



SPELTHORNE BOROUGH COUNCIL

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Date: 4 April 2019

DECISION NOTICE

In accordance with the LICENSING ACT 2003 s.23

Date of Licensing Sub-Committee: 29 March 2019

Applicant: Stop & Shop

Premises: 53 Clare Road
Stanwell
TW19 7QW

REASON(S) FOR HEARING: Relevant representations received from Relevant Authority concerning:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Public Safety
- Protection of Children from Harm

DECISION

Refused to Grant

With effect from 29 March 2019

REASONS FOR DECISION

1. The application is for a Premises Licence at Stop & Shop, 53 Clare Road, Stanwell, TW19 7QW.

Attendance

2. 3 people attended the Sub-Committee hearing to make representations. They were:
 - Mr. Rob Thomas – Licensing Manager, Spelthorne Borough Council
 - Mr. Amit Arora - Applicant
 - Mr. Surinder Panchal – Applicant’s agent (Personal Licence Courses)
 - Mrs Arora also attended but did not speak
3. The Licensing Sub-Committee considered all of the relevant evidence made available to it at the hearing including:
 - the report of the Deputy Chief Executive outlining the matter to be considered;
 - written representations from a responsible authority (Licensing) and oral evidence at the hearing.

Application

4. A valid application for a Premises Licence at 53 Clare Road, Stanwell, TW19 7QW, was received on 25 January 2019. The application was to permit the sale of alcohol seven days a week from 07:00 to 23:00. The licensing hours are the same as the proposed opening hours.
5. The public was consulted in accordance with the Licensing Act 2003. The required notices were displayed at the Premises and published in the local newspapers on 15 February 2019.
6. The application generated one representation from a Responsible Authority. No other representations were received.

EVIDENCE

Background

7. The Licensing Enforcement Officer outlined the background to the matter for consideration. The premises forms part of a parade of shops situated in a primarily residential area of Stanwell.

- 8.** The licence was held by Blue Ocean (Int) Ltd, which was a partnership between Mr Amit Arora, the current applicant, and his previous DPS, who was a 'sleeping' partner. The DPS left the partnership in November 2018 which resulted in the Company being dissolved on 13 November 2018.
- 9.** Mr Arora contacted the Licensing Authority on 15 January 2019 to request a transfer of the premises licence to a new Company. However, a search at Companies House revealed that Blue Ocean (Int) Ltd had been dissolved more than 28 days previously which meant the licence had lapsed and could no longer be transferred.
- 10.** The Licensing Enforcement Officer reminded the Sub-Committee that it is the responsibility of the Premises Licence Holder to ensure he has the appropriate licence or authorisation in place to sell alcohol.
- 11.** The Licensing Authority advised Mr Arora that he was unable to transfer the licence and must remove all alcohol from the premises, as it is an offence to sell alcohol without a valid licence and also to expose alcohol for sale, and he must now apply for a new premises licence.
- 12.** Two applications for a Premises Licence were received by the Licensing Authority on 16 and 18 January 2019 but these were rejected due to administrative errors on behalf of the applicant.
- 13.** A valid Premises Licence application was submitted and accepted on 25 January 2019 specifying Mr Arora as the Premises Licence Holder and Designated Premises Supervisor (DPS).
- 14.** It is a requirement under the Licensing Act 2003 to display a Notice advertising an application for a consecutive 28 day period to allow for representations.
- 15.** A Licensing Enforcement Officer visited the premises on 25 January (24 January was mistakenly referred to in the Responsible Authority's representation) and 5 and 7 February 2019 and noted that these requirements had not been fulfilled as the notice was not visible at all times. The agent was advised that the notice was not displayed in accordance with the requirements of the Licensing Act 2003.
- 16.** Further visits to the premises were made by the Licensing Enforcement Officer on 5 and 7 February. The required notices were not displayed and the application was declared invalid. The last date for representations was delayed until 6 March 2019.
- 17.** The notices were displayed when a Licensing Enforcement Officer visited the premises on 13 and 14 February 2019.

EVIDENCE

Applicant

- 18.** The applicant's representative, Mr Panchal stated that Stop and Shop had been run by Mr Arora since 2013 and that he had been in the Licensing Trade for 15 years. He said that Mr Arora was aware that if a different Company wished to run the Premises that he needed to hold a licence in the name of that Company. When Mr Arora called the Licensing Authority to request the transfer, he had not realised the previous Company had already been dissolved.
- 19.** Mr Panchal explained that it would be frustrating for a business which had been running since 2013 to not be able to sell alcohol as sales would go down. He did not dispute that alcohol remained on the shelves during the application process but said that a clearing procedure was underway.
- 20.** He believed that the Notice displayed on the shop's shutters was taken down by people passing the Premises and this was not due to Mr Arora's failings in displaying it. He suggested that it was this failing that resulted in the representation of the Local Authority against the application and that it would be unfair if the Council did not grant the licence for these minor issues that are, or are easily being, resolved.
- 21.** Mr Panchal noted that neither the Police nor Trading Standards had submitted a representation and that no responsible authority had reviewed the previous licence.
- 22.** Mr Panchal stated that it was Mr Arora's duty that the Licensing Objectives are robustly promoted and explained how he was making every effort to do this:
 - Mr Arora contacted Personal Licence Courses (Mr Panchal's company) immediately upon making his application to make sure training was arranged for his staff
 - A training manual had been prepared
 - The refusals book had been updated
 - An incident book would be in place
 - Staff training now to take place every 3 months (it was lack of training in the Licensing Act 2003 which was why staff could not state who the DPS was in 2017 and 2018).
 - Right to work checklist was displayed
 - Section 57 notice authorisation will be displayed.

- 23.** Mr Panchal stated that Mr Arora would make a lot more effort to promote the Licensing Objectives. At his request Mr Arora proceeded to state the four Licensing Objectives and gave the following examples of the measures he was taking to promote each of them:
- Prevention of crime and disorder - he has CCTV
 - Public Safety – he has a fire extinguisher, fire exit door and first aid box
 - Prevention of public nuisance – he will provide a bin and not allow people to stand outside the shop drinking
 - Protection of children from harm – He uses Challenge 25 and asks for ID in the form of a photo ID, passport or driving licence
- 24.** Mr Panchal ventured that Mr Arora’s responses showed a full understanding of the Licensing Act 2003.
- 25.** Mr Arora responded to the allegations in the representation of underage sales and sales of psychoactive substances by stating that: he uses Challenge 25 and if ID is not provided they don’t sell alcohol, he never sells to underage; he sold psychoactive substances to over 25s for use with coffee machines before 2017 but has not sold it since it has been banned.
- 26.** Mr Panchal claimed that none of the allegations listed in the representation were raised with the licence holder at the time.
- 27.** Mr Arora also responded to the other failures to comply with the requirements of the Licensing Act 2003 as listed in the representation:
- Failing to display summary of licence in 2014 and 2017 – the notice was displayed in the window but would fall off when the window was cleaned
 - CCTV not maintained in good order in 2017 – could not explain why this happened. He now has a mobile system as well
 - alcohol still on display when licence was not valid – all alcohol had been removed from the fridge and shelves but the miniature bottles were left displayed by mistake. He explained that the alcohol was not immediately removed from the Premises because it consisted loose bottles in a fridge of 13ft x 4ft and he did not have any boxes in which to put them to remove them quickly nor any safe space to store the bottles, some of which he took home and some went to family/friends’ homes.
- 28.** Mr Arora apologised for his past failings and said he would make sure they never happened in future.

Representative

29. Written representation was received from a Responsible Authority (Licensing) raising the following objections to the application under the licensing objectives:

All four licensing objectives:

- Prior compliance history of failure to adhere to licence conditions

Prevention of crime and disorder

- Allegations of underage sales
- Allegations of sale of psychoactive substances

Protection of children from harm

- Allegations of underage sales
- Allegations of sale of psychoactive substances

30. Rob Thomas, Principal Licensing Manager made oral representations at the hearing on behalf of the Licensing Authority. He stated that the representation had not been made solely due to the failings to comply with the Notice requirements, which were just the tip of the iceberg, but rather was due to a collective failure over several years to apply or have regard to the Licensing objectives.
31. He stated that the applicant took two weeks from the date of the application to meet the straightforward requirements for displaying the Statutory Notice which should have been easily achieved in much less time.
32. He disputed that the applicant had not been notified of the allegations of underage sales and psychoactive substances, stating that he personally, together with Trading Standards had visited the premises in 2015 to advise Mr Arora of the allegations. Additionally the Licensing Enforcement Officer confirmed that following any visits which identified any issues of non-compliance were followed up with emails and letters to tell Mr Arora what he needed to do to address them.
33. Mr Thomas stated that the Licensing Authority was not impressed by Mr Arora's management of the Premises over the past 5 years; his inability to comply with straightforward licence conditions, respond in a timely manner to requests from the Licensing Authority and his inability to serve the application correctly gave concern that he would be unable to operate the Premises in a manner which promoted the Licensing Objectives.

34. Mr Thomas stated that Mr Arora ought to understand his responsibilities as he had undertaken a Personal Licence Course but that his ability to recite the Licensing Objectives did not persuade him of his ability to comply with them.
35. In response to Mr Panchal's query as to why the Licensing Authority had not called the Licence in for Review as a result of the allegations made over three years, Mr Thomas responded that the Council's policy was to assist businesses towards compliance in preference to taking an enforcement approach and furthermore allegations would not hold sufficient weight to justify a review without the substantiated evidence. He clarified that the representation against the grant of the licence had been made due to a consistent stream of both allegations and failures to comply.
36. Mr Thomas agreed with Mr Panchal that the applicant was now fully co-operating with the Authority during the application process but prior to this Mr Arora had not been replying to letters or emails and the Licensing Team was having to constantly chase him for responses.
37. The Licensing Enforcement Officer added that as the conditions submitted on the new application were not in line with National Guidance, she had to re-draft the complete operating schedule so that conditions were clear and enforceable.

Findings

38. The Licensing Sub-Committee considered all of the relevant representations made by the applicant and responsible authority both in writing and at the hearing, and in doing so has taken into account the provisions, regulations and national guidance under the Licensing Act 2003 and Spelthorne Borough Council's Statement of Licensing Policy.
39. The Sub-Committee finds as follows:
40. The Sub-Committee is not persuaded that the applicant will promote the licensing objectives, as he did not demonstrate a full understanding of what they meant in practice. The applicant stated what the licensing objectives were. However, the Sub-Committee were persuaded by the representation of the Responsible Authority, in particular with regard to problems with promoting the licensing objectives prevention of crime and disorder and protection of children from harm. The Sub-Committee shared the Responsible Authority's position that it does not follow from the ability to state the licensing objectives that the applicant will take steps to promote the licensing objectives.

- 41.** The Sub-Committee finds that there is a record of failure to co-operate with the licensing authority over a number of years and it is not reassured that the applicant has convincingly demonstrated how he will comply with the requirements of the Licensing Act 2003. The applicant's previous lack of co-operation with the Council includes failure to provide the staff training log until asked numerous times.
- 42.** The Sub-Committee finds the emails sent out to the applicant by the Licensing Authority persuasive. These set out what steps to take such as obtaining legal advice, removing alcohol from the shop floor and displaying a notice advertising the application on the front of the premises. No response was received from the applicant. There was also correspondence with the applicant's agent which highlighted that a notice must be displayed at the premises. Despite the Licensing Authority's efforts, its warnings were not acted upon, for example failure to display a notice was observed during site visits on 25 January and 1 February 2019. The Sub-Committee is persuaded that the applicant does not meet straightforward requirements of the Licensing Act 2003. There is persistent disregard for the requirements under the act and the premises licence.
- 43.** The Sub-Committee is concerned that the applicant does not appreciate the importance of his roles and responsibilities as a Premises Licence Holder. For example, he did not undertake to transfer the licence in a timely manner and he did not make sufficient effort to remove alcohol from the shop floor, even after being advised by the Licensing Authority of the need to do so. It is a point of concern that alcohol was still available for sale in the shop after the licence had expired. The applicant was advised by email on 15th January 2019 that it is an offence to expose alcohol for sale without authorisation under section 136 of the Licensing Act 2003. The Sub-Committee finds that there were systematic failings by the applicant and is concerned about the way in which the business was managed.
- 44.** There are other points raised in the representation of the Responsible Authority which concerned the Sub-Committee both in terms of promotion of the licensing objectives and the management of the business. Some examples include failure to display challenge 25 posters and 'cool shot' mixed vodka shots being situated beside the till point adjacent to the children's sweet counter. The representation sets out that the CCTV was not maintained in good order in 2017 and the 'CCTV in operation' sign was not displayed in 2018. This calls into question the promotion of licensing objectives including protection of children from harm and the prevention of crime and disorder.
- 45.** The allegations of underage sales of alcohol and the sale of psychoactive substances caused grave concern to the Sub-Committee. The Sub-

Committee is worried about the allegations of sale of psychoactive substances. Although these were only allegations, the Sub-Committee were persuaded that repeated similar allegations are likely to show a pattern of behaviour for not running these premises in accordance with legal requirements. The Sub-Committee feels strongly that everything possible should be done to protect children and prevent crime and disorder and these allegations call into question whether the business was being run in a way which fits with this aim and if going forward the applicant will operate the premises in a satisfactory way.

- 46.** The Sub-Committee took no comfort from staff being unaware of who the Designated Premises Supervisor was in 2017 and 2018, as noted by the Responsible Authority. It was worried that there was no clear accountability. This does not help to instill confidence that the licensing objectives were being promoted.
- 47.** With regard to the licensing objective, protection of children from harm, the Sub-Committee were not satisfied from the evidence provided by the applicant when questioned, that adequate emphasis was placed on protection of children or that underage sales of alcohol would be effectively prevented, which also raises concerns about the prevention of crime and disorder.
- 48.** The Sub-Committee noted the Council's responsibility to local residents. In line with section 25.8 of the Council's Statement of Licensing policy, the Council is committed to the safeguarding of children and vulnerable persons. Premises Licence Holders also have legal responsibilities around the protection of children under the Licensing Act 2003.
- 49.** The Sub-Committee sought reassurance about the staff training to be provided, especially with regard to underage sales. Training being a significant way to promote the licensing objective prevention of crime and disorder, in line with section 25.0 of the Statement of Licensing Policy. After hearing the evidence, the Sub-Committee felt it was not clear how the training on offer would assist with promoting the licensing objectives.
- 50.** The Sub-Committee was worried about having the applicant put in position of Designated Premises Supervisor in addition to Premises Licence Holder. The Sub-Committee was not confident that the applicant would act in accordance with the necessary requirements as Designated Premises Supervisor. The applicant has been involved in running the shop for years, as highlighted during the hearing, and numerous issues highlighted by the Responsible Authority have arisen during this time.

Decision

- 51.** The Sub-Committee confirms that the application for a Premises Licence is refused.

Conclusion

- 52.** That is the decision of the Sub-Committee. A copy of this decision has been provided to all parties to the hearing within 5 days of the Sub-Committee meeting.
- 53.** You have the right to appeal against this decision to the Magistrates' Court within 21 days of receipt of this decision notice.
- 54.** If you decide to appeal, you will need to submit your appeal to Guildford Magistrates' Court. You should allow sufficient time for your payment of the relevant appeal fee to be processed. For queries, Guildford Magistrates' Court can be contacted on 01483 405 300.

Cllr Robin Sider BEM - Chairman
Cllr Sandra Dunn
Cllr Nick Gething

Date of Decision: 29 March 2019
Date of Issue: 4 April 2019