

LICENSING SUB-COMMITTEE
26th February, 2019

Present:- Councillor Beaumont (in the Chair); Councillors Clark and Taylor.

6. LICENSING ACT 2003 - REVIEW OF A PREMISES LICENCE - TODAY'S LOCAL, 6 UPPER MILLGATE, ROTHERHAM

Consideration was given to an application for the review of a premises licence in accordance with the provisions of Section 51 of the Licensing Act 2003, in respect of the premises known as Today's Local, 6 Upper Millgate, Rotherham.

The Licensing Authority received representations made by the Borough Council's Licensing Enforcement Unit (as a responsible authority), which had not been withdrawn, and the Sub-Committee considered those representations.

The Sub-Committee heard the representations from Mr. C. Burnett (Licensing Enforcement Officer, and from Mrs. A. Forrest (Solicitor), the Area Manager and the Premises Licence Holder.

The Licensing Authority had received representations from local businesses which were not withdrawn. Mr. M. Ridsdale (local business owner) attended the hearing and presented his concerns.

The Sub-Committee heard the representations from Mr. C. Burnett (Licensing Enforcement Officer), on behalf of the Borough Council. The subject premise was a small sized off-licence situated on the pedestrianised precinct within Rotherham Town Centre. The premises licence permitted the sale by retail of alcohol, from 0600 hours to 2300 hours daily, for consumption off the premises.

Members were informed of the details of the specific concerns in respect of the management of these premises:-

(i) Over the past 12 months there had been a steady increase in alcohol related disorder and nuisance;

(ii) The premises were initially visited on 19th April, 2017, by Mr. C. Burnett (Licensing Enforcement Officer) following a number of complaints in relation to nuisance and under age sales. The visit had revealed a number of breaches of the premises licence (set out in Annex 1 and 2);

(iii) A subsequent visit to the premises where it was found that some but not all of the breaches had been addressed;

(iv) Agreement was reached with the premises licence holder that a variation would follow to address conditions on the licence which would improve the general operating methods and also remove conditions which were either unhelpful or unenforceable. However, the application to vary the licence was never made;

(v) Further issues in respect of the premises were highlighted by the Police and the Environmental Health Team in March 2018. The issues continued to be around disorderly conduct fuelled by alcohol being served to persons in drink and known street drinkers;

(vi) A meeting was held on 12th June 2018 between the Local Authority, the Local Policing Team, the premises licence holder, the DPS, the general manager and the legal adviser for the premises. An action plan was agreed with a number of variations to the existing premises licence offered and voluntarily included within the action plan with a view to the conditions being applied by way of variation at Annex 2 of the premises licence during or following the 3 months action plan;

(vii) Following the action plan, however, incidents had continued to take place at the premises including disorder and a clear lack of willingness to assist the Police and ensure public safety was preserved. Numerous Police requests for CCTV footage in respect of incidents at the premises had been ignored by the management and continued lack of willing to provide evidence to address crime and disorder. There was evidence of staff serving to persons in drink and CCTV footage of staff serving to customers whilst fights were taking place within the premises;

(viii) The premises were visited by Police and Council Enforcement staff on 20th July, 2018 which had revealed continued breaches of the premises licence including a failure to implement and maintain an incident log and refusal register, staff training records unsigned and spirits on display on the shelves and not behind the counter. The fire exit was once again partially blocked with cases of alcohol;

(ix) Despite continued efforts by the Police and the Local Authority to work with the premises and a voluntary action plan, the premises appeared unwilling or unable to ensure the 4 licensing objectives were being properly promoted.

During the hearing various CCTV footage was viewed by everyone present illustrating some of the concerns highlighted above.

The Premises Licence Holder's legal representative replied to the issues raised and presented the Premise Licence Holder evidence as follows:-

(a) The alleged purchase of alcohol from Today's Local seen in blue carrier bags – Today's Local had red and white carrier bags;

(b) There was anti-social behaviour in Rotherham and clearly within the Town Centre but was this not an issue for the Police and not necessarily a matter for the premises?

(c) The main concern raised was that of street drinkers with the assumption that they were purchasing their alcohol from Today's Local;

(d) Witness statements had been submitted by other local businesses but they had not made their own representations. The review had been advertised but only one member of the public had felt it necessary to submit a representation. Some of the statements included within the documentation had been used for the purpose of seeking Criminal Behaviour Orders in Court a number of which related to incidents not linked to licensing e.g. fighting outside of the premises. There was also no evidence of independent complaints either as a result of the Criminal Behaviour Orders or incorporated into the review. There was no substantive evidence of complaints prior to the application to review;

(e) The current conditions attached to the licence were poor and not enforceable;

(f) It was intended that a new employee, who was a qualified door supervisor, and had been trained in dealing with conflict situations as well as Licensing objectives, would be registered as the new Designated Premises Supervisor once he had secured his Personal Licence. Attention was drawn to Section 11.21 of the Statutory Guidance i.e. that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly related to poor management decision made by this individual;

(g) Some of the staff named within the document bundle no longer worked at the premises. The staff structure had been revised and all staff had now been trained to Level 2. A new training manual was under development that would contain a refusals register, age restricted sales, accident report etc.;

(h) Unless there was evidence of the fighting in the shop being as a result of the sale of alcohol from the shop they could not be linked to the premises and made a premises problem;

(i) Statutory Guidance made it clear that there was Legislation to deal with anti-social behaviour and not Licensing;

(j) It was not the staff's responsibility to break up fights within the premises. The staff, as well as members of the public, felt intimidated by the street drinkers;

(k) The benches outside the premises were a focal point but it did not mean that the alcohol being consumed had been purchased from there;

(l) There had been minor breaches of the Licensing conditions in the past which had not had a direct impact on the public. These had now been rectified;

(m) Over the last few years there had been an increase in street drinkers in the Town Centre; the Premises Licence Holder did not want to add to those problems and just run a business in town like any other;

(n) Challenge 25 Policy was in operation at the premises. There was no suggestion or evidence that children had come to any harm or of any age restricted sales of cigarettes/alcohol or test purchases;

(o) No evidence that the shop serving alcohol was causing the problem of street drinkers; it just happened to be the nearest shop;

(p) Within the statements it mentioned “product” but did not stipulate what product it was or the ABV. Another shop close by to Today’s Local sold Karpackie which Today’s Local had not sold for the last 4 months. It no longer sold alcohol with a 9% ABV rating;

(q) If the Police believed that there was strong evidence that the premises were facilitating street drinkers why had the Police not submitted a Review application themselves or make representations?

(r) Revised conditions had been drawn up with Licensing which included training and the downloading of CCTV footage;

(s) A member of the Fire Service had attended the premises that morning to advise with regard to the fire exit;

(t) Attention drawn to Section 11.20 of the Statutory Guidance i.e. the remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

(u) Attention drawn to Section 11.27 of the Statutory Guidance which referred to the use of the licensed premises. These were issues that the review should look at in the first instance of revocation of a licence, however, what had been heard with regard to Today’s Local was anti-social behaviour which was not included within those categories listed;

(v) It was felt that revocation should not be considered and instead consideration given to the remedial action that had taken place together with the revised enforceable conditions to ensure the licence could be upheld;

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The Sub-Committee considered the application for this review of the premises licence and the representations made specifically in the light of the following Licensing objectives (as defined in the 2003 Act):-

- The prevention of crime and disorder;
- Public safety;
- Public nuisance;
- The protection of children from harm.

Resolved:- That, after due consideration of the application for review and to the representations submitted, the premises licence for the premises known as Today's Local, 6 Upper Millgate, Rotherham, be revoked with immediate effect.