

Licensing Panel (64)

Minutes

14 December 2020 at 10.00 a.m. (Via Skype)

Present:

Councillors: M. Hussain (Chair), A. Hussain and Keens

67. Minutes (Ref 2.1)

Resolved: That the minutes of the meeting of the Committee held on the 18 November 2020 be taken as read, approved as a correct record and signed by the Chair in due course.

68. Application for review of premises licence – Ashcroft Supermarket, 47-53 Bute Street, Luton (Ref: 4)

Present

| | |
|--|--|
| Applicant: | PC Darren Welch, Licensing Officer Beds Police |
| Premises Licence Holder: | Mr Jignar Patel, on Behalf of JM Convenience Store Limited |
| Premises Licence Holder's Representative: | Ms Sarah Clover, Counsel Mr Surendra Panchal, Licensing Consultant |
| Interested Parties: | Mr. Bill Masini, Trading Standards, Luton Council Ms Sandra Glenn, Head, Tenants' Association |

The Chair led the introductions and established that all parties could hear and contribute to the discussions.

The Clerk to the Panel informed all present of the procedure to be followed in line with the skype virtual hearing procedure for the Licensing Panel.

The Licensing Officer then presented the report (Ref: 4) on the application from PC Darren Welch, Licensing Officer on behalf of Bedfordshire Police, a responsible authority, for the review of the premises licence in respect of Ashcroft Supermarket, 47-53 Bute Street, Luton, on the grounds of the prevention of the crime and disorder and prevention of public nuisance licensing objectives. A copy was of the application was attached at Appendix B of the report.

She drew the Panel's attention to the premises licence, with the current conditions at Appendix A of the report.

She further informed the Panel of ten representations received objecting to the application, including one from a business premises. These were attached at Appendix E of the report.

She added there was also one representation in support of the application from Mr Bill Masini of the Council's Trading Standards, a responsible authority, based on the prevention of the crime and disorder and prevention of public nuisance licensing objectives, as set out at Appendix D of the report.

There being no questions for the Licensing Officer from any parties, the Chair called on PC Welch, the applicant to present the application.

Key points made by PC Welch were recorded, as set out in the below paragraphs.

The application was based on the prevention of the crime and disorder and prevention of public nuisance licensing objectives.

Bute Street was situated in the town cultural quarter and was a main thoroughfare from the shopping centre to the mainline railway station.

The matter under consideration came to light in March 2020 during the first pandemic lockdown, when all the responsible authorities had a meeting to discuss how to deal with the impact in the town centre. One of the issues highlighted was the high number of homeless street drinkers, who had been housed in the area close to the Ashcroft Store, causing nuisance and a spike in anti-social behaviour the area.

Mr Patel was spoken to and agreed a voluntary action plan, as set out at page 44 of the agenda pack. He was very agreeable and engaging and the action led to a slight downturn in complaints regarding street drinkers.

In July/ August, PC Schofield, the town centre neighbourhood police officer indicated there was still a problem in the area. He had worked with Mr Patel, along with Mr Masini to include conditions to stop sale of high strength alcohol, as shown on page 46 of the agenda pack. The proposed strength of alcohol for sale was 5.5% alcohol by volume (ABV).

Mr Patel had contacted PC Welch and expressed his view that the proposed conditions were very strict. PC Welch met with Mr Patel and in a spirit of co-operation agreed to revise the conditions to make them more flexible, as shown at page 47 of the agenda pack. The proposed strength of alcohol was raised to 5.9% ABV.

After reflection, Mr Patel had decided that 5.9% ABV was not acceptable and suggested 7.9%. This was considered too far from that proposed by the Police and in the absence of an agreement, it was decided to bring the matter to Panel to review the licence and decide.

The Panel's attention was drawn to two witness statements in the agenda pack obtained by PC Schofield, one from an employee of the Job Centre, who saw street drinkers go into Ashcroft Store on numerous occasions and come out with cans of lager, large blue bottles of cider and bottles of spirits. The other witness stated they had on numerous occasions seen street drinkers go into the store and come out with either single cans of beer or large blue plastic bottles of alcohol.

On the procedural issue of calling witnesses, the Clerk to the Panel advised that the Panel had flexibility and could hear from PC Schofield at that point if it considered it proper to do so.

Following an objection from Ms Clover and confirmation from PC Welch that evidence from certain other witnesses referred to by PC Schofield had not been served on time for circulation to all parties, and a Regulation 8 Notice had not been served, the Panel decided to exclude their evidence, but not that from PC Schofield.

PC Schofield, who had been the Town Centre neighbourhood police officer for about 8 months, advised that the Police had been called to more incidents of crime and disorder in Bute Street than anywhere else in Bedfordshire, particularly as more people were working from home and witnessed street drinkers hanging around the area arguing, shouting, causing anti-social behaviour, begging for money and going into the shop to buy alcohol. He said that on every shift when he was in Bute Street, he had seen discarded beer cans in the alleyway nearby where street drinkers went to drink.

PC Schofield informed the Panel the Police had been considering solutions to put to the council to reduce the problems, e.g., shutters around the job centre and moving the benches to discourage loitering, but ultimately the issue was about where the street drinkers were getting their alcohol from, which invariably was from Ashcroft Store.

PC Schofield re-iterated that discussion he and Mr Masini had with Mr Patel was productive and a plan was initially agreed, but then that Mr Patel changed his mind, hence why a few statements were obtained as evidence for the review.

In his opinion, PC Schofield believed that, with the exception of St George's Square on a hot summer's day, Bute Street around the area of the Job Centre was probably the worst area in the town centre for problem drinking.

PC Welch referred to the representations made by residents and said that the review was not asking for Ashcroft store to be shut down and that even if the licence was revoked, they also sold other goods and contributed to the local the community so could continue to trade even if the alcohol licence was revoked. He added his concern was about alcohol sale and promoting the four licensing objectives in this problem area.

PC Welch was questioned by the Panel and responded in compliance with the approved licensing hearing procedure. Key points recorded were as set out in the below paragraphs.

He could not confirm how long Mr Patel had been premises licence holder and had no knowledge of any previous issues with the premises, having only been involved in the consultation for the action plan to deal with the implications of Covid-19.

He was aware that PC Schofield and Mr Masini had spoken to Mr Patel, who had initially agreed to consider the conditions set out at page 46 of the pack to deal with the problems in the area and then decided against them. .

The store was located within the restricted area for alcohol street drinking due to the town centre PSPO. Street drinkers bought their alcohol only from Ashcroft Store, not from pubs or restaurants in the area.

On whether the application was asking for conditions to restrict the strength of alcohol on sale to address the anti-social behaviour on the basis that the papers indicated the Police had no problem with the business continuing, PC Welch said it was up to the Panel to decide. He added that it was street drinkers buying cheap alcohol from the store, who went on to cause the trouble.

It was confirmed that the store sold other provisions and that alcohol was only part of the business.

In the absence of further question for PC Welch, Mr Masini addressed the Panel highlighting Trading Standards representations, as set out in the below paragraphs.

He advised Trading Standards would have called for a review the premises licence, had the Police not done so, due to the issue of sale of super strength alcohol at below permitted price, revealed when a test purchase was carried out and 1800 cans of Karpackie beer were seized.

Subsequent to the first inspection visit, walking to the railway station, Mr Masini said there was a clear problem with street drinkers in the Guildford Street area near the store.

Mr Patel had been interviewed under caution and explained that the selling the Karpackie beer at 45p below permitted price was due to the fact that it was a 'loss leader', which brought in foot-fall to the shop. It was to meet customer demands, as some would threaten to throw things around the shop, if they did not get what they wanted. Mr Masini provided the Panel with excerpts from the interview.

Mr Patel had said he had tried to move street drinkers/ beggars away, but that it was not his business where people drink the alcohol after purchase.

Mr Patel lacked the ability to control the selling of super strength alcohol to street drinkers, which was the cause of the problem.

If it was not for lack of capacity, Trading Standard would have applied for a review of the licence.

The pandemic lockdown and the housing of the homeless street drinkers in a nearby hotel was not ideal.

Mr Patel had initially agreed to comply with the conditions about sale of reduced strength alcohol and not selling single bottles/ cans, but then had changed his mind after reflecting on the proposals.

The area was within the Town centre Public Spaces Protection Order, which banned alcohol consumption in public places. The council was working with businesses to solve the problems.

Mr Patel had said he had had threats that the shop would be trashed if he did not sell to street drinkers.

Mr Masini requested that, at the very least the Panel should consider imposing the conditions proposed by Beds Police, if the licence was not to be revoked, given that Bute Street was an area with the highest incidence of anti-social behaviour and street drinkers were attracted to it. The photos in the pack showed the sheer quantity of super strength alcohol sold.

Mr Masini was questioned by the Panel and responded in compliance with the approved licensing hearing procedure. Key points recorded were as set out in the below paragraphs.

He re-iterated that Town centre Public Spaces Protection Order banned alcohol consumption in public places, but did not impose conditions on strength or quantity of alcohol sold, hence why Mr Patel was encouraged to accept the proposed conditions by the Police. Time had moved on and the problems have persisted.

Conditions could only go on the premises licence. Only the Panel could impose them unless the Premises Licence holder applied for a minor variation

In the absence of further questions for Mr Masini, Ms Clover, addressed the Panel on behalf of the premises licence holder, against the application, as set out in the below paragraphs.

All businesses were under huge pressure during the current very difficult times and some were in crisis, as a direct result.

Mr Patel had been in the business since 2014 and was a valued member of the community, proven by the number of people who had written in his support, which was unusual, as residents were more prone to object. This would confirm his standing in the community, by people who knew the store and who did not blame him for the problems with street drinkers.

Mr Patel wanted to be part of the solution and contribute to solving the problems. He recognised his role and would accept conditions, but not the exact ones as proposed by the Police and hoped the Panel would be reasonable and appropriate.

As it was put by the Police, Mr Patel had been agreeable and not reluctant or less constructive, as intimated by the selective excerpts from his interview used by Mr Masini. It was noted that the transcript should be looked at in full to get a true sense of Mr Patel's attitude and the Panel should be cautious of relying on selective excerpts.

The Panel should consider revocation of the premises licence only if it felt no other options were available. It was not clear in the report what the review was asking for.

Alcohol was a key part of Mr Patel's business, as part of the basket of goods customers would come in the store for and they would go elsewhere if they could not get everything they needed in one go. Hence why it was called a convenience store. Losing his alcohol licence would affect the viability and be the death knell of the business, something she said the Panel was not there for.

Mr Patel wanted to see how he could contribute to solve the problems, but had no 'magic wand'. Local residents, including Ms Glenn supported Mr Patel against the application due to the role of the shop played in the community. The store had won awards from the council for its service to the community. She added that since the pandemic, Mr Patel was also providing a delivery service for vulnerable people without charge and with no lower limit of spend.

Mr Patel and his staff wanted to part of the solution and had been receptive when approached by the Police and signed up to the voluntary action plan proposed.

Mr Patel's store was not the only one in the locality and street drinkers would go to wherever they could get alcohol easily and cheaply. Mr Patel had no doubt that street drinkers had bought alcohol from his store, probably when sober, as he did not sell to people who were drunk.

Ms Clover queried what actions had been taken regarding the other off-licence premises in the locality. She proposed that, if CCTV had been reviewed, it would have shown street drinkers did not only go into Ashcroft store. The problem with street drinkers was endemic.

Ms Clover asked that equal weight be given to the representation in support of the application and those in support of Mr Patel against the application. She said the Panel needed to look at the nature of the problem and what Mr Patel could do.

She quoted the guidance from section 182, paragraph 9.42 of the Guidance, which required the Panel's decision to be proportionate and appropriate, as the problem had been brought to the area by the council housing homeless street drinkers at the nearby Easy Hotel. She added that Mr Patel could not stop people drinking in the area, after selling to them.

Mr Patel had agreed to the voluntary action and removed alcohol of above 7.9% ABV from the shelves. The Police said this had led to an improvement in the area. Mr Patel could not therefore understand the justification why they then wanted to change it to 5.5% ABV and to 5.9% after his representation to PC Welch that it was too stringent. Ms Clover wondered if other off-licences had a similar condition. If Mr Patel's store was the only one, then people would go elsewhere to get alcohol above 5.9% ABV, which would put him at a competitive disadvantage.

It was proposed that the shutdown of the Mall due to Covid could be a contributory factor to crime and disorder.

Mr Patel accepted he made a mistake with the pricing and had resolved this on the EPOS cash register system. He would agree to 7.9% ABV and not sell single cans of alcohol, but only in packs of four and 1.5 litre bottle. He had stopped selling

Karpackie beer and would control sale of cheap alcohol, despite pressure from aggressive people. Mr Patel and his staff would only sell to the right people, as they recognised street drinkers by sight.

Ms Clover introduced Mr Panchal, licensing consultant who had been advising Mr Patel.

Mr Panchal went on to explain the detailed package of training he had delivered to Mr Patel and his staff in four different languages on how to manage sale of alcohol. This included training the store manager as Designated Premises Supervisor (DPS), as he was going to be the premises new DPS, given Mr Patel was busy with other business.

Ms Clover and Mr Patel were questioned by the Panel and responded in compliance with the approved licensing hearing procedure. Key points recorded were as set out in the below paragraphs.

Mr Patel would agree to the conditions proposed by the Police, except the 5.9% ABV, which he would wish to be 7.9% ABV. He was also against the imposition of the 1 litre limit.

The training provided complied with and recognised by the British Institute of Inn Keepers.

The three factors affecting street drinkers' behaviour when buying alcohol were strength, price and easy access. Mr Patel made a mistake with the price and had dealt with the issue. The strength issue was under discussion and the ease of access had been addressed by the staff training.

Mr Patel had accepted to the voluntary condition of 7.9% ABV in March, which had led to an improvement in the problem in the area and could not understand why his licence was being reviewed.

Ms Clover and Mr Patel were questioned by PC Welch and responded in compliance with the approved licensing hearing procedure. Key points recorded were as set out in the below paragraphs.

Mr Patel could not say, without checking, how many items of alcohol on the list of products sold had an ABV of above 7.9%, which had been removed from his shelves, but it was believed it was more than two or three lines as suggested by PC Welch.

It was confirmed that Mr Patel was looking to make the store manager the DPS.

Ms Clover and Mr Patel were questioned by Mr Masini and responded in compliance with the approved licensing hearing procedure. Ms Clover could not confirm or deny Mr Masini's assertions about the definition of high strength alcohol, the distinction between beers and ciders and the fact that there was no mention of 7.9% in his representation.

Ms Glenn, a nearby resident and the Head of the Tenants' Association addressed the Panel in support of Mr Patel and against the application. She said she had lived there for 5 years and described the Ashcroft Store as a good ambassador for the local community, Mr Patel having given food parcels to mothers and babies in need

pre Covid. The store had been given an award by the council for service with a smile and philanthropy and had set up a delivery service free of charge and no minimum spend since the pandemic.

Ms Glenn described the anti-social behaviour caused by street drinkers in the area, an issue she said made worse by the council's decision to house the homeless in the Easy Hotel. She believed it was unfair to blame Ashcroft Store for the street drinking problems, which carried on until 4.00 am, whereas the store closed at 11.00 pm. She suggested other stores should also be looked at and objected to the review of Mr Patel's licence.

PC Welch summed up his application saying there was a problem in the area, which was acknowledged by Mr Patel, who had initially agreed the action to deal with it, but refused to make the conditions proposed by the Police and Trading Standards permanent additions to the licence. He said the Police would stick to the conditions proposed in the report based on the list of alcohol sold provided by Mr Patel.

PC Welch added that the review was called due to the gap between what was wanted by the Police and Mr Patel, to allow the Panel to decide on the right course of action

Mr Masini summed up, explaining the issue of the strength of alcohol according to Trading Standards. He said that he was aware about other premises in the area, which needed to be dealt with and that Ashcroft Store was not being singled out.

He added that even 7.9% ABV might not solve the problem, as he believed the current list of drink of choice for street drinkers was of 7% ABV. Mr Masini concluded that the conditions proposed by the Police would however make a significant contribution to make the area better for people visiting.

Ms Clover summed up her representation against the application highlighting that, by PC Welch's own report, the situation had improved following the initial action planned, with the 7.9 ABV condition.

She added there was no clear reason why the Police had changed the proposed ABV to 5.5% and then 5.9%, as the list of alcohol products sold at the store contained only five above 7.9% ABV. She asked that the Panel make its decision on a case by case basis and proportionately across all licensed premises and not to single out Ashcroft Store and Mr Patel, who should not be placed at a disadvantage compared to his competitors, who would not have such conditions.

She highlighted the representation from Ms Glenn and other local residents in support of Mr Patel, demonstrating the value of the premises and the good it was doing for the community going above and beyond normal service.

She said Mr Patel wanted to be part of the solution for the problems in the area and was not denying his responsibility. She invited the Panel to consider imposing conditions, as proposed, as part of a package of reasonable and proportionate measures.

The Clerk of the Panel drew the Panel's attention to the options opened to it at paragraph 12 of the licensing officer's report. He said the Panel should take any steps it considered appropriate in line with the evidence and that for a revocation

decision, it also needed to give reasons why. He also advised that the Panel should disregard any evidence that had not been properly served on all parties.

There being no final words from any parties present, Members of the Panel considered whether the interest in retiring to make their decision without all the parties present outweighed the interest in holding their deliberations with them present, in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

Following brief discussions by Members of the Panel, they determined that the public interest of retiring to make their decision in private outweighed the public interest in holding their deliberations in public.

69. Licensing Act 2003 (Hearings) Regulations 2005 (Ref: 5)

Resolved: That in accordance with regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005, the public and press and all parties to the application, except the Clerk, the Legal Advisor and Administrators be excluded from the meeting during consideration of the decision in relation to the report of the Licensing and Compliance Manager (Ref: 4).

(Note: All parties present, except Panel Members, the Clerk to the Panel and the Administrators were then excluded from the Skype meeting)

70. Licensing Act 2003 (Hearings) Regulations 2005 (Ref: 5)

Resolved: That, following their deliberations, the public and press and all parties to the application be no longer excluded from the meeting.

(Note: All excluded parties were re-admitted to the Skype meeting)

71. Application for review of premises licence – Ashcroft Supermarket, 47-53 Bute Street, Luton (Ref: 4)

Resolved: That having carefully considered all the papers before it and the oral representations made by PC Welch, the applicant, Ms Clover, Counsel for the premises licence holder, PC Schofield, a witness and by Mr Masini for Luton Council's Trading Standards in support of the application and Ms Glenn against the application and having regard to the licensing objectives set out in the Licensing Act 2003 and the Council's Statement of Licensing Policy and the Guidance issued under the Act, the Panel determined to amend the Premises License by adding the additional conditions recommended by the Police, specifically:

1. No beers or lagers in cans, bottles or any other container constructed of any material with an ABV of more than 5.9% are to be displayed, sold or offered for sale from or stored on the premises.
2. No ciders in cans or bottles or any other container constructed from any material with an ABV or more than 5.9% are to be displayed, sold or offered for sale from or stored on the premises.
3. A minimum of 4 cans of beer, lager or cider shall be sold in any one transaction. A combination of these drinks is permitted to achieve this minimum quantity.

4. No beers, lagers or cider are to be displayed, sold or offered for sale from, or stored on, the premises in individual containers which have a capacity exceeding 1 litre (or imperial equivalent).

The Panel accepted that there was evidence linking the street drinkers to going to buy high strength cheap alcohol from the store, albeit that other factors, such as the council housing homeless street drinkers in the hotel nearby had contributed to the problems in the area. However, the Panel decided that revocation of the licence was not proportionate in this case and that the additional conditions were sufficient and appropriate to promote the licensing objectives.

(Note: The meeting ended at 12.55 pm)