

**Minutes of a meeting of Liquor Licensing Panel
held on Monday, 5th June, 2023
from 10.02 am**

Present: J Henwood (Chairman)
J Dabell
J Mockford

Officers in attendance: Nathan Mountney, Solicitor to the Licensing Panel
Lucy Corrie, Assistant Director Communities
Jon Bryant, Senior Licensing Officer
Alison Hammond, Democratic Services Officer

Also Present: Mr Chaudhari, Applicant, Arya Food & Wine
Peter Aston, WSCC Trading Standards, Interested Party
Lucinda Joyce, Senior Democratic Services Officer
Ellen Fisher, Democratic Services Officer

Observing Members: Councillors C Cherry, L Farren, P Kenny and C Wood

LS.1 TO RECEIVE APOLOGIES FOR ABSENCE.

Apologies were received from WSCC Public Health.

LS.2 TO RECEIVE DECLARATIONS OF INTERESTS FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA.

None.

LS.3 TO CONFIRM THE MINUTES OF THE PREVIOUS MEETINGS HELD ON 19 DECEMBER 2022, 10 FEBRUARY 2023 AND 3 MARCH 2023.

The minutes of the meetings held on 19 December 2022, 10 February and 3 March 2023 were agreed as a correct record and were signed by the Chairman.

LS.4 APPLICATION TO REVIEW PREMISES LICENSE - LICENSING ACT 2003.

Introduction and outline of the report

Jon Bryant, Senior Licensing Officer introduced the report to determine an application submitted by West Sussex Trading Standards to review a Premises Licence at Arya Food and Wine, Burgess Hill; the review related to the Prevention of Crime and Disorder and the Protection of Children from Harm.

The application to review the licence, pursuant to Section 51 Licensing Act follows the sale of alcohol to a child during a test purchase conducted by West Sussex Trading Standards on 8 February 2023. Submissions from Responsible Authorities,

in support of the review had also been received from Sussex Police and WSCC Public Health.

The Panel were asked to determine the application on the evidence presented at the hearing having regard to the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003.

The Senior Licensing Officer advised Arya Food and Wine have been licenced for the sale of alcohol for consumption off the premises since April 2010 and the Premises Licence was transferred to Mr Chaudhari on 8 June 2015. The Officer noted the hours for the licensable activities and the extra conditions attached to the license which were in addition to the mandatory conditions, these included CCTV, Proof of Age and staff training. The review was requested as during a test purchase on 8 February 2023 organised by Trading Standards a child was sold alcohol. Intelligence had been received advising of underage sales at the store, and Trading Standards visited in September 2022 and gave advice on the sale of age restricted products and staff training. Mr Chaudhari was given a copy of the advice. Trading Standards contend there is a failure of the store management to promote the licensing objectives, in particular protecting children from harm, a review of the premises licence would limit further criminal activity by the licence holder and act as a deterrent to this illegal conduct. They requested a suspension of the premises licence for three months.

The Officer advised the application to review the licence had been correctly advertised. He noted the representation from Sussex Police supported the review and they invited the Panel to modernise the conditions in Appendix 2; Appendix 6 listed the proposed revised schedule of conditions. WSCC Public Health also supported the review on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm and highlighting the harm caused by alcohol to children and young people, noting the high rates of alcohol harm to young people in Mid Sussex. They expressed concern that staff at Arya Food and Wine were not adhering to the Challenge 25 policy put in place by the management.

The Officer advised Mr Chaudhari had emailed the Licensing Team on 2 June, confirming his attendance at the Panel and that he had all the documents. He advised he knew a minor had been served, he took responsibility, they serve around 100 people a day, many minors come into the store. They had not failed an inspection before, they train their employees. The staff member was not aware where the records were kept as the store had been recently cleaned and they had been moved. There had been further training for all employees, more regular training, and regular checks where the documents are (that they are in the correct place). He noted that this was first time in nine years of business, that he had failed a test purchase.

The Panel were asked to determine the review application, having due regard to all relevant representations for the promotion of the Licensing Objectives: the prevention of crime and disorder, the promotion of public safety, the prevention of public nuisance and the protection of children from harm.

Determination should be carried out in accordance with the Licensing Act 2003, MSDC Licensing Policy and the Home Office Guidance issued under Section 182 Licensing Act 2003, whilst having due regard to the applicant's submissions and relevant representations. He highlighted sections 51(1) and 52 of the Licensing Act 2003 and sections 11.27 of the Guidance Issued Under Section 182 of the Licensing

Act 2003: there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously.

The Panel could modify the conditions of the licence, exclude a licensable activity from the scope of the licence, remove the designated premises supervisor, suspend the licence for a period not exceeding three months or revoke the licence. The remedial actions should be appropriate and proportionate.”

The Officer closed after summarising the appendices which included Mr Chaudhari’s responses to questions asked whilst under caution, and he noted that Challenge 25 signs were displayed in store.

Questions to the Senior Licensing Officer

There were no questions for the Senior Licensing Officer.

Mr Chaudhari, Licence Holder

Mr Chaudhari advised he was the Designated Premises Supervisor for Arya Food and Wine in Burgess Hill, “I know that on 8 February 2023 my colleague has sold alcohol to a minor, and he has accepted that he made a mistake, even though full training was given” He advised that the staff member had recently joined the shop, he had worked there previously (a year ago), left and the re-joined. Training had been given when he first started working at the shop and further training was given after he had re-joined. “From my side I have done everything single thing I could do, I did explain him why, what is the importance of the training and records and everything. I did everything myside whatever I could”. He confirmed Mr Chaudhary acknowledged that he did make a mistake and he misunderstood the age of the girl, stating it is harder to determine the age of girls as she looked older. He confirmed they have the Challenge 25 policy in place. Mr M J Chaudhary takes responsibility for the incident, confirmed he had received training, further training had been provided after he re-joined. Mr Chaudhari advised he keeps records of refusals, but the training records had been moved following cleaning, so they were not available when he was asked to provide them. He had told him where they were during a phone call, but they could not be located; all records had since been provided to Mr Bryant - Challenge 25 Policy, Authorisation of Sales, Refusal Book, Staff Training Records, he confirmed there is a reminder in the till. After the incident he spoke to all team members “to make sure it does not happen again. I have done everything I should have done. As the DPS I have done everything. After the incident I have increased the like frequency of training every second, two months”. He takes the training, makes sure he trains them and if anything happens, he explains in a proper way. He checks the CCTV more frequently. every week, that the refusal book has been updated. “Kids are buying alcohol from the shop, sometimes if they don’t not get it they are stealing it”. They report the incidents to the Police and no further action is taken.

In response to Mr Chaudhari comments on minors stealing alcohol, the Chairman advised the Panel was not dealing with matters that the Police would deal with.

Questions to the Licence Holder

The Chairman asked about the missing records and Mr Chaudhari confirmed all records were there except one that was “a bit to the side”, all records had been seen by the council officer and Mr Chaudhary had been re-employed for a couple of months before the incident. He asked that the Panel would not give him punishment as he and his wife survive on the store’s income. “I have taken every single action I could have taken”.

A Member of the Panel acknowledged that the store is important to Mr Chaudhari's family, previous events had been observed and the test purchase was carried out to check all was in order. The issue arose after they failed the test purchase; Trading Standards had previously visited and provided advice.

Mr Chaudhari confirmed there had been many test purchases before and they had passed them all. He was there most of the time and he was doing his best; it was not his intention to do it and he would make sure it doesn't happen again. In response to further questions, he advised 70% of his income is from sales of alcohol and all staff know where the training records are located.

Mr Peter Aston, WSCC Trading Standards, Team Manager - Responsible Authority
Mr Aston thanked the Senior Licensing Officer for his detailed report. He confirmed that West Sussex Trading Standards instigated a review of the Premises Licence under section 51 of the Licensing Act 2003; they asked the Panel to include additional conditions, suspend or revoke the license, or remove Mr Chaudhari as the DPS. They requested the review to bring the breaches to the attention of the Panel as they were in the opinion that Mr Chaudhari was undermining the licensing objectives of the Prevention of Crime and Disorder and the Protection of Children from Harm. He outlined their press release of October 2021 of a zero tolerance to underage sales of alcohol; in previous test purchases in West Sussex 9 out of 16 businesses sold alcohol to children, he noted several businesses where they took action.

He advised Covid had impacted on the ability of Trading Standards to do test purchases on age restricted products, stating it was unfair to legitimate business, particularly vapes. In 2022 they announced a zero tolerance on the sales of alcohol to children and where there is enough evidence, they would seek a review of the licence to seek a suspension or revocation unless exceptional circumstances were found. He advised sellers / businesses would have a personal visit from Trading Standards and they would send a letter; they would actively engage with the licence review process to assist with illegal underage sales of alcohol and tobacco, conduct intelligence led test purchases and give robust advice to business.

He noted that in August 2022, intelligence was received regarding the underage sale of alcohol at Arya Food and Wine. On 12 September 2022 Mr Chaudhari received an advice visit by Trading Standards by appointment and advice was given to him on the sale of underage products and the Licensing Act 2003, he was advised to ask for ID before selling products. The Challenge 25 policy was explained; he was told not to sell age restricted products if ID is not shown, they were advised to train staff to check ID if the buyer looked under 25 and to log refusals. On 12 September 2022 the last refusal logged was on 9 September 2022. He outlined the Trading Standards free training, "Business Companion" available online to train staff. No training log was available for inspection during their visit, it was at his home address. He confirmed till prompts come up on the till to check for ID. Mr Chaudhari was told a future test purchase would be done and the consequences if he failed the test purchase. A copy of the report was given for him to sign, he was also sent a letter on 14 September reminding him of the advice given and details of the zero-tolerance policy.

For the test purchase on 8 February 2023, the underage sale of alcohol was witnessed by Laura Darby, Senior Trading Standards Officer and ID was not asked for or the child volunteer's age. Mr Chaudhari confirmed he had worked for Arya Food and Wine for over a year and received training every two months on age restricted products and ID should be asked for, no training records could be shown

as they were at the manager's house. The till prompts were working at the time of the visit and on the day of the visit the last date in the refusal book was 19 January 2023. The sale was contrary to the Licensing Act.

Whilst under caution Mr Chaudhari advised Mr Chaudhary had been working at the shop for a different length of time to the that given to Laura Darby. Mr Chaudhary had said he thought she was over 18 and he had received full training on the sale of age restricted products. The DPS had advised Mr Chaudhary had also been trained in using the refusal book, Mr Aston reiterated that no training records were shown on the day of the visit. Mr Chaudhary had initially worked at the store in 2021, left and then returned in 2023, the training log listed he received age related training on 15 January 2023. No details of regular training were listed between 21 October 2021 and 15 January 2023 and no age-related training until 15 January 2023. Mr Aston noted a big increase in the entries in the refusal log since the visit on 8 February 2023. He disputed the effectiveness of the training to the staff member as the item was sold only 25 days after the training.

Trading Standards had no confidence that the DPS would uphold the licensing objectives and the review was sought to prevent further illegal criminal activity. He drew attention of the Panel to Local Government Associations Handbook 2023, the purpose of a review is to act as a deterrent to prevent further breaches and the threat of revocation can be a deterrent.

In summary he advised intelligence had been received of the underage sale of alcohol at the premises, warning advice visits were made and a test purchase by a child volunteer. He stated the DPS was undermining the licensing objectives and Mid Sussex District Council's licensing conditions. He asked the Panel to consider a suspension of the licence, which would send a strong message across the county, where child protection matters are involved, robust sanctions should be administered.

Questions to the Responsible Authority

To clarify and avoid confusion the Chairman noted that Mr Mehulkumar Chaudhary had sold the drink, not the DPS. She sought further information from Mr Aston on the exceptional reasons to not suspend or revoke a licence.

Mr Aston advised that clause had been added to stop a licence review, to date no valid reason had been found to stop any review of a licence; there was no reason to stop the review of this licence

A Member noted the good work of the Trading Standards team. In response to another question on Operation Crackdown, Mr Aston advised the operation was continuing and four out of five test purchases were successful for underage products.

Summing up by the Licence Holder

Mr Chaudhari commented that Off Licences are not the only places that are responsible for children consuming alcohol, some obtain it from their parents, family and friends.

In response to the Chairman's request for clarification on the schedule of proposed conditions in relation to home delivery services. The Senior Licensing Officer confirmed they had been suggested by Sussex Police and since Covid home delivery services had increased; the revised conditions would prevent underage sales by a home delivery service. When asked Mr Chaudhari confirmed he did not have and had no intention of introducing a home delivery service in the future.

The Solicitor to the Panel explained that Members would retire to another room to deliberate, all relevant representations would be considered, and if a decision was not reached it would be communicated within five working days. All parties, Trading Standards, WSCC Public Health and Sussex Police would have the right to appeal the decision within 21 days.

The Chairman asked the other attendees to the meeting to remain in the Council Chamber and the Members left the Chamber at 10.55 am.

The Members returned to the Chamber at 11.23 am.

The Chairman advised there was no reason to doubt the evidence provided by Trading Standards, Mr Chaudhari has acknowledged it was correct and the Panel could not ignore that a serious offence had occurred. The Chairman confirmed the Panel decisions was to suspend the premises licence for two months and an additional condition would be added.

The Senior Licensing Officer advised that any party have 21 days in which to appeal to Brighton Magistrates Court and the suspension takes effect after 21 days if no appeal has been received. The Legal Department will send Mr Chaudhari a letter to explain.

RESOLVED

The Panel decisions was to suspend the premises licence for two months and an additional condition would be added.

“All such training and refresher training undertaken by staff members every three months, shall be fully documented and signed and dated by both the employee and DPS. All training records shall be kept on the premises and made available to any Responsible Authority upon request”.

The meeting finished at 11.50 am

Chairman