

**Minutes of a meeting of Mid Sussex District Council Liquor Licensing Panel
held on Tuesday, 17th October, 2023
from 10.00 am**

Present: Councillors: J Henwood (Chairman)
A Eves
M Kennedy

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

Also in attendance: Miss Man, MDL Solicitors – Solicitor on behalf of Licence Holder
Ms Lakminy Kandasamy, Licence Holder
Peter Aston, WSCC Trading Standards, Interested Party
Ryder White, Democratic Services Officer
Lucinda Joyce, Senior Democratic Services Officer

The panel and officers were introduced to the applicants and 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 TO BE AGREED BY GENERAL AFFIRMATION THE MINUTES OF THE PREVIOUS MEETINGS HELD ON 15 SEPTEMBER AND 22 SEPTEMBER 2023.

Nathan Mountney, Solicitor to the Licensing Panel, confirmed the minutes of the meetings held on 15 September and 22 September 2023 were a correct record. The Committee agreed the minutes and they were signed by the Chairman.

LS.4 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 KK News Ltd, Trading as Sparks News, 56 Queens Road, Haywards Heath, RH16 1EE. 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 2003, follows the sale of underage products and the sale of alcohol to a child during a test purchase operation conducted by Trading Standards on the 24th May 2023, noting subsequent enquiries were made into the incident. Submissions from Responsible Authorities, in support of the review have 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 due 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 Sparks News (KK News Ltd) of 56 Queens Road, Haywards Heath, RH16 1EE have been licensed for the sale of alcohol for consumption off the premises since March 2017, under License Number PWA0551. The Premises License holder and the Designated Premises Supervisor (DPS) at the time of the incident in the review application was Ms Lakminy Kandasamy.

He noted the current Premises License and conditions were attached at Appendix 2. The premises is currently licensed for the following licensable activities:

Licensable Activity	Timings
Sale by retail of alcohol	Everyday 06:00-20:30

The current opening hours of the premises are:

Sunday: 10.00 – 22.30

Monday to Saturday: 08:00 – 23:00

The premises operates as a local convenience store/newsagent in Haywards Heath within a mainly residential area. Photos of the store are attached at Appendix 3.

The Senior Licensing Officer confirmed there are a number of additional conditions attached to the licence in addition to the mandatory licence conditions including Challenge 25, Digital CCTV in accordance with Home Office Guidelines relating to UK Police Requirements for Digital CCTV System (PSDB Publication Number 09/05), operation of a sales refusal log and incident log book and staff training.

He noted that West Sussex Trading Standards had applied for a review of the premises licence based on the sale of alcohol to a child that took place during a test purchasing operation that they conducted on the 24th May 2023.

They cite that they had previously received a report on the 30th of January 2023 that Sparks News was openly selling vapes and liquids to children in Oathall College school uniform, every day after school. The report also stated that this was causing litter and anti-social behaviour. They received three further complaints at the end of March 2023 of the venue selling alcohol and e-cigarettes to 15- and 16-year-old children.

Trading Standards reference a visit to the premises by Mid Sussex District Licensing Team on the 30th of March 2023 when a programmed inspection took place, and an advice letter was sent to the DPS following the inspection.

On the 3rd of April 2023 Trading Standards completed a visit to the premises where advice was given to Ms Kandasamy regarding underage sales, and she was advised that test purchases would take place and if failed a licence review would be applied for. A follow up advice letter was sent to the premises.

On the 24th of May 2023 an employee at the store sold alcohol to a child during the test purchase. When Trading Standards officers spoke to the employee, they commented that he was hard of hearing and his command of English was limited as it did not appear to be his first language. He did seem to understand what underage sales were but thought the volunteer was 18. KK News Ltd director Ms Kandasamy responded to a formal written interview request and stated that both herself and a staff member have personal licences. Ms Kandasamy confirmed that she is the owner and responsible for the day to day running of the business.

Trading Standards advised they do not have confidence that the licensing objectives are or will be promoted by the continuation of licensable activities at these premises. They comment that despite being trained with a personal licence since 25th June 2008 and being a DPS at Sparks News since 11th March 2017, Ms Kandasamy had not put adequate due diligence and procedures in place until Trading Standards visited on 3rd April 2023. They highlight that Ms Kandasamy left her staff untrained for years after they joined the business, allowing them to sell age restricted products without knowledge of how to ensure children are protected from harm. The Challenge 25 policy is a mandatory condition of the premises licence, and it has not been complied with. They state that there has been a failure of the management to promote the licensing objectives, the sale/supply alcohol in the circumstances outlined is a breach of the licensing objectives and the licensee has failed in their responsibilities to protect children from harm. Therefore, Trading Standards suggest to the Panel an appropriate outcome of the review would be a revocation of the premises licence.

He noted full details of the Trading Standards investigation are attached to the report at Appendix 4.

WSCC Public Health have submitted representations in support of the application on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm. These are attached in full at Appendix 5. In their representation they state that sale of alcohol to children is of extreme concern, considering the strong

evidence demonstrating the harms caused by alcohol to children and young people. They highlight that the premises had received an advice visit from MSDC Licensing Team and from a Trading Standards officer prior to the test purchase.

They highlight that in Mid Sussex alcohol-specific hospital admissions among under 18s have shown an increase since 2016/17 and the comparable rate for the district is 35.2 admissions per 100,000 under 18s which is also above rates for England overall.

They state that it is disappointing that despite previous advice provided by Trading Standards, alcohol was sold to a child. Given the serious nature of this offence and the harm caused to children by alcohol, this suggests that the premises is not taking seriously their responsibility to uphold the Licencing Objectives.

Having considered the information provided in the review, West Sussex Public Health state they are supportive of the recommendations of Trading Standards which seek to limit further criminal activity and to promote the licencing objectives.

Sussex Police have submitted representations in support of the application to review the premises licence on the grounds of the Prevention of Crime and Disorder and the Protection of Children from Harm. These are attached at Appendix 6.

They detail that Sussex Police received a report on the 27th of March 2023 from an informant stating that her son of 15 years of age had been sold alcohol and vapes from the premises on the 25th of March 2023. As a result of this information a joint visit by the Police and Mid Sussex District Council Licensing team was carried out on the 30th of March 2023. During the visit the DPS Ms Kandasamy was present along with another member of staff. She was spoken to regarding the allegation and words of advice was given regarding this matter. It appeared that the DPS was not at the premises at the time of the reported incident.

The following observations were made whilst the officers were at the Licensed premises:

- The DPS could not produce part A of the Premises Licence.
- Part B of the Premises Licence was on display in the store.
- The DPS could not produce a DPS authorisation form.
- Challenge 25 (age verification) displayed.
- CCTV was working although the time was incorrect.
- Training records for the member of staff working in the store at the time of the visit could not be produced. No refresher training documented which as per the training condition attached to the licence, should be carried out at intervals of no more than 6 months.

To assist the DPS in managing the issues raised and upholding the Licensing objectives, documentation was then passed to the DPS to help rectify the issues raised during the visit. A further visit to the premises was carried out on the 17th of April 2023 by Mid Sussex District Council Licensing team. The result of the visit was that the premises had rectified all the issues raised.

In the representation they state that they are particularly concerned that in this case alcohol was sold to a child during a test purchase exercise and that prior to the test purchase exercise carried out by Trading Standards, advice around the sale of age

restricted products was given to the management of the premises by a number of Responsible Authorities.

Sussex Police support the review application and recommend to the Committee that they consider a suspension period of three months is appropriate. In addition to a suspension of the premises licence, Sussex Police invite the Committee to consider updating the premises licence conditions by replacing all the existing conditions in the operating schedule of the licence with proposed conditions detailed at Appendix 7.

The review has been applied for under Section 51 (1) of the Licensing Act 2003. Section 52 of the Licensing Act deals with the determination of the review. These are listed in the report along with the next steps.

In terms of the Licensing Objectives, the Senior Licensing Officer confirmed that the Licensing Act 2003 requires representations to address the four licensing objectives which are:

1. Prevention of Crime and Disorder
2. Public Safety
3. Prevention of Public Nuisance
4. Protection of Children from Harm

The Panel were asked to determine the review application having due regard to all the relevant representations, the promotion of the Licensing Objectives as stated above and the Home Office Guidance issued under Section 182 of the Licensing Act 2003. He highlighted section 11.10 of the guidance which advises it is good practice for responsible authorities to give licence holders early warning of their concerns and the need for improvement and actions to be taken. He also highlighted section 11.23 which advises licensing authorities should note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

The Senior Licensing Officer highlighted Appendix 6 which contained information from Sussex Police regarding implementing replacement conditions to the current Premises Licence upon the License being revoked. He outlined the remaining appendices which include the representations from WSCC Public Health, Sussex Police and suggested condition and photos of the premises.

Questions to the Senior Licensing Officer

Mr Aston, Team Manager, Trading Standards, asked if the amended licensing conditions supplied by Trading Standards had been included with their representation.

Upon the advice of Nathan Mountney, Solicitor, the Senior Licensing Officer, confirmed the amended conditions had not been included in the Trading Standards submission and advised Mr Aston address these in his submission to the Panel.

The Chairman asked if the alcohol, in particular spirits, were stored behind the counter on the premises.

The Senior Licensing Officer confirmed that spirits are stored behind the counter and all other alcohol were displayed in the lefthand aisle, including chilled and non-chilled alcohol.

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

Mr Aston advised Trading Standards had requested a standard review of the premises licence of KK News Ltd, Trading as Sparks News, 56 Queens Road, Haywards Heath, RH16 1EE under Section 51 of the Licensing Act 2003 with a view to a revocation, suspension, inclusion of additional conditions or removal of the DPS.

He highlighted that the current operation of the premises was undermining the Licensing Objectives, and the purpose of the review was to bring to the Local Authorities attention the breaches of the licencing laws. He outlined their press release of October 2021 warning businesses there would be a county wide crack down on to underage sales of alcohol and noted previous cases where shops had been found to be selling alcohol and tobacco products to children. There has also been significant press coverage of licences across the district that have been revoked. There have also been occasions of other underage sales across the County, but they have involved other criminal activity and are not reported on. As the sale of vapes has continued, Trading Standards took the decision in January 2022 to instigate a zero-tolerance policy to the sale of alcohol to children and where there is sufficient evidence, they will seek a review of the business alcohol licence with the aim of having it suspended or revoked unless there are exceptional circumstances. This approach would be following businesses having been fully advised in a personal visit and followed up in writing.

As part of their policy they agreed that the following steps would be taken: Trading Standards engage with the alcohol licence review process in view of tackling the supply of the restricted items. They conduct intelligence led test purchasing operations with evidence that usually comes from parents, teachers or businesses. All reported instances are followed up. They give robust advice to businesses who are reported as selling age restricted products to children and take appropriate and proportional action. They also utilise zero tolerance messaging and this is reflected in the published enforcement policy.

Unfortunately, incidents in Mid Sussex and the County have escalated which has a significant impact on the resources of both Trading Standards and Mid Sussex District Council.

With regards to this specific case on 30th January 2023 the Responsible Authority received a report that Sparks News in Queens Road Haywards Heath openly sells vapes and liquids to children in school Oathall Communications College uniform, every day after school. The report also stated that this was causing litter and unsocial behaviour for local residents.

Between 26th and 30th March 2023 the Responsible Authority received three complaints about the business trading at Sparks News 56 Queens Road selling alcohol and e-cigarettes to 15 and 16-year-old children regularly.

On 30th March 2023 Mid Sussex Licencing authority provided advice on the licensing objectives to the Designated Premises Supervisor. The mandatory conditions of the premises licence include a challenge 25 policy, whereby anyone looking under 25 must be asked for identification to verify that they are over 18 years of age. The premises licence also requires the business to regularly train staff, with this being documented. This documentation must be readily available for inspection by officers.

On 3rd April 2023 the Responsible Authority carried out an advice visit to Sparks News 56 Queens Road Haywards Heath, West Sussex, RH16 1EE. It was established that the business has been run by KK News Limited, who had been trading there for the last 2 years. Mr K Murugaivan, an employee, was advised on underage sales, also the owner was spoken to on the phone. The owner gave her name as Minnie, understood to be Miss Kandasamy, and provided the company information. Miss Kandasamy was given advice on underage sales, including being sign posted to the Business Companion website. This website provides businesses with advice on how to comply with consumer protection legislation. Miss Kandasamy was advised that test purchases of age restricted products would take place and if they sold a licence review would be applied for. The DPS was confirmed as Lakminy Thambu Kandasamy.

During the advice visit a refusals log appeared to be in use, as well as a till prompt and identity accepted was appropriate. However, the challenge 25 policy was not in place. Challenge 25 posters were provided to the business. No training records were in place, but it was said that verbal training had been completed. The business was advised to ensure they complete signed records of any training completed.

On 6th April 2023 a follow up letter of advice on age restricted sales was sent to Lakminy Kandasamy, via email. The letter included advice on; asking for identification to prove age when selling age restricted products, the challenge 25 policy, refusals logs and staff training. At the end of the email was a link to the business companion website.

On 24th May 2023, the Responsible Authority visited Sparks News 56 Queens Road, Haywards Heath, West Sussex, RH16 1EE as part of a controlled test purchasing operation. Officers witnessed an employee, who gave his name as Mr Morg Kyin sell a bottle of Blue WKD, an alcoholic drink, to a child under the age of 18. This sale is contrary to Section 146 of the Licensing Act 2003. It was witnessed that the seller did not ask the volunteer for their age or ask them for any identification.

Immediately after the sale Mr Morg Kyin was interviewed under caution. He was hard of hearing and his English speaking was limited as it did not appear to be his first language. He did seem to understand what underage sales were but thought the volunteer was 18. He showed the till prompt and was able to provide the refusals log. The refusal log showed usage since 03/04/2023, when Trading Standards conducted an advice visit, with the last entry on 20/05/2023. The shop had a steady flow of customers, so daily refusals would be expected, but this is not the case. Training logs could not be found, Mr Morg Kyin said these may be upstairs. He was apologetic and stated that he usually checks identification when selling age restricted products.

KK News Ltd director Miss Kandasamy responded to a formal written interview request and stated that both herself and staff member Jeyarajah have personal licences. This has been confirmed by the issuing councils. Miss Kandasamy confirmed that she is the owner and responsible for the day to day running of the business, she stated that she can speak on behalf of the company.

The reason given for the sale was that the volunteer looked over 21 years old. This is contrary to the mandatory licence condition to have in place a challenge 25 policy. Miss Kandasamy stated that there is a policy to read and explain about under age sales every week. This was not provided when requested during the visit on 24/05/2023, despite the premises licence mandatory condition that records should be readily available for inspection. Miss Kandasamy stated that council officers gave the

business the procedures for age restricted sales, indicating that procedures had not been implemented by Miss Kandasamy. She stated that she had external and online training for age restricted sales. The training logs provided by Miss Kandasamy include one for Kalyanasundaram Murugaiyan who joined 15/04/2019 but the date of initial training/induction is stated to be on 21/04/2023. The training log said it includes training on who the licence holder and DPS are, where the licence is, authorisation to sell alcohol, age verification and refusal log. This training was been repeated on 01/06/2023 and 23/06/2023.

Another training log for G Jeyarajah was provided by Miss Kandasamy. This stated that this person joined on 19/07/2021 and was trained on 21/04/2023, 01/06/2023 and 25/06/2023. The employees and Miss Kandasamy signed all of the training logs, which all stated that the training includes licensing objectives, an age verification policy and refusal logs.

A signed designated supervisor staff authorisation form had been provided to show that Miss Kandasamy had given advice to Mr Murugaiyan and Govindapillai Jeyarajah about age restricted sales, when authorising them on 21/04/2023, 01/06/2023 and 23/06/2023.

A premises Age Verification Policy had been provided that confirmed Miss Kandasamy is the responsible person for the business in relation to age restricted sales, this was signed on 21/04/2023. Further refusal logs had been provided showing it had been in use since 24/05/2023 until 13/06/2023, with various staff refusing mostly e-cigarettes sales. It is stated that the log is checked weekly, these logs have been signed off by Miss Kandasamy or G Jeyarajah at the end of each page.

Photographs of the tobacco notice, and the challenge 25 policy displayed at Sparks News have been provided along with photographs of the till prompt, as evidence of these being in place. Miss Kandasamy states that a DPS or personal licence holder will remain in the shop and supervise sales to prevent the sale of age restricted products to minors. She also states that the CCTV is monitored daily.

Under section 146 of the Licensing Act 2003 it is a criminal offence to sell alcohol to a person who is under the age of 18 years old. Miss Kandasamy admits the offence has been committed by herself and the company, she apologised for the sale that took place on 24/05/2023.

Despite being trained with a personal licence since 25/06/2008 and being a DPS at Sparks News since 11/03/2017 Miss Kandasamy has not put adequate due diligence procedures in place until Trading Standards visited on 03/04/2023. Miss Kandasamy left her staff untrained for years after they joined the business, allowing them to sell age restricted products without knowledge of how to ensure children are protected from harm. The challenge 25 policy is a mandatory condition of the premises licence and still has not been complied with.

In summary, the Responsible Authority does not have confidence the licensing objectives are or will be promoted by the continuation of licensable activities at KK News and deemed it both proportionate and necessary to invite the committee to consider a review of the premises alcohol licence, to limit further criminal activity by the licence holder and to act as a deterrent against such illegal conduct. He drew the Panels attention to section 11.27 and 11.28 of the Home Office Guidance issued under section 182 of the Licensing Act 2003. The Responsible Authority suggested an appropriate outcome of the review would be a revocation of the premises license.

Questions to the Trading Standards, Responsible Authority

The Chairman asked that the Panel be provided with the amended licensing conditions. The Solicitor and Senior Licensing Officer confirmed these to be shared with the Panel.

A Panel Member asked for clarity on 'oilens' contained in the refusal log of the report and depending on the final decision of the Panel, would Trading Standards continue to monitor the premises for underage sales of harmful substances, as this review is only considering underage sales of alcohol.

Mr Aston confirmed the Responsible Authority would continue to monitor the premises.

A Panel Member asked to be reminded of Trading Standards warning procedures to businesses.

Mr Aston advised that a press release was published in October 2021 and since then, Trading Standards have continued to publish press releases and other communication media platforms to provide warning to businesses. He noted that every business Trading Standards visit are subject to a test purchase and following the results of the test, a formal review.

Representatives of the Premises Licence holder: Miss Man, MDL Solicitors – Solicitor

Miss Man advised the Panel there were two issues contained in the reports presented that she would like to address. Firstly, the employee involved in the test purchase, Mr Morg Kyin, failed to perform the instructions given to him as English is not his first language and he has a disability. She referenced the Trading Standards application at Appendix 4, noting this was a failure of the test purchase procedure not a failure of the Management. Shortly after the visits by Trading Standards in March and April 2023, Ms Kandasamy the DPS, spoke to all employees reminding them of how to deal with age restricted products.

Secondly, the issues raised by Sussex Police following a visit on 27th March 2023 have now been resolved. A DPS authorisation form has been produced, the employee in question has been added to staff training records and these are now up to date and a DPS refusal log has been provided. Finally, the CCTV is working with the correct time.

She acknowledged they had failed the test purchase on 24th May 2023 and Ms Kandasamy had learnt her lesson. As a result, she would be implementing the following actions to limit the number of underage sales of alcohol; reduce the number of children allowed into the shop at any one time by displaying on a poster at the front of the premises and instruct the premises supervisor to allow 2 children at a time into the shop. Increase the number of supervises on duty at the premises to support staff and provide regular training monthly.

With regard to the suggested three month suspension, she advised the shop is primarily a convenience store for the local residential areas, with the nearest supermarket at least 10 minutes away. The festive season is also approaching, including Diwali and Christmas, therefore, if the premises licence was suspended for three months this would include November and December, causing a huge loss of income to the DPS and inconvenience for customers. She emphasised alcohol was

the highest selling product and suggests a reduced licence suspension of 1.5 months to take account of the festive season, this would still have an impact on income and sales. As this was the DPS's first time offence, Miss Man pleaded the Panel consider a reduced suspension of the licence and the DPS would cooperate with the suggested conditions at Appendix 7.

Questions to the Licence Holder

Members asked for clarification regarding the increased availability of the DPS to provide supervision at the premises. Miss Man confirmed this would increase but it would not be possible to provide 24hour supervision. The DPS would be on duty from 8am – 3pm and from 3pm onwards, Ms Kandasamy's husband would provide supervision. There would be an increase of staff, two employees per shift and Ms Kandasamy's husband, increasing the number of staff to three in the shop.

In response to Members asking if the employee involved in the test purchase was still employed, the Solicitor confirmed he was, and the employers had taken steps to improve communication and use sign language.

Finally, Members asked the License holder to confirm the financial turnover of the business and what percentage of this was from alcohol sales. The solicitor advised the DPS could not provide the exact figures, however, the base sale of alcohol is £200 per day, including snacks, £350 per day as an approximate figure.

Summing up by WSCC Trading Standards

Mr Aston confirmed that Trading Standards do not have the confidence that the licensing objectives will be upheld as it is clear there is a shortfall at all levels, including training of staff and procedures. He noted a robust decision should be made by the Panel as a clear deterrent to other businesses from selling age restricted products, in particular alcohol.

Nathan Mountney, Solicitor to the Licensing Panel advised the Panel would retire to make their decision and their reasoning. If the Panel was unable to make a decision at the meeting, it would be communicated to various parties within 5 working days. They may return with a decision but not reasons, however, these will be made clear. Attendees have the right to appeal against the Licensing Authorities Decision. Any appeal of the decision is to be within 21 days of being notified of the decision.

The Panel retired from the Chamber at 11.09am and returned at 11.48am.

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 submitted at the hearing by the Premises License Holder. 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 Panel confirmed the Licensed Premises, Sparks News failed a West Sussex Trading Standards (WSTS) test purchase to a minor.

RESOLVED

The Licensing Panel decided that;

- The conditions of the licence should be amended to the submissions suggested by the police, amended by Trading Standards and agreed by the Premises Licence Holder. Those conditions to include provision for 1/ limiting children to two at a time if not supervised by an adult, and 2/ door supervisor for periods after schools close to ensure the above is implemented, AND
- Suspend the licence for a period of 2 months to enable the Premises Licence Holder implementation time for the new conditions.

The meeting finished at 11.49 am

Chairman