

**Minutes of a meeting of Mid Sussex District Council Liquor Licensing Panel
held on Friday, 22nd September, 2023
from 2.00 pm**

Present: Councillors: J Henwood (Chairman)
M Kennedy
M Miah

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

Also in attendance: Mrs Pinky Bharat Patel, Licence Holder - Londis Supermarket
Mr Bharat Patel, Licence Holder - Londis Supermarket
Mr Michael Kheng, Agent for the Licence Holder
Mr Peter Aston, WSCC Trading Standards, Interested Party
Terry Stanley, Head of Democratic Services and Elections
Aidan Gaff, Senior Electoral Services Officer
Lucinda Joyce, Senior Democratic Services Officer

The panel and officers were introduced to the applicants and the Responsible Authority.

LS.1 TO RECEIVE APOLOGIES FOR ABSENCE.

Apologies were received from WSCC Public Health and Sussex Police.

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

None.

LS.3 APPLICATION TO REVIEW PREMISES LICENCE - 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 of Londis Mini Supermarket, 65 Lingfield Road, East Grinstead, West Sussex, RH19 2EU. 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 underage products, the sale of alcohol to a child during a test purchase conducted by West Sussex Trading Standards on 8th February 2023, noting enquiries were made into the incident. 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 Londis (Anishs) Mini Supermarket, of 65 Lingfield Road have been licenced for the sale of alcohol for consumption off the premises since November 2014, under Licence Number PWA0494. The partners of the supermarket are Manjulaben Ambarish Patel, Ambarish Ambalal Patel, Bharat Chaturbhai Patel, and Pinky Bharat Patel. The Designated Premises Supervisor (DPS) at the time of the incident in the review application was Mrs Manjulaben Patel, however the DPS changed to Mrs Pinky Bharat Patel on 22 February 2023. The Officer noted the licensed hours and additional conditions on the current licence, Challenge 25, staff training, and the operation of a refusals log were detailed in the report.

The review was requested as during a test purchase, organised by Trading Standards on 8th February 2023 a child was sold alcohol. Staff at Londis Supermarket were also made aware of the sale of age restricted vapes to children during an advice visit to the store in August 2022, where Trading Standards gave advice to Mr Bharat C Patel on the sale of age-restricted products. Bharat Patel then sold alcohol to a child on 8th February 2023, he claimed he had been distracted whilst serving the customer due to receiving a large energy bill. At the time there were no written records of staff training as it was done verbally.

Trading Standards advised they believed there is a failure to continually uphold the Licensing Objectives, the management do not promote the Licensing Objectives and a review of the licence could limit further criminal activity, and act as a deterrent for other licence holders considering illegal activities. As advice on the sale of underage products had been given before the sale to the underage customer, Trading Standards suggested a three-month suspension of the Premises Licence. Full details of their representation were listed in Appendix 4.

The representation by Sussex Police in Appendix 5 advised they supported the request for a review on the same grounds as Trading Standards and their request for a three-month suspension of the Premises Licence. They expressed concern that the underage sale occurred during a test purchase exercise when advice had been given to the management previously regarding underage sales, and Challenge 25 posters were not displayed. At the time of their visit no DPS authorisation forms, training logs, refusal or incident logs were available for inspection; CCTV was operational but only the manager could operate the system. The Panel were recommended to update the conditions of the premises licence, as detailed in Appendix 6; the Senior Licensing Officer noted he had no information whether the Premises Licence Holder had accepted or made any comments on these conditions.

Appendix 7 detailed the representations of West Sussex County Council Public Health, who also supported the review on the same grounds and the suspension of the premises licence. In their representation they stated that they are deeply concern over the sale of alcohol to children due to the harm caused by the effects of alcohol. They reiterated that the premises had received advice during a visit by Trading Standards prior to the failed test purchase. They expressed concern that the person who sold the alcohol during the test purchase was also responsible for training other staff in the Challenge 25 Policy, was not promoting the Licensing Objectives and there was no written evidence of staff training. They highlighted the increase in alcohol related hospital admissions for the under 18s, and in Mid Sussex the rate is also higher than the national rate.

The Senior Licensing Officer highlighted Appendix 8 which contained information supplied by the Licence Holder's Agent and included the result of a test purchase by the National Lottery, a utility bill, training records, refusals log and sections of the Home Office Guidance issued under Section 182 Licensing Act 2003.

The 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 section 2.34 of the guidance which advises considerable weight should be given to representations on child protection matters and the Director of Public Health may also have access to relevant evidence to inform such representations. Section 11.10 advises it is good practice for authorised persons and responsible authorities, who have concerns to give licence holders early warning of their concerns, the need for improvement and the actions to be taken. Section 11.17 advises the Licensing Authority may issue a warning letter or recommend improvements to ensure promotion of the Licensing Objectives.

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. 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. He noted that the DPS had changed since the incident; the Licensing Authority should seek to establish the cause, any remedial action should be directed at the cause, should be appropriate and proportionate to the requested review. The Senior Licensing Officer advised the Panel that in Appendix 8 Mr Kheng had highlighted section 11.23 of the Home Office Guidance, the effect of a temporary suspension on the business and that the detrimental financial impact should be proportionate to the four Licensing Objectives. Where a business was found to be trading irresponsibly, Licensing Authority should take tough action. He outlined the appendices, noting the revised conditions supplied by West Sussex Public Health, which were similar to those of Sussex Police.

Questions to the Senior Licensing Officer

There were no questions for the Senior Licensing Officer from Trading Standards.

Mr Peter Aston, WSCC Trading Standards, Team Manager - Responsible Authority

Mr Aston advised Trading Standards had requested a review of the premises licence of Londis Mini Supermarket, 65 Lingfield Road under Section 51 of the Licensing Act 2003 with a view to a three-month suspension. He highlighted that the purpose of the review was to bring to the Local Authorities attention the breaches of the licencing laws. The current operation of the premises was undermining the Licensing Objective of the protection of children from harm as alcohol was sold to an underage person. The second licensing objective 'Prevention of Crime and Disorder' has also been failed by the criminal offence that took place on the 8th of February 2023. He outlined the press release by Trading Standards in October 2021 of a zero tolerance to underage sales of alcohol and noted previous cases where licences have been revoked/ suspended following a review of a licence. The illegal sale of vapes to children has also continued and there is now a zero tolerance for these sales. Where

there is evidence of a breach of licencing laws, Trading Standards will seek a review to get the licence suspended or revoked, this enforcement action is in line with their policy. He advised that a wide range of media is used to highlight recent cases where licences have been revoked/suspended. Londis Mini Supermarket was fully advised by a personal appointment which was followed up in writing. Trading Standards had received intelligence from parents, local residents and the Police; all information received is followed up and he advised they take tough action where breaches occur. Intelligence reports in Mid Sussex have escalated, and the sale of illegal vapes to children is a particular concern due to the impact of the vapes' chemicals on children.

In June 2022 intelligence was received from the Police that advised vapes to sold to under 18s, and the Police attended the premises. They gave advice to the Store Manager and advised Trading Standards would be informed. The Store Manager advised the staff would be re-educated. The Committee were informed that the sale of vapes to under 18s is illegal under the Children and Families Act 2014. On 5 August 2022 Trading Standards undertook an advice visit by appointment and spoke to Mr Bharat Patel, they advised a test purchase would be made and the consequences if they failed the test. An advice visit letter was sent after the visit. On 8th February 2023 a test purchase was undertaken, where a 17-year-old volunteer, under the supervision of Trading Standards successfully purchased a bottle of WDK Blue cocktail. The male on the till did not ask for ID; after securing the evidence the Trading Standards officers went back to the shop and took information from the member of staff under caution. Mr Bharat Patel said the volunteer looked 19/20 years old and he had been distracted by received a large energy bill. With regard to training on the sales of age restricted products, he said he had not been recently trained, he reads articles online and he trains the other employees. He confirmed staff were trained on the Think 25 Policy and reiterated that at the time of the test purchase he had been distracted by the energy bill. Further questions were put the other partners, and Trading Standards were advised that all training was done verbally and there were no written records of the training. The Panel were advised that the partners also have a second premises at Felbridge.

In summary Mr Aston highlighted that the sale of alcohol was a breach of Licensing Objectives, the staff had failed to promote the Licensing Objectives, and a criminal offence had occurred on 8th February by the sale of an age-restricted product to a child.

A review of the licence can act as a deterrent. He drew the Panel's attention to section 2.28 and 2.34 of the Home Office Guidance issued under Section 182 Licensing Act 2003; section 2.34 advises Local Authorities should give weight to child protection matters.

Questions to the Trading Standards, Responsible Authority

Members of the Panel questioned Mr Aston on the approach of Trading Standards to the failed test purchase, the time taken to seek the review, the records of the Premises and were concerned over the continued selling of vapes to children.

Mr Aston advised they have not prosecuted Londis Mini Supermarket as the incident was still under investigation, they are guided by their enforcement policy of a stepped approach; the outcome could be a warning letter, a simple caution if they accepted the failure or a prosecution. He advised the review had taken a long time as seven of the eight test purchase undertaken had failed which increased the officers' workload as a thorough investigation is required. He confirmed that training and refusals logs

had not been available for inspection when Responsible Authorities visited the store. The sale of vapes to children was being dealt with through the review of licences, and nationally with the help of a Government review and Public Health they are trying to educate children through their schools.

Mr Michael Kheng, Agent for the Licence Holder

Mr Kheng advised the Londis Mini Supermarket was a family business which had been running for over 9 years, they also had bigger premises at The Parade for 12 years. They had sold age restricted products for a long time with no issues. They had passed a Camelot test purchase and do operate a Challenge 25 policy. He acknowledged that they failed the test purchase on 8th February 2023, and noted that the report did not include any photos of the volunteer who had been dressed to look like they were 18. He highlighted the energy bills in Appendix 8, advising Mr Patel had apologised and "his mind was focussed on an energy bill he had opened 10 mins earlier. He hoped the Panel would understand as the bill for one month's energy was very high.

Appendix 8 also contained a copy of the Essential of Alcohol Workbook by Highfield Qualifications; a recognised awarding body and a form of basic training for staff. He noted that the workbook contained tests and a quiz at the end; the quiz is completed by the staff member then signed as part of their training record. The quiz is then reviewed by the DPS, this is now in place for both shops. The Panel were reminded that there was no evidence of a problem regarding the sale of vapes at the store, and the review only related to the test purchase for alcohol. He advised holding a copy of the DPS authorisation form at the store was not a legal requirement and the officer's photos show the Challenge 25 signage on display. They were on display when the Police attended the store, and another sign was put up at their request. He noted that the store has 32 CCTV cameras internally and externally, and access to the footage is restricted in line with data protection requirements.

With regard to the suggested three-month suspension to give the store time to train the staff, he advised the store had continued to operate for over 6.5 months since the failed test purchase and all staff had been retrained. Therefore, a suspension was not appropriate. In his opinion the store would have passed if another test purchase had been undertaken by Trading Standards and no warning letter had been received. Section 182 of the Home Office guidance advises any suspension would be a financial punishment, a suspension would not gain anything and would not promote the Licensing Objectives. A suspension would be contrary to section 11.20, "remedial action should be directed at the causes, an appropriate and proportion response". The store's previous history and the last six months show the Licensing Objectives are being addressed, there was no persistent underage sale of alcohol. All remedial action has been done. There was no need to change the licensing conditions as the proposed conditions are standard, not tailored to the premises as a delivery service is not provided; there had been no consultation of the proposed conditions. The DPS had not been at a panel before, so the current conditions work. He also highlighted section 9.43 of the Home Office guidance. Mr Kheng asked for a formal warning instead of a suspension of the Premises Licence.

Questions to Mr Kheng, Agent of the Licence Holders

Members expressed concern that the visit of Trading Standards had highlighted many issues and noted changes had been made, and the previous DPS had rarely been in attendance at the store particularly during the visit of the Police. They

queried whether the large energy bill was considerably higher than normal, who checks the training records and what percentage of the store's taking are for alcohol.

Mr Kheng confirmed the store now had a good operating practice. The previous DPS had been absent due to a knee operation and within weeks the DPS had changed, and the authorisation form was put in place. He accepted that no logs of training were kept, a refusal log now written. All the points raised by the Police had been dealt with. He recapped on previous energy bills that had been included in Appendix 8 which indicated the bill was much higher, the discrepancy had now been rectified. He confirmed that the refusals log is stored electronically on the till, a prompt is provided as age-related products are scanned. Mr Patel confirmed from March a written record has also kept, the DPS checks the training records and 10% of their total sales are for alcohol.

Summing up by WSCC Trading Standards

Mr Aston reiterated the seriousness of the case which demonstrated a breach of Licensing Objectives and the Premises Licence holder has a duty to uphold the Licensing Objectives. There had been a breach of the Prevention of Crime and Disorder objective as alcohol had been sold to a minor. He highlighted the proposed changes to conditions six and seven, and the suggestion of a three-month suspension was consistent and proportionate to other recent reviews. Trading Standards had no confidence that the licence holder would continue to uphold the Licensing Objectives as no action had been taken after advice had been given.

Nathan Mountney, Solicitor to the Licensing Panel advised that the Panel would retire to make their decision and their reasoning. He also advised that any party has 21 days in which to appeal to Brighton Magistrates Court.

The Members left the Chamber to review the documents at 3.08 pm. The Members returned to the Chamber at 3.49 pm.

The Panel carefully considered the application for review and verbal submissions from West Sussex Trading Standards; the representations made by Sussex Police and West Sussex County Council Public Health; and verbal submissions and evidence submitted at the hearing by the License Holders and their agent. It has taken into account the Mid Sussex District Council's Statement of Licensing Policy, the revised Home Office guidance issued under section 182 of the Licensing Act 2003, the duties under the Crime and Disorder Act 1998 and the rights set out in the Human Rights Act 1998. All options for determination have been considered as per section 52 of the Licensing Act 2003.

The Chairman commented that they may have been momentarily distracted but that does not justify their failure to uphold the promotion of the Licensing Objective to protect minors. They must separate the distress of running a business and the obligation to uphold the conditions of their licence. Within the last six months the Panel is satisfied that the Premises Licence holder and the staff have implemented the conditions of their licence. Police and Public Health have suggested an amendment to their conditions. The Panel accepts the current conditions of your licence are sufficient if implemented to address the promotion of the Licensing Objective to protect minors and prevent crime and disorder. In this case the Panel believe a formal warning is sufficient.

RESOLVED

The Panel decided that Mrs Pinky Bharat Patel, the Premises Licence Holder no PWA0494 should be issued with a formal warning.

The Solicitor advised all attendees have the right to appeal against the Licensing Authority's Decision. Any appeal must be made to Brighton Magistrates' Court, The Law Courts, Edward Street, Brighton BN2 0LG, 01273 670888 and commenced by Notice of Appeal within 21 days of being notified of the decision, which is the 16th October 2023.

The meeting finished at 3.50 pm

Chairman