

Licensing Panel

Wednesday, 15 July 2020

10.00 am

Present:

Councillor Steve Thompson (Chair)

Councillors: Helen Ashenden
Baljit Hayre

Emily Lane-Blackwell	Senior Licensing Officer
Kyle Rogers	Legal Advisor
PC Chris Hill	North Kent Licensing Police Officer
PC Clare Cossar	North Kent Licensing Police Officer - Applicant
Kandiah Thayatharan	Owner and Designated Premises Supervisor
Gill Sherratt	Licensing Matters (representing the owner)
Sarah Clover	Barrister (representing the owner)
Iris Smith	Chair of G-Safe and public representative
Lauren Wallis	Committee Services Officer (Minutes)

1. Apologies for absence

No apologies for absence were received.

2. To declare any interest Members may have in the applications being considered. When declaring an interest a Member must state what their interest is.

No declarations of interest were made.

3. Determination of an application for a review of a Premises licence granted under the Licensing Act 2003. GM/PRE/10/0003 for 29 Milton Road, Gravesend, Kent DA12 2 RF

The Licensing Panel met to determine an application for a review of the Premises Licence granted under the Licensing Act 2003 in respect of the premises known as Londis, 29 Milton Road, Gravesend, Kent DA12 2RF.

The Chair welcomed everyone to the first virtual meeting of the Panel and went through the process he intended to follow during the Panel. He further explained that once everyone had made their submissions and all questions had been answered, then the hearing would close to all parties but the Panel and the Council's Legal Advisor, for the Panel to consider their decision. The decision would then be published within 5 working days.

The Senior Licensing Officer gave a brief overview of the current Premises Licence and background information in relation to the Londis convenience store.

On 9 June 2020 an application for a review of the licence under section 51 of the 2003 Act had been received from the Police. The application related to all four licensing objectives by continuing to serve street drinkers and person who cause anti-social behaviour through the day and night in and around the area. The premises was also found to have been in continued breach of the premises licence.

At this point, the Chair mentioned the new information that had been emailed by the applicant's representatives the previous night and the Police that morning. The Council's Legal Advisor advised that the receipt of these documents amounted to submission on the day of the meeting and was a matter for all parties to agree acceptance for consideration. The Chair sought and obtained the agreement of all those in attendance.

Chris Hill, the Police representative addressed the Panel and the main points were as follows:

- The quantity of high strength beer, lager and cider available in the store.
- The Refusals Register which had not been used since April 2018.
- The storage of a quantity of beers and ciders on the floor of the shop which was a breach of a licensing condition namely that all alcohol was to be displayed on suitable shelving as indicated on the plan and not on the floor.
- A breach of the licensing condition which states that at all times the Designated Premises Supervisor or a personal licence holder must be present to authorise the sale/supply of alcohol. The female shop assistant, who at the time did not hold a Personal Licence, had stated that the DPS had only been away from the shop for 30 minutes or so but was due back soon. The PC who was present at the store then witnessed the shop assistant selling alcohol which had not been authorised by the DPS or a personal licence holder.
- The sale of high strength alcohol to known street drinkers who then went on to exhibit anti-social behaviour and cause littering. A compliance check was undertaken and CCTV footage was assessed which confirmed that the Designated Premises Supervisor was breaching three conditions as follows:
 - All staff working on the premises will be fully trained to ensure they understand and adhere to the law relating to the sale/supply of alcohol. This training is to be documented and recorded.
 - At all times the Designated Premises Supervisor or a personal licence holder must be present to authorise the sale/supply of alcohol.
 - A refusal/incident book is to be maintained at all times and made available for inspection when required. All incidents relating to criminal matters must be reported to the Police.
- The Panel was apprised of the information contained in the supplementary agenda which gave details of police visits to the premises, the outcome of these visits and the Police Officers' description of the street drinking in the locality of the shop.

The Panel was advised that new evidence could not be raised during the consideration of the application without the prior agreement of those present and therefore the Chair asked Members to disregard the new information contained in the Police submission.

Those present had their questions answered by PC Chris Hill.

Mrs Iris Smith, a representative of G-Safe, a local resident and business owner addressed the Panel and the main points were as follows:

- The speaker was the Chair of the Board for G-Safe which was an organisation working in partnership with local businesses towards the reduction of crime in the area. She was also the owner of a public house in Milton Road.
- The issues caused by the sale of alcohol by the Londis store on the local area was highlighted including the impact on residents and visitors which had been witnessed many times by the speaker and had included begging, disruptive behaviour, using the area as a public convenience and the littering of cans and bottles.
- Young people had been noted going into the store and coming out with alcohol sometimes possibly without paying given the speed of exit.
- The issues had been brought to the attention of the Police of the Council.
- Mrs Smith stated that she had a direct view of the Londis store from the front of her business premises and walked her dog to the park and around the local area at least twice a day.

Those present had their questions answered by Mrs Smith.

Mrs Sarah Clover, the representative of the owner of the premises addressed the Panel and the main points were as follows:

- Mr Thayatharan had operated the premises for ten years, had bought the shop six years ago, had successfully transferred the Premises Licence into his name in 2016 and became the Designated Premises Supervisor (DPS) in 2017.
- It was noted that although the Police application had been completed by PC Clare Cossar, it had been presented by PC Chris Hill. There had also been no opportunity to question PC Hunt and PC McAllen who had contributed to the Police report.
- The Police had professed no faith in the management of the store. However, the Police report covered the period from 28 April to 28 June 2020. Therefore, these issues had arisen during the Covid-19 emergency.
- The speaker referred to a letter from Kit Malthouse - Minister of State for Crime, Policing and the Fire Service and Minister of State for Justice which stated that "A considered and pragmatic approach should be taken to breaches of licence conditions and procedural defects caused by the COVID-19 pandemic, particularly where these breaches or defects do not have a significant adverse impact on the licensing objectives."
- It was highlighted that there had been no previous reviews in relation to this premises, no letters of warning had been received by the DPS from the Police, no test purchases had been made and Trading Standards had not been involved.
- It was also highlighted that no representations had been received from members of the public which was unusual as this was considered to be a hallmark of a problem premises.
- It was noted that there was no legal requirement for the DPS to be present at the premises at all times. The shop employed two men and one woman. One of the men held a personal licence and was therefore permitted to grant permission for the sales of alcohol in the absence of the DPS. The licence holder had self-isolated during lockdown as his wife was considered vulnerable and therefore in the Shielded category and he had not been able to come to work. Therefore, during this period, the DPS had only left the store for essential matters such as visiting the wholesaler etc.

- The DPS or a qualified member of staff (licence holder) was required to authorise every alcohol sale. Given the absence of the licence holder during lockdown, it had not been possible for the DPS to be present in the shop at all times.
- In regard to the Police witnessing alcohol sales during the absence of the DPS, CCTV showed that the DPS had been absent for 30 minutes only.
- Most of the loyal customer base for the store was law abiding and the shop stocked products that the customers wanted to buy.
- Not all single cans of alcoholic drink and high strength alcohol were bought by street drinkers.
- There was no evidence in the Police report that proved that this was the only shop in the area that sold high strength alcohol and claims such as this should be able to withstand scrutiny.
- The Police had asked for a reduction in opening hours but had not stated how this would help the situation.
- It was considered that the issues fell into three categories:
 - Street drinking and the shop's contribution
 - Breaches of the conditions of the licence and the Covid-19 related absence of the member of staff with a personal licence
 - Breaches of the conditions of the licence which were the responsibility of the DPS.
- The Panel was advised that PC Hill had mentioned that the female member of staff had not been trained. However, the DPS had verbally trained her but had failed to enter it in the training record. This member of staff had also been put forward to take the personal licence holder qualification which she had completed and this was awaiting processing by the Council,
- The Panel was also advised that the Refusals Register had not been kept up to date. However, this did not mean that sales of alcohol had not been refused and no test purchases had been undertaken to evidence this claim.
- The Panel was informed that Mrs Sherratt, a licensing consultant, had been employed by the DPS and, if required by the Panel, could oversee or independently manage the training of staff.
- Attention was drawn to the alternative conditions being suggested by the applicant's agent.
- The Business and Planning Bill was highlighted which, when enacted, would allow shops to sell alcohol in open containers which was considered to be a Covid-19 related response. This was confusing when set against Public Spaces Protection Orders.
- The Kit Malthouse letter had also mentioned the difficulties faced by businesses in relation to staff absenteeism and the need to have the minimum number of staff at a premises to follow government guidance on Covid-19.
- It was noted that the street drinker issue in the area could not be cured by closing all the off-licences but premises who did not sell to street drinkers were needed.
- Mrs Smith's submission had mentioned young drinkers, but the Police submission had not mentioned this subject.
- It was considered that the street drinker problem had worsened during the lockdown as the street drinkers carried on regardless and were added to by people breaching lockdown guidance to drink outdoors in parks for example. It was therefore possible that the DPS had sold alcohol to people who went on to drink outside which was not the responsibility of the DPS or his staff.
- The request for a review of this licence by the Police had been based on the Council's Licensing Objectives. However, it was noted that:

- the Public Safety Objective was about the safety of the premises and not the safety of the public at large in the town centre area.
- There was no mention in the Police submission with regard to the Protection of Children from Harm or underage drinking.
- It was noted that the Police had asked the DPS to change his business model. However, this was not within Police powers and could be deemed as interfering with free market conditions which could be considered unlawful.
- It was considered that the removal of the DPS would not make a difference as the DPS was the owner of the shop so the removal would not address the issues.
- The DPS would accept the reduction of strength of alcohol he was permitted to sell to 7.5ABV and below. The Police suggestion of a reduction to below 5.5ABV would wipe out most customer interest. It was noted that people wanted to buy everything they had come to buy in one go, so the shop would also lose a large number of associated sales.
- The condition suggested by the Police of branded shop carrier bags contradicted other legislation and did not accord with the Londis brand.
- The clear glazing policy had been accepted by the DPS but it was noted that the counter was in the middle of the shop and it would not be practical for the sales staff to keep watch on a line of sight to the outside of the shop.
- The suggestion of lockable shutters outside of licensable hours had not been supported by evidence.

Those present had their questions answered by Mrs Clover, Mrs Sherratt and Mr Thayatharan (DPS).

At the request of the Chair, PC Hill and Mrs Sarah Clover summarised their arguments to the Panel. Mr Thayatharan was offered this opportunity but declined the invitation.

Determination:

The Chair advised that, in coming to a decision the Panel had considered the evidence presented by all parties attending the hearing and the representations made to the Panel by Kent Police, the representative of G-Safe, the Applicant and his representatives; the section 182 guidance particularly paragraph 9.12, and the requirements of the Licensing Act 2003. The Panel further considered the impact that the Covid-19 pandemic had on the ability of the licensee to fully comply with the conditions of his licence.

The Panel was disappointed to note that the Police presented no evidence to collaborate many of their claims and that PC Cossar did not address the Panel. In addition, PC McAllen and PC Hunt did not attend the Panel to undergo questioning.

Having considered all the above and the advice given, the Panel made the decision that the Premises Licence granted under the Licensing Act 2003 in respect of Londis, 29 Milton Road, Gravesend, Kent DA12 2RF be amended as follows:

- (a) that Condition 5 of the conditions/Licence agreed with responsible authorities be deleted.
- (b) the addition of the following conditions as put forward by the Applicant's representatives as follows:

Refusals Register

A register of refusals of alcohol will be maintained at the premises. The register shall be examined on a regular basis by the duty manager/ DPS and the date and time of each examination will be endorsed in the register. The register will be made available for inspection by the Police and other responsible authority

Incident Register

An incident register will be maintained at the premises and will be made available for inspection by the Police and other responsible authority. All incidents of a criminal matter will be reported to the police and full details entered into the register.

High strength beer and cider

No beer, lager, cider, perry or spirit mixer above 7.5% will be sold at the premises.

Clear Glazing

A 'clear glazing' policy for the window at the front of the shop shall be kept above 1 metre and below 2 meters (measured from the shop floor) so staff have an unobstructed view of the area outside the front of the premises through the glass looking into the street. The exception to this shall be the display of notices required by law and any required as a condition of this licence.

Close of meeting

The meeting ended at 2.30 pm