(s) or their Representative

LICENSING SUB-COMMITTEE
29.10.15

There were no questions from the Premises Licence Holder.

Questions to the Applicant by Members

Councillor Pullen queried the date that the information leaflet in Kurdish had been provided to the Premises Licence Holder. The Applicant circulated an English copy of the leaflet to the Sub-Committee and confirmed that the Premises Licence Holder would have received this information at an early stage as the Trading Standards Service had reason to believe that he needed this advice. The Premises Licence Holder, through his supporter, denied ever having receiving this leaflet and the Applicant showed a copy of it to him.

Councillor Lugg enquired whether any test purchases had been made for alcohol at the premises. The Applicant confirmed that no test purchases of alcohol had been made and explained that illegal alcohol was more difficult to identify as opposed to tobacco. The Applicant showed the Sub-Committee examples of the illegal tobacco seized from Costless on 2 September 2015.

The Chair referred to the fact that the Trading Standards Service was aware that the Premises Licence Holder needed advice on compliance with the law and asked why this was the case. The Applicant confirmed that the Premises Licence Holder had previously worked in a shop where the owner had been subsequently prosecuted for the sale of illegal tobacco although there had been no formal discussions on this matter with him.

The Chair asked if the Trading Standards Service was planning to prosecute the Premises Licence Holder. The Applicant explained that no decision had been taken at this point and that the Premises Licence Holder had not been formally interviewed.

The Chair sought clarification on the value of the illegal goods seized on 2 September 2015. The Applicant provided clarification on this point.

3. Other Person(s) Representation

The Other Person (Premises Licence Holder through his supporter) addressed the Sub-Committee regarding the application made by Gloucestershire County Council Trading Standards Service.

The supporter stated that the Premises Licence Holder was unaware of any advice regarding the sale of illegal tobacco and stated that the tobacco seized was for his own personal use. The supporter referred to animosity expressed towards the Premises Licence Holder by other retailers and stated that reference to the review application in the press had resulted in customers demanding to be sold illegal goods on the threat of reporting the Premises Licence Holder.

LICENSING SUB-COMMITTEE
29.10.15

Questions of clarification by the Licensing and Enforcement Officer on Other Person(s) case

There were no questions from the Licensing and Enforcement Officer.

Questions of clarification by the Applicant on Other Person(s) case

The Applicant asked the Premises Licence Holder through his supporter whether he understood that illegal tobacco had been seized on 2 September 2015. The supporter stated that the Premises Licence Holder did not know anything about it. The Applicant reminded the Premises Licence Holder that he had been present during the seizure and when further test purchases were made on 3 October 2015 and 22 October 2015.

The Applicant queried whether legal tobacco was sold in the shop. The supporter confirmed that this was available in a case behind the counter in accordance with the law.

The Applicant pointed out that illegal tobacco had been provided during the test purchases from a different location to that housing the legal tobacco.

The Applicant referred to the press interest in the licence review application and stated that this had not been instigated by the Trading Standards Service.

Questions of clarification by Members on Other Person(s) case

Councillor Pullen reminded those present that the Sub-Committee considered factual evidence and not press reports.

The Chair asked the Premises Licence Holder through his supporter if he was aware that a condition attached to the granting of the current Premises Licence necessitated the recording of CCTV footage during operational hours and asked why it had been switched off. The supporter replied that the CCTV was working satisfactorily. The Applicant clarified information in the report concerning the CCTV system and explained why there was evidence to show that someone had deliberately tampered with the equipment remotely. This evidence included an email address found on the system of an associate of the Premises Licence Holder who had been on the premises at the time of the seizure on 2 September 2015. The supporter replied that this was not possible and that the CCTV equipment was in a high place which was inaccessible.

Councillor Pullen asked the Premises Licence Holder through his supporter who could have tampered with the equipment. The supporter responded that no one apart from the Premises Licence Holder could have interfered with the CCTV and confirmed that the Premises Licence Holder had not tampered with it.

The Chair asked the Premises Licence Holder through his supporter if he admitted selling illegal cigarettes. The supporter said that the Premises

LICENSING SUB-COMMITTEE
29.10.15

Licence Holder did admit it and wanted to apologise. The Chair queried why, despite the warnings issued, the Premises Licence Holder had revealed illegal tobacco concealed under gravel to the rear of the shop on the night of 28 October 2015. The supporter responded that this was for the Premises Licence Holder's own personal use and that it had been hidden so that it was not seized.

The Chair reminded the Premises Licence Holder that Trading Standards Officers had been in his shop on four occasions and on three of these occurrences had been sold illegal tobacco. The Premises Licence Holder refuted this statement.

At this point the Applicant confirmed that he was satisfied that it was the Premises Licence Holder who had sold the illegal goods to Trading Standards colleagues. The Premises Licence Holder asked the Applicant through his supporter why Trading Standards had not returned to the shop after each of the occurrences. The Applicant replied that there was no obligation for the Trading Standards Service to come in to the shop after each occasion that a test purchase had been carried out. The Premises Licence Holder was then shown samples of the illegal tobacco seized from the shop which he denied ever seeing and said that they did not belong to him. The supporter suggested to the Applicant that Trading Standards Officers should use a digital pen to record their visits. The Applicant replied that covert surveillance could only be carried out following a RIPA request and that the evidence of a professional Trading Standards Officer in a notebook was sufficient and that recording was not warranted.

Councillor Pullen asked the Premises Licence Holder through his supporter the proportion of his daily takings which were attributed to the sale of alcohol. The supporter supplied a rough estimate.

4. Final Statements

Summing Up by the Licensing and Enforcement Officer

The Licensing and Enforcement Officer reminded Members that they were being asked to consider and determine the review application and take such steps as they considered appropriate for the promotion of the Licensing Objectives as detailed in paragraph 7.4 of the report.

Summing Up by the Other Person(s) or their representatives

The Premises Licence Holder through his supporter asked the Sub-Committee to give him another chance and allow him to keep his licence otherwise the business would fail. He pointed out that there were too many shops and Off Licences in Eastgate/Barton Street and that it was unfair that he was being singled out. He believed that the retailers who had complained about him were guilty of selling illegal tobacco and alcohol.

Applicant's final closing statement

LICENSING SUB-COMMITTEE
29.10.15

The Applicant reminded Members of the revised guidance issued under Section 182 of the Licensing Act 2003 (Chapter 11) and in particular paragraph 11.28 which stated:-

It is envisaged that licensing authorities, the Police and other law enforcement agencies which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used for further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

5. The Decision

The Chair and Members of the Sub-Committee withdrew from the meeting to consider their decision. On return to the room the Chair read out the decision off the Sub Committee which was:-

The Sub-Committee has considered the application made under Section 51 of the Licensing Act 2003 for a review of a premises licence made by Gloucestershire County Council Trading Standards Service, in respect of Costless, 82 Eastgate Street, Gloucester, GL1 1QN. Having had regard to the representations made by the interested parties, evidence from the applicant, the Home Secretary's guidance, the Council's own statement of licensing policy, and the legal implications as set out in the report, the Sub-Committee has determined to **revoke** the licence:-

Reason(s) for decision

1. The Premises Licence Holder is also the Designated Premises Supervisor and has been identified as the person selling the illegal tobacco.
2. The Premises Licence Holder and Designated Premises Supervisor has been given opportunities to prove himself. He received an information leaflet in Kurdish about the impact and consequences of selling illegal tobacco.
3. Illegal tobacco was seized on 2 September 2015. Two further test purchases were made on 3 October 2015 and 22 October 2015 following the seizure on 2 September 2015, demonstrating that the Premises Licence Holder and Designated Premises Supervisor has not taken heed of the implications of the seizure.
4. The Premises Licence Holder and Designated Premises Supervisor has not fulfilled his duties in relation to the conditions on the Premises Licence regarding CCTV.
5. The Sub-Committee has serious concerns about the health impact of selling illegal tobacco.

LICENSING SUB-COMMITTEE
29.10.15

6. There is a need to promote the licensing objectives and the licence must be revoked to prevent further criminal activity.

6. Rights of Appeal

The City Council's Solicitor advised the Premises Licence Holder of his rights of appeal.

Time of commencement: 6.15 pm hours

Time of conclusion: 7.45 pm hours

Chair