

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2 - County Hall, Durham on **Tuesday 2 July 2019 at 10.00 am**

Present:

Councillor D Bell (Chair)

Members of the Committee:

Councillors L Brown, L Kennedy and M Wilson

1 Apologies

Apologies for absence were received from Councillor P Crathorne.

2 Substitute Members

There were no substitute Members in attendance.

3 Declarations of Interest

There were no declarations of interest.

4 Application for the Review of a Premises Licence - Costcutter, Units 2-3 Old Co-op Building, Front Street, Burnopfield

The Committee considered a report of the Corporate Director of Regeneration and Local Services, to consider and determine the application by Durham County Council Local Weights and Measures Authority to review the premises licence in respect of Costcutter, Units 2-3 Old Co-op Buildings, Front Street, Burnopfield.

A copy of the application and supporting information had been circulated to all parties prior to the meeting, together with additional late information from Mr Foster, who was representing the Premises Licence Holder.

The Senior Licensing Officer presented the report and explained that there had been a delay to the consultation period as the public notice had not been correctly displayed. Furthermore, the Licensing Authority had agreed to an adjournment of the original sub-committee hearing scheduled on 4 June 2019 as it had been made apparent during proceedings that the PLH and his

son shared the same name and address, and all parties had been addressing the PLH, but liaising with his son.

Councillor Kennedy asked for clarification with regards to the off-site Designated Premises Supervisor (DPS) and whether this should have been challenged due to the length of time they had held an off-site role. The Senior Licensing Officer confirmed that there was no means to challenge or remove a person and no action would be taken unless the licensing authority was notified of a change. It was noted that no offence had been committed and despite the fact that the DPS did not have day to day management of the premises she was still satisfactory according to the Licensing Act.

On behalf of the Local Weights and Measures Authority, the Team Leader, Trading Standards and Business Complaints, confirmed that intelligence had been received by Durham Constabulary, alleging that the premises was potentially selling alcohol to young people under the age of eighteen. As a result, two test purchases were carried out on separate occasions in December 2018 and both sales were made by the same individual who could be identified as Mr James Millican.

Following the second test purchase the Senior Trading Standards Officer and PCSO Williamson visited the premises and following an admission from Mr Millican, who confirmed that he was the PLH and a fixed penalty notice was issued. During this visit, it was confirmed that Mr Millican could not produce a sales refusal register and he did not understand the forms of identification that could be requested.

It had become apparent that Mr Millican was not the PLH during the previous hearing and that in fact, his father with the same name held the licence. Even though it had been confirmed that the PLH had not failed the test purchases, Mr Millican was heavily relied upon to run the business and the Trading Standards Team Leader remained of the opinion that a review of the licence was necessary.

The Trading Standards Team Leader confirmed that during a more recent visit to the premises, a number of changes had been made. Mr Millican had been able to demonstrate age verification measures following the training that himself and another two members of staff had received from Mr Robson. She had also been advised that Mr Millican had reduced his workload from 100 hours per week and this had been a significant factor in the failed test purchases.

Finally, the Trading Standards Team Leader confirmed that she had been unaware until earlier that morning, that the Designated Premises Supervisor had now been transferred to Ms Laidlaw, however the reasons for the review remained and it was still necessary to ask for revocation. She acknowledged

that she was aware of the intention for DPS to be taken over by Ms Laidlaw, however despite the additional conditions suggested by Mr Foster, it was her opinion that the original conditions were and should have been robust enough to ensure no unlawful sales took place on the premises.

Councillor Brown queried whether there was a procedure for when a licence holder would be notified of a failed test purchase and the Trading Standards Team Leader confirmed that it was at the discretion of the Licensing Authority and was determined on a number of factors such as whether it was likely to be a one-off, or whether to determine whether there were multiple staff who were failing to challenge for age verification. In relation to the fixed penalty notices, they were issued by Police, but in conjunction with the Licensing Authority. Councillor Kennedy queried why only one FPN had been issued when there had been 2 failed test purchases and the Trading Standards Team Leader confirmed that only one could be issued both sales were made by one person.

Mr Foster asked whether Mr Millican had been able to describe the Pass ID on the subsequent visit on 30 May 2019 and the Trading Standards Team Leader confirmed that he did have a much clearer understanding of the age verification procedure, however she reiterated that previously he had been unable to answer questions sufficiently.

In response to a question from Mr Foster, the Trading Standards Team Leader confirmed that Mr Millican had offered an explanation for the failure to answer questions sufficiently, in that he had been playing football and fatigued. She noted that the visit had taken place in the morning and considering the hours worked by Mr Millican, she was further concerned of how he would be operating towards the end of the evening.

With regards to Mr Millican's inability to demonstrate a refusals register, Mr Foster asked whether it had been received the following day by the Senior Trading Standards Officer. The Trading Standards Team Leader confirmed that she was unaware that it had been provided the following day but she had not received the email.

Mr Foster asked what was standard practice in notifying a PLH of a failed a test purchase. The Trading Standards Team Leader confirmed that the policy was flexible and on further questioning she agreed that in certain cases it would be of benefit to inform a PLH immediately, but consideration had to be given to the circumstances and at the time and it was not deemed appropriate.

PCSO M Williamson addressed the sub-Committee and confirmed that Durham Constabulary were in full support of the application for revocation and explained that the test purchases had taken place as a result of a large

operation in the Stanley area which had been undertaken as a result of concerns regarding anti-social behaviour. Intelligence had been received from the Burnopfield area and test purchases were carried out in accordance with the policy.

With regards to whether it would have been beneficial to inform the licence holder of the test purchase failure straight away, she confirmed to Mr Foster that multiple tests in thirteen premises had been undertaken and the same rules were applied to all premises to identify whether the regularity and number of staff who were involved. She confirmed that all premises were tested over a period of 2-3 weeks and although she could not confirm the exact number, a high proportion of the test purchases had failed.

Mr Foster then asked if it would have been appropriate to inform the licence holder on the night of the second test purchase fail and she responded that it was not possible as there were a number of test purchases to be undertaken at different premises on the same night and she confirmed that she attended to inform the licence holder of the failed test purchases on the soonest available date thereafter.

In response to a question from the Solicitor, PCSO Williamson confirmed that intelligence had been received from concerned residents and parents to allege that alcohol was being sold to children from these premises.

In response to a query from Councillor Brown regarding whether the operation was publicised, PCSO Williamson advised that an event was held in Stanley bus station following a fireworks display.

PCSO Williamson confirmed in response to the Solicitor, that she was unaware of whether it was Durham Constabulary's intent to object to the DPS application.

The Licensing Enforcement Officer confirmed that she had carried out a full premises inspection in March and had observed a number of breaches which undermined the licensing objectives. At the time of the inspection there was no working CCTV, no displayed opening hours, no register with regards to the protection of children from harm, no incident log and no first aid facility. The outcome had been reported in writing following the visit and the premises had been given 14 days to rectify the breaches.

The Licensing Enforcement Officer confirmed that follow up visit had taken place and she commented on the premises having benefited from the installation of a new CCTV system, however she noted that the last entry in the refusals register was July 2016. Overall, during this visit, she was satisfied that the premises was operating in accordance with the conditions of the licence.

Mr Foster was invited to address the sub-Committee and confirmed that most of the business was undertaken by Mr Millican with his father carrying out trips to the cash and carry. The proposed change of DPS had been made clear from the outset, however it took a number of weeks for the necessary checks to be carried out and that is the reason for the sudden change.

Mr Foster described the premises as a medium sized convenience store which stocked a wide range of products. It was well kept and opened relatively long hours, from 8.30am-10.00pm and the services it provided included a Post Office, newsagents, lotto and alcohol. He advised that that the shop did not stock cheap alcohol and the products were tailored to the clientele which was predominantly older. The premises employed three staff and had been occupied by Mr Millican and his father since 2016. The DPS who resided in Morpeth had agreed provide off-site support but it was acknowledged that the store was essentially ran by Mr Millican whilst his father acted as a carer.

Mr Foster confirmed that Mr Millican had been working over 100 hours per week until he employed Ms Laidlaw on a contract which was initially only 20 hours. He subsequently employed a third member of staff which had enabled him to reduce his hours to 50-60 per week. It was confirmed that Ms Laidlaw intended to increase her hours to 30-40 hours per week.

The failings which had been described by the Licensing Enforcement Officer could all be equated to the number of working hours that Mr Millican was working at the time, which had made him ill and unable to carry out his role to the best of his ability. He had finally recognised the need for change and employed more staff to reduce his hours. In addition, the test purchases were carried out during an extremely busy Christmas period when the other nearest post office had closed and amounted in an increased workload.

On addressing the confusion with regards to the PLH, Mr Foster advised that the intention was for Mr Millican to be the PLH at the time of the application, however his father had filled out the forms and used his own date of birth. As they had the same surname and forename, there was nothing to determine that a mistake had been made when the Premises Licence had been received as it just contained the Licence Holder's name. Mr Millican's father had agreed to remain as the DPS.

Mr Foster confirmed that the impact of losing the licence could affect the viability of the business and there was a risk it would fail. Mr Millican admitted that the DPS should have been changed sooner. Ms Laidlaw intended to remain working in the business as the DPS, which had been attained in recognition of her service and ability.

Mr Robson, Licensing Consultant, gave a visual description of the premises and described it as stocking a low amount of alcohol. He had attended on a busy day and noted that he was unable to have an uninterrupted conversation with Mr Millican due to the number of customers, none of which were observed as being in the challenge 25 bracket. He would normally recommend that there were two members of staff, one acting as postmaster and the other serving customers as he was of the opinion that the requirements of the mail was complex.

On his second visit in May, Mr Robson delivered detailed, accredited training to all three members of staff and went through all of the age verification procedures. He confirmed that all staff were more than capable of carrying out their role to a high standard and Mr Millican was able to answer difficult questions relating to the licensing objectives. He confirmed that the course he had delivered would allow for a DPS or personal licence.

In his professional opinion, Mr Robson felt that the reason for Mr Millican's shortcomings were as a result of being overworked and stressed. Whilst delivering the training he ensured that there were improvements to the way in which information was recorded and described a register which was filled in every time a customer was challenged and passed age verification checks in addition to a refusals register. This could be provided should the refusals register not contain a lot of information, which could be the case in a store with predominantly older clientele.

Mr Foster referred to the late submission as he was proposing a condition for 12 months, or longer if Members saw fit, to ensure that the licensing authority, police and trading standards were notified of the results of all test purchases carried out by a company which carried out test purchases on behalf of retailers. The papers submitted confirmed that one test purchase had been passed by Mr Millican in May.

In response to a question from Councillor Brown, Mr Millican confirmed that the family reopened the business in 2016 and were provided with basic training from Mrs Bahl.

Councillor Wilson queried whether Mr Millican would have been prompted for age verification by the software on the till in December and he admitted that he must have ignored it.

Councillor Kennedy asked why Mr Millican didn't employ seasonal staff to cover the Christmas period and he responded that initially Ms Laidlaw was only employed for 5 hours to assist in order for him to have time out to play football once per week.

Councillor Brown asked Ms Laidlaw how she would feel about challenging Mr Millican as her employer, should she have an issue and she confirmed that they had a good working relationship and she would be comfortable challenging him in her role as DPS. Mr Millican's father would remain as PLH but his role would be limited and Ms Laidlaw would have the main responsibility.

PCSO Williamson commented that her concerns remained and queried why Mr Millican was not more alert to 15 and 16 year old children entered to buy alcohol, when it was alleged that the clientele was predominantly older people.

In response to questions from the Solicitor, Mr Foster confirmed that both employees had successfully applied for a personal licence however Mr Millican had not yet been successful due to a delay in progressing his application.

The Solicitor asked if anybody had been refused sale since the last test purchase and Mr Millican confirmed that there had been a challenge on Saturday where ID had been provided and Mr Foster also reminded the Sub-Committee of the test purchase from the external company, of which information had been provided. The Solicitor asked for reassurance that if Licensing Enforcement visited to carry out an inspection, a refusals register would be provided. Mr Foster confirmed that in addition to an up to date refusals register, a challenge register as described by Mr Robson would also be provided.

The Solicitor and queried whether due to his lack of involvement in the business, it would make more sense for Mr Millican to apply to take up the role as PLH and Mr Foster confirmed that in future he would potentially advise his clients to do this, however due to the crisis in the confidence of Mr Millican, they had agreed that the Premises Licence would remain with Mr Millican's father.

In response to a question from Councillor Wilson, Mr Millican confirmed that he believed he was to use Challenge 25 until he was familiar with a customer and knew that they had already verified their age. Councillor Wilson advised that Challenge 25 should be used no matter how often a customers age had been verified and that regardless of Mr Millican's confidence, he should not risk further errors.

Councillor Brown agreed that Mr Millican needed to challenge on every sale, regardless of whether he had verified a customers age prior.

Mr Foster summed up to confirm that at the time of the application, Trading Standards were correct to seek revocation, but there had been significant changes since and he proposed an additional condition;

- The Premises Licence Holder will instruct a provider offering a similar service, to carry out 'test purchases' at the premises, The purpose of these test purchases will be to check that the premises are adhering to the challenge 25 policy.
All results from the test purchases carried out in accordance with this condition will be shared with the licensing authority, trading standards and durham Constabulary. This will operate for a period of 12 months from the date of the contract.

Mr Foster also confirmed that all staff had now been trained to the highest level and applied to hold a Personal Licence and any new staff would be required to do the same. It was a vastly improved premises to what it was.

Resolved:

That the Sub-Committee impose conditions on the licence which shall be attached to Annex 3 of the premises licence:

CCTV

1. A digital closed-circuit television system (CCTV) will be installed and maintained in good working order and be correctly time and date stamped.
2. The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed.
3. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
4. Cameras will encompass all ingress and egress to the premises, outside areas and all areas where the sale/supply of alcohol occurs.
5. The system will record and retain CCTV footage for a minimum of 28 days.
6. The system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer or laptop.
7. The Digital recorder will be password protected to prevent unauthorised access, tampering, or deletion of images.

8. There will be at all times, when the premises is open, a member of staff on duty with access to the CCTV system who is trained in the use of and is able to operate the equipment.
9. CCTV footage must be made available to be viewed by the Police, Licensing Officers or other Responsible Authorities on request during an inspection or visit to the Premises.

INCIDENT BOOK

10. An incident book must be kept at the Premises and maintained up to date (no later than 24 hours after the incident) at all times.
11. The incident book must be made available to Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

REFUSALS REGISTER

12. A refusals register must be kept at the Premises and maintained up to date at all times recording the date time, type of product refused, reasons for every refusal to sell alcohol to a customer and the name and signature of member of staff refusing the sale. There will also be a record of challenges made, which didn't result in refusals.
13. The refusals record must be made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.
14. The Premises Licence Holder/Designated Premises Supervisor must monitor the refusals register on a monthly basis and must sign and date the register to confirm when this has been completed.

TRAINING

15. All members of staff, involved in the sale of alcohol, shall hold a personal licence. Any new members of staff, involved in the sale of alcohol, shall be given immediate induction training and submit to the personal licence application process within 28 days of the commencement of their employment. Upon request, evidence of such shall be provided to the licensing authority.
16. Training in relation to Challenge 25, under age sales, sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals registers, incident records and all other conditions on the Premises Licence must be provided and undertaken by all members of staff (whether paid or unpaid) before he/she makes a sale or supply of alcohol and at least every six months thereafter.

17. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training. The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor/Premises Licence Holder or external training providers.
18. Documented training records must be kept at the Premises and made available to the Police, Licensing Officers and all other Responsible Authorities on request or during an inspection.

CHALLENGE 25

19. Staff must require ID in the form of a current ten-year passport, photo card driving licence or PASS Hologram identity card from any customer who appears to be under the age of 25 and verify the customer is over the age of 18 before any sale or supply of alcohol is made.
20. There shall be notices at the point of sale and at the entrances and exits informing customers and reminding staff that the premises is operating a proof of age scheme which includes a "Challenge 25" policy.
21. The Premises Licence Holder will instruct 'Serve Legal', or a provider offering a similar service, to carry out test purchases at the premises. The purpose of these test purchases will be to check that the premises are adhering to the Challenge 25 policy.

All results for the test purchases carried out in accordance with this condition will be shared with the licensing authority, Consumer Protection and Durham Constabulary. This will operate for a period of twelve months from the date of the contract.