



LICENSING SUB-COMMITTEE

MEETING : Thursday, 1st April 2021

PRESENT : Cllrs. Finnegan, Hansdot and Walford

Officers

City Centre Improvement Officer (Licensing Lead)
City Centre Improvement Officer
Senior Lawyer, One Legal
Democratic & Electoral Services Officer

Also in Attendance

Barrister, Serjeants' Inn (Representing Gloucestershire Constabulary)
PC Hammond, Gloucestershire Constabulary
PC Tubb, Gloucestershire Constabulary
Licence Holder
Consultant, AKRA Licensing (Representing the Licence Holder)

APOLOGIES : None.

1. ELECTION OF CHAIR

Councillor Walford was elected Chair.

2. WELCOME AND INTRODUCTIONS

Those present introduced themselves and the Chair outlined the procedure to be followed for the meeting.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

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4. APPLICATION FOR DETERMINATION

Licensing Officer's Report

The City Centre Improvement Officer presented a report inviting members to consider an application from Gloucestershire Constabulary to review an existing Premises Licence in respect of Wellington Store, 24-26A Wellington Street, Gloucester, GL1 1RD.

Report of Gloucestershire Constabulary

Counsel representing Gloucestershire Constabulary presented a report detailing the application made by Gloucestershire Constabulary for a review of the Wellington Store's premises licence.

Counsel representing Gloucestershire Constabulary stated that the review hearing was being held under section 51 of the Licensing Act 2003.

She stated that the application to review the licence of the premise had been made on behalf of the Responsible Authority (the Chief Constable of Gloucestershire Constabulary). She stated that a revocation of the licence was being sought. She added that the review notice was served to the Designates Premises Supervisor ("DPS") on the 12th February 2021.

She said that the application for a review concerned the Wellington Store which was a corner shop in a residential area that sold alcohol.

She said that the current licence was issued on the 16th July 2014. She stated that the licence permitted the sale of alcohol everyday between the hours of 6am and 11am. She stated that a copy of the premises licence was contained in the agenda pack.

Counsel representing Gloucestershire Constabulary stated that the shop was one of the closest to Gloucester Park. She stated that due to the high levels of Anti-Social behavior within the area, when the licence was initially granted for the property, a restriction on the sale of high percentage alcoholic ciders and beers was placed on it.

She stated that the application for a review and revocation of the licence was made on the basis that two licensing objectives had been undermined. They were:

- 1) The Prevention of Crime and Disorder;
- 2) Protection of Children from Harm.

She stated that the grounds for the review were set out in the report pack and that it was alleged that:

- 1) There had been two occasions where a 16 year old purchased alcohol as part of a test purchase in 2017 and 2019;

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- 2) There had been a further incident where a vulnerable male (aged 17) had purchased alcohol in 2020. This came to attention to the Police as Social Services had contacted the Police to inform them of this;
- 3) There had been multiple breaches where alcohol above 7.4% had been sold to customers, which breached the condition of the licence;
- 4) On the 7th November 2020, PC Hammond carried out a licensing check, where the following recommendations on the licence had not been met;
 - a) There was no incident recording book;
 - b) There was no refusal recording book;
 - c) No Part B of the premises licence was on display;
 - d) There was no staff training log book;
- 5) There had been an allegation that stolen goods had been handled by the Licence Holder's husband in January 2021, details of which were outlined within the report.

She stated that in terms of the law, the application was being made under Section 51 of the Licensing Act 2003 and that the hearing was being heard under Section 52 of the Licensing Act 2003.

She stated that Counsel representing the Licence Holder would attempt to persuade the Sub-Committee that they should modify the terms of the licence and not revoke the licence.

She stated that Gloucestershire Constabulary after considering the proposal by the Licence Holder and their counsel to make modifications to the Licence, they had deemed their suggestions inappropriate and still believed that a full revocation of the licence was the only course of action. She stated that the breaches were numerous and spanned over a couple of years. She stated that the proposed conditions put forward by the Licence Holder were steps that the Licence Holder should have taken before it got the stage where it required a review.

Counsel representing Gloucestershire Constabulary pointed to paragraph 11.23 of the Home Office guidance, which accompanied the Licensing Act 2003, which stated that:

'However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence'

She stated that members were considering the difference between modifications of conditions and the revocation of the licence. She stated the regulatory compliance was not optional. She stated that there had been repeated opportunities granted to the Licence Holder and that the Licence Holder had failed to take them. The Counsel representing Gloucestershire Constabulary stated that if a licence holder could not satisfy the basic legal requirements, then they should not have a licence. She stated that the Licence Holder knew of the rules of the licence and repeatedly broke them.

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She pointed to paragraph 11.29 of the Home Office guidance which stated that where:

'persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances'.

She stated that those managing the property had not carried out their due diligence.

Counsel representing Gloucestershire Constabulary stated that the report made clear that there had been issues with the premises selling alcohol to underage persons since 2017. She stated that the proposals put forward by the Licence Holder came too late and the training put forth in the conditions proposed were basic. She stated that the training outlined as a proposal should have been taking place in any event.

She stated that the proposals put forth by the Licence Holder were not particularly robust and did not outline who would deliver the training. She said that it did not cover whether existing staff would have to undergo training. Nor did it deal with the Licence Holder that had failed to live up to the conditions of the Licence to implement sustained change. She stated that this was demonstrated by the fact that there had been multiple breaches of failing test purchases over the years, and the separate issue of continually selling alcohol above 7.4%.

She stated that in conclusion, due to the continued and serious nature of the breaches of the licence, that the only course of action would be a full revocation of the Licence. She stated that there could be no confidence that the Licence Holder would stick to the conditions proposed, given the lack of compliance, the number and serious nature of the breaches.

The Chair asked members if they needed clarification on any aspects of the report.

There were no questions regarding clarification of the report from members.

The Chair asked Counsel representing the Licence Holder and the Licence Holder whether they required clarification on the report.

Counsel representing the Licence Holder asked what evidence was there that the premises had sold alcohol to a vulnerable male aged 17 on the 14th August 2020.

Counsel representing Gloucestershire Constabulary stated that the Licence Holder's representative could not deny the veracity of the event and that it had been reported to the Police by Social Services, and that in any case, the shop should have had a Challenge 25 policy.

Counsel representing the Licence Holder sought clarification as to where it stated that there was a condition on the licence to have an incident recording book.

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The Police Officer stated that it was not a condition to have an incident recording book, it was a recommendation and something the Police had discussed with the owners of the store.

The Licence Holder's representative asked where it stated in the conditions that the store required Part B of the premises licence to be on display.

Counsel representing Gloucestershire Constabulary stated that even if the requirement to have an incident recording book was not a requirement as part of the licence, it was a fundamental expectation and that the Police Officer had contacted the premises holder about it on numerous occasions.

Counsel representing Gloucestershire Constabulary stated that the conditions outlined in the report made clear that the fact that there was no incident recording book was not a breach of conditions, it was a mistake on her part when she summarised the contents of the report orally. She stated that the underlying documentation outlined in the report had the correct language.

The Chair stated that he had made a note of the queries the Licence Holder's representative had made in regards to page 19 of the agenda pack and that he would seek clarification from the Council's Senior Lawyer regarding it when it came to deliberation later on.

Statement of the Licence Holder

Proposed additional conditions of the Licence by the Licence Holder and her counsel had been circulated to members, and relevant parties in advance of the meeting.

The representative of the Licence Holder stated that the store was a family business, and that the Licence Holder and her husband had been running the store for seven years. He stated that the shop owners had an excellent relationship with local people. He stated that the Licence Holder had been looking after the business and her husband was running the day to day operations and looking after the family at the same time.

Counsel representing the Licence Holder pointed to page 19 of the Agenda Pack. He stated that the grounds for the objections leading to the review were incorrect. He stated that the Licence Holder had been using the Challenge 25 Policy.

Counsel representing the Licence Holder stated that he believed that the report had been exaggerated to lead to a revocation. He stated that there had been two failed test purchases, one of which was in June 2017. He stated that this was a mistake on a staff members part, not the Licence Holder. He stated that the Licence Holder did have a staff training record. He stated that the staff member who sold alcohol to an underage person in June 2017 had been asked to leave and had done so.

The representative stated that it was important to look at each incident outlined in the report individually. He stated that the incident in June 2019 where alcohol was sold to an underage person was done so by a new member of staff and not the

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Licence Holder. He stated that the Licence Holder subsequently gave the staff member a warning and that the staff member in question left.

The representative stated that they had acted responsibly by giving the staff members who had sold alcohol to underage persons a warning letter.

The representative pointed to page 20 of the Agenda Pack, which stated that the store had been 'subject to several alcohol test purchases'. He stated that they had only failed two test purchases and passed all the others meaning that the term 'several' was an exaggeration.

He stated that the shop had passed numerous test purchases and had taken required action against the staff members who had sold alcohol to underage persons.

Regarding the sale of alcohol above 7.4% in contradiction of the conditions of the Licence, the representative of the Licence Holder stated that a couple of customers had specifically requested the alcohol above that percentage and that the husband of the Licence Holder had provided it. He stated that other premises in the area sold alcohol with a higher percentage of beer and cider. He stated that the husband of the Licence Holder should not have sold alcohol above 7.4% but there were other premises in the area that were allowed to sell alcohol at any percentage and that the husband of the Licence Holder only did so to a couple of responsible customers. He stated that it would not happen again. He stated that the Licence Holder was committed to check on a weekly basis that conditions of the licence were being met.

Regarding the allegation that the premises had sold alcohol to a vulnerable 17 year old, the representative of the Licence Holder stated that the husband of the Licence Holder knew that particular customer well. He stated that the Licence Holder denied the allegation that they had sold alcohol to the vulnerable 17 year old in question. The representative stated that the Licence Holder and the husband knew the family of the vulnerable 17 year old in question. The representative of the Licence Holder stated that the parents of the child in question knew that the parents frequently came into the store and bought chocolates and other goods for the child. He stated that the Licence Holder and the husband were convinced that they had not sold the alcohol to the vulnerable 17 year old on the 14th August 2020.

He stated that in contradiction of the report, the store did have a refusal book and that staff had been trained. He said that it was not perfect, but they did have a basic recording book. He stated that Part B of the Licence was always on display and was only not there during the site visit because there was refurbishment going on.

The representative stated that the Licence Holder and her husband had accepted that they had sold alcohol above 7.4%.

Regarding the allegation that the husband of the Licence Holder had purchased stolen goods, he stated that the husband only purchased the chocolate bars from the person who came into the store because he felt sorry for him, thought he was homeless and that he was wearing a mask so he was unaware of who it was. He stated that he was not justifying the purchase of the chocolate bars but the husband

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of the Licence Holder only did so because he felt sympathy with the person in the store and that the husband of the Licence Holder had no intention of selling the purchased stolen goods. He stated that the person came into the store and asked for food which was why he gave him £21 for the chocolate. He stated that the husband was unaware that the chocolate was stolen. He stated that the stolen goods were left in the back and not put out on the shelf.

He stated that he wanted the members of the Sub-Committee to show forgiveness. He said that the Licence Holder would now take a higher level of control to ensure that there were no more breaches of the licence going forward. He said that the husband of the Licence Holder was upset with the claims that vodka had been 'sold from under the counter'. He stated that the report made clear that this was 'not substantiated at the time' and thus should not have been included within the report. He stated that the husband of the Licence Holder denied the claim that they ever sold vodka from under the counter.

He stated that he invited the Chair and other members to provide the Licence Holder an opportunity to meet Licensing objectives. He stated that the Shop was a community business and no members of the public made a representation. He questioned why trading standards had not attempted to substantiate the claim that vodka had been sold under the counter. He stated that the husband of the Licence holder had been working every day to support the local community during the COVID-19 Pandemic.

The representative of the Licence Holder stated that they invited members and the Chair to give the shop an opportunity. He stated that the local community informed him that they wanted to support the business. He stated that the commitment to be compliant with the licensing objectives was evidenced by the fact that one of the conditions on the licence that they had proposed was not to sell single cans of cider or beer to help reduce anti-social behavior in the area. The representative stated that the Licence Holder wanted to invite members and officers to consider supporting the business and that they would understand more severe punishment if there was ever a breach in the future but promised that this would not happen.

The Chair asked why the husband of the Licence Holder gave the member of the public who had stolen chocolate money and not food if he believed that he was hungry and homeless.

Counsel representing the Licence Holder replied that he had put this question to the husband of the Licence Holder, and that his reply was that the member of the public who came to the store stated that he was hungry and asked for money, which was why he gave him the £21 but that he accepted that it may have been a better decision to provide food in that situation. The representative stated that the shop's sales report would show that they had not sold the stolen goods.

The Chair asked the representative of the Licence Holder whether the husband of the Licence Holder was aware that the chocolate was stolen.

The representative replied that the husband of the Licence Holder was unaware that the chocolate was stolen.

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The Chair stated that he would go through the police report again during deliberation.

The Chair pointed to two letters sent on the 28th June 2017 and the 23rd June 2019 respectively to the Licence Holder, where the relevant Police Licensing Officer had asked the Licence Holder to contact him if they needed any help with the Challenge 25 policy or adhering to conditions of the Licence. The Chair asked whether the Licence Holder or the husband of the Licence Holder had taken the opportunity to do so.

The representative contacted the husband of the Licence Holder to check whether he had contacted the Police after receiving letters from them.

The representative stated that the husband of the Licence Holder did not contact the Police for help, but they added conditions and introduced extra training to the staff. He stated that they had added a documentation system outlined in the proposed conditions circulated to members. He stated that the Licence Holder and her husband had always cooperated with law enforcement and had been open and honest.

The Chair stated there had been four incidents where alcohol above 7.4% had been sold in contradiction of the terms of the licence. The Chair asked who had purchased and sold alcohol above this percentage.

The representative of the Licence Holder responded that the Licence Holder was unaware that this was happening and that it was the husband of the Licence Holder who had purchased it. The representative stated that this would not happen again. Counsel representing the Licence Holder added that they had proposed a condition on the licence to not sell single cans of cider or beer to promote Licensing objectives.

The Chair noted that he was concerned that there were 6 incidents that had happened at the premises. He asked the Licence Holder and her representative how they could reassure members that further breaches would not occur.

The Licence Holder's representative replied that this was why they had proposed extra conditions to demonstrate that they were committed to promoting the Licensing objectives. He stated if a further breach occurred then they would understand a revocation. The representative stated that the Licence Holder would go into the shop on a weekly basis to ensure that all licensing objectives were being met.

Councillor Hansdot asked who was buying the strong cans of alcohol that were being sold.

The representative replied that the Licence Holder was relying on the husband not to buy the cans of high strength alcohol, but that he had for a couple of customers but would not do so anymore.

Councillor Hansdot asked the Licence Holder's representative what would happen to the store if the licence was revoked.

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The representative replied that it would have a large, and detrimental effect on the business.

Councillor Hansdot noted that the selling of high percentage cans of cider and beer exacerbated anti-social behavior in the area.

The representative of the Licence Holder replied that the Licence Holder and her husband were totally aware of the issue he had raised, which was why they would ensure that it would not happen again and why they had proposed a condition of not selling single cans of cider or beer.

Councillor Hansdot asked whether there was previously a condition that excluded the sale of single cans of beer or cider.

The representative of the Licence Holder stated that it was not a condition.

The Police Officer added that it was previously a recommendation, not a condition.

Councillor Finnegan asked whether staff members were asking for proof of age.

The Licence Holder's representative replied that staff members of the store were adhering to Challenge 25 Policy and that the two failed test purchases were made by members of staff, not the Licence Holder or the husband of the Licence Holder. He added that notices had been put up around the shop stating that they were operating a Challenge 25 policy.

Sum up by Gloucestershire Constabulary's Representative

The representative of Gloucestershire Constabulary stated that she wished to make three points to answer points made by the representative of the Licence Holder.

She stated that contrary to the representative of the Licence Holder's claim that there had been many successful test purchases since 2017, there had actually been three test purchases, two of which the store failed in and one of which where they had passed.

Counsel representing Gloucestershire Constabulary said that she wished to highlight that in relation to the handling of the stolen chocolate bars, the husband of the Licence Holder had made clear in the interview that he was aware that the individual he purchased chocolate from had previously come into the store with stolen goods. She added that the husband of the licence holder in the police interview also stated that he accepted that he 'did not believe that the chocolate bars belonged to him'.

She concluded by stating that it took three weeks for the premises to remove the high percentage alcoholic beverages, after being informed that this was in breach of their licence, evidencing their unwillingness to meet Licensing objectives.

Officer Sum Up

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The City Centre Improvement Officer outlined the options available to the Sub-Committee detailed in the report.

Licence Holder Sum up

The representative of the Licence Holder stated that he had pointed out the review had been made on incorrect information. He stated that the husband of the Licensing holder had been honest about the handling of the stolen chocolate. He stated that if the representative of the Licence Holder wished to sell the chocolate, he would have put it on display. The representative noted that the licence owner and her husband were aware that it was a serious matter, but that it was a genuine mistake.

The representative noted that he invited the Chair and members of the Sub-Committee to look at the proposed conditions that had been circulated to members prior to the meeting and how strong they were.

The Chair noted that members would look at all written and oral submissions carefully before making a decision.

The Decision

The Sub-Committee having considered the request of a review of the premises licence of the Wellington Store, 24-26A Wellington Street, Gloucester, GL1 1RD under section 51 of the Licensing Act 2003, after having undertaken a hearing and considered all of the relevant representations from the advocate on behalf of the licence holder and Gloucestershire Constabulary, has resolved: -

(g) To revoke the licence.

The Sub-Committee say that revocation is the appropriate outcome in this case because of the following: -

1. On the basis of the continued breaches and the serious nature of the breaches, both individually and collectively, the sub-committee accept the view of the Police that there can be no confidence that the Licence Holder would comply with any conditions added to the licence given the lack of compliance described in the witness statements of the police officers;
2. The conditions put forward at the eleventh hour add very little to that which the DPS is subject to in any event;
3. The home office guidance states that where premises are found to be trading irresponsibly, the licensing authority should not hesitate to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence;

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4. Regulatory compliance is not optional – the licence holder has blatantly breached her licence conditions on a number of occasions even after persistent warnings;
5. It is a privilege to sell alcohol and the licence holder has been unable to satisfy the basic and minimum requirements expected of her. Conditions are there for a reason and the licence holder has flouted them on numerous occasions;
6. There has been a lack of willingness and keenness for compliance even when it has been brought to the licence holder's attention;
7. There are fundamental expectations of how a well-run premises should be run and the licence holder has not met these;
8. Two of the licensing objectives, prevention of crime and disorder and protection of children from harm, have been undermined;
9. Admissions were made in interview in relation to the criminal offence;
10. The licence holder did not once, following the warnings, contact the police for help or advice even though it was offered to her twice in two different letters;
11. The licence holder has not operated due diligence or followed a proper policy;
12. Issues with the premises go back as far as 2017 – there has not been an adequate system in place even after all of the warnings that the licence holder has been given;
13. Removing the DPS would not solve the problems at the premises and neither would suspending to allow time to comply;
14. Taking everything in to account the sub-committee deem it is necessary and proportionate to revoke the licence as they have no confidence that the licence holder would comply given the numerous opportunities she has had to remedy the issues at the premises over the last 4 years.

Right of appeal

All parties are reminded that there is a right of appeal to the local Magistrates' Court within 21 days of formal notification of this decision.

Time of commencement: 6.00 pm hours

Time of conclusion: 7.50 pm hours

Chair