

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
7 June 2016 (10.30 - 11.25 am)**

Present:

COUNCILLORS

Conservative Group Frederick Thompson (Chairman)

Residents' Group Jody Ganly

UKIP Group Phil Martin

Present at the hearing were Mr Janak Patel – Premises Licence Holder, Mr Graham Hopkins & Ms Linda Potter - applicant representatives, Police Licensing Officers PC Oisin Daly and PC Belinda Goodwin, Sasha Taylor – Havering Trading Standard Specialist and Havering Licensing Officers Paul Campbell, Paul Jones and Arthur Hunt.

Also present were the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

Councillor Dilip Patel was also present for parts of the hearing.

The Chairman advised Members and the public of action to be taken in the event of emergency evacuation of the Town Hall becoming necessary.

No interests were disclosed at the meeting

The Chairman reminded Members of the action to be taken in an emergency.

2 APPLICATION TO REVIEW A PREMISES LICENCE - MCINTOSH NEWS

PREMISES

McIntosh News
19 McIntosh Road
Romford
RM1 4JU

DETAILS OF APPLICATION

Application for a review of the premises licence by the London Borough of Havering's Licensing Authority under section 51 of the Licensing Act 2003 ("the Act").

APPLICANT

Sasha Taylor
Havering Trading Standards Specialist
Borough of Havering
Mercury House
Mercury Gardens
Romford
RM1 3SL

1. Details of existing licensable activities

Opening Hours		
Day	Start	Finish
Monday to Saturday	08.00	23.00
Sunday	10.00	22.30

2. Grounds for Review

Trading Standards Services submitted the application to review McIntosh News premises licence, numbered 2077, in accordance with the provisions of section 51 of the Act.

The grounds for the review were that the premises had made alcohol sales to underage persons on more than one occasion, thus failing to promote the prevention of crime and disorder and protection of children from harm licensing objectives.

In line with s.51 (3) (a) of the act the licence holder and other

3. Requirements upon the Licensing Authority

The provisions of s.51 of the Act indicated that the Licensing Authority undertakes certain functions with regard to a premises licence review application. To this end a suitably worded public notice was placed nearby to the premises (street sign pole at the junction of Marshalls Drive and McIntosh Road – photo was attached in the agenda pack). The same notice was also installed at Havering's Town Hall notice board on Main Road and also made available on Havering's website. A copy of the notice was attached for reference to the Licensing Officer's report.

The report of the Licensing Officer informed the Sub-Committee that during the consultation period the public notice was removed from the location nearby to the

premises on three (3) occasions and tampered with on a fourth occasion. Each time it was replaced or repositioned in order that the public could have notification.

On the first replacement Mr Patel was asked to display the notice inside his premises to prevent any removal. He was stated to be reluctant. He was therefore asked to contact his Licensing Advisor to resolve his issues. No further request was made to Mr Patel.

When determining an application for a premises licence review s.52(3) of the Act requires that the Licensing Authority must, having regard to the application and any relevant representations, take such of the steps mentioned in s.52(4) as it considers necessary for the promotion of the licensing objectives. These steps were:

- (a) to modify the conditions of the licence
- (b) to exclude a licensable activity from the scope of the licence
- (c) to remove the designated premises supervisor
- (d) to suspend the licence for a period not exceeding three months
- (e) to revoke the licence

4. Representations

There was no representation from interested parties.

There were four representations from Responsible Authorities.

Mr Paul Jones, Havering's Licensing Authority made a representation in support of Trading Standards application to review this premises licence. Mr Jones' representation details a number of licensing policies that the premises failed to adhere to, thus failing to promote the Licensing Objectives. He also produced a timeline of events to assist the Sub-Committee.

Havering's Children and Young People Services submitted a written representation in support of the application based on the protection of children from harm Licensing Objective but were not present at the hearing.

PC Belinda Goodwin submitted a representation on behalf of the Metropolitan Police in support of the application under the protection of children from harm licensing objective.

It was mentioned in the Licensing Authorities' representation, that visit were made to the premises by Licensing Officers, the agenda pack included inspection reports of the visits.

5. Details of Representations

At the commencement of the hearing, Mr G Hopkins, representing the Personal Licence holders requested to address the Sub-Committee on a suggested way forward in the hearing.

The Sub-Committee was informed that Licence holder were offering for Mr Patel to be removed as the DPS for the premises, and for the premises licence be suspended for three months and offered to waive the 21 days appeal period to the magistrates' court. Mr Hopkins also stated that the offer was being made as Mr Patel was marketing the business for sale and that an earlier agreed verbal sale had collapsed as the purchaser could not raise the funds to complete the purchase of the business.

The Sub-Committee sought the views of Trading Standards who confirmed that the application was for a revocation of the premises Licence.

Trading Standards

Sasha Taylor, for Trading Standards addressed the Sub-Committee stating that the Trading Standards Service was concerned about the management of the premises in light of the number of failures in recent years.

That underage sale had been made to young persons under the age of 18 on three occasions since 2007. That the sales were made by the Designated Premises Supervisor (DPS) and Mrs Patel, joint Premises License holders.

- Trading Standards contended that the Premises Licence holders had failed to promote the prevention of crime and disorder and
- The protection of children from harm

The Sub-Committee noted that on 1 June 2011, as part of an underage sale test purchasing exercise, Mrs Vinodbala Patel, sold one 75cl bottle of Echo Falls red wine to a 16 year old test purchaser. There was no request for identification or enquiry about the person's age. There was no CCTV, no Refusal Register and no Premise licence displayed. Mrs Patel received a formal Caution in relation to the sale. Mrs Patel had also sold alcohol to a person under 18 in 2007.

Following the test failure in 2011, the premises signed up to operate a 'Challenge 21' policy.

In 2011 the premises passed two test purchases.

At a meeting on 8 November 2011, the following action plan was agreed with Mr Janak Patel:

Proposed conditions on their premises licence:

- Installation of a CCTV system, that was fit for purpose.
- A personal Licence holder being on the premises at all times that alcohol was displayed for sale.
- In light of Mrs Patel failing two underage sales test purchases of alcohol she would no longer be authorised to make alcohol sales on behalf of Mr Patel.
- It was suggested that appropriate checks were carried out to ensure proof of age before selling alcohol.
- To adopt a "Challenge 25 policy"
- A refusal register been introduced and retained.

The Sub-Committee was informed that the premises licence holder was made aware of the need to remind customers suspected of buying alcohol on behalf of underage persons that it was an offence to do so. After numerous emails and phone calls, the business finally submitted a minor variation in February 2012 adopting all of the conditions on the licence.

The only condition that was not acceptable to Mr Patel related to the proposed restriction on his wife not been able to make alcohol sales.

In May 2012, Mr Patel was advised to replace all Challenge 21 posters with Challenge 25 posters. On 22 May 2012 the Challenge 25 application was returned to the Licensing Authority.

On 4 August 2015, the premises was visited as part of an underage sales test purchasing exercise and Mr Janak Patel sold an alcoholic beverage to a 15 year old female volunteer. He did not ask for identification or the age of the volunteer. Mr Patel was also the Designated Premise Supervisor.

There was also no Refusal Register and he was unable to produce any training records. On the day, two different business premises failed out of six visited.

On 10 August 2015, Licensing Officer Arthur Hunt visited McIntosh News, Mr Patel was asked to address a number of issues. In total 9 Licence Conditions were breached, 6 of the Conditions related to CCTV. Further visits were subsequently carried out between 2 September and 17 November 2015 as Mr Patel failed to contact Licensing Authority to address the issues raised, as far as the Licensing Authority were aware, Mr Patel never contacted Mr Hunt.

On 16 October 2015, a Trading Standards Officer called to remind Mr Patel of the Fair Trading Award Training which was scheduled for 31 October 2015 but Mr Patel responded that he would not be attending as he had to take his wife to the hospital.

On 21 October 2015, a meeting took place between Mr Patel, his Licensing Agent, the Trading Standards Specialist, Licensing and a Police Licensing Officer to discuss the recent problems at the venue.

At the meeting the Licensing Authority indicated to Mr Patel that he still had not set up the CCTV system as stipulated in the conditions despite a number of follow up visits.

Mr Patel admitted that it was a mistake to sell alcohol to a young person under the age of 18, and blamed it on the workload and hours he had to do that day as he had to cover for a newspaper boy who had not turned up.

During the meeting it was made clear to Mr Patel that he had not implemented the conditions he had previously agreed to in 2012, Mr Patel was unable to respond with reasons or convince the trading standards that he would do so and maintain them in the future.

Mr Patel was asked to consider surrendering his licence, which he said he did not want to do as he wanted to sell the business with the licence included.

Mr Patel was asked where he would live and he responded that he had a home nearby which he would move to. Mr Patel stated that he was going to sell the business. It was agreed at the meeting that he would provide evidence that the premises was been put up for sale and then notify Trading Standards of the sale. The Sub-Committee was informed that to date the notification had never been received.

The Trading Standards Officer explained to the Sub-Committee that the service was concerned that Mr Patel had made three failed test purchases within a few years and had not acted on the conditions that were agreed in 2012, despite numerous attempts to engage with the DPS.

These failings by what should be considered responsible persons within the shop gave Trading Standards Service significant concerns as to their commitment to preventing underage sales and responsible alcohol retailing.

The premises holder appeared to be unable or unwilling to successfully operate a Challenge 25 Policy despite numerous attempts by the Trading Standards Service to offer the valuable tool to the owner.

On a visit on 4 August 2015, there was no Refusal Register available on the premises even though it was added as a condition on the premises licence.

The premises holder adopted the following conditions after the sale in 2011:

- Installing a CCTV system that was fit for purpose and "operating to Home Office guidelines
- A personal Licence Holder to be in the premises at all times that alcohol was on display for sale

- Adoption of 'Challenge 25' policy by only accepting a valid form of Identification i.e. passport or driving licence before selling any age restricted products
- A Refusal of Service register been introduced and retained
- The need to remind customers suspected of buying alcohol on behalf of underage persons that it is an offence to do so.

The premises had continued to operate without a Refusal register even after the first underage sales and despite it been made clear that this was an important part of their diligence. The premises had also failed to honour previous assurances to install a CCTV system at the venue.

Although the sales had taken place over a longer period of time, Trading Standards service had lost confidence in the management and had concerns regarding the operation of the business. It was accepted that Mr & Mrs Patel had made the sales and owned the business.

Trading Standard believed that the premises holder would continue to sell to underage persons. Trading Standards would suggest that the revocation of the premises licence would be appropriate and should be considered.

The Sub-Committee was also informed that if it was felt that all conditions were appropriate Trading Standards would welcome any further conditions that would help prevent any future underage sales, or would ask the Sub-Committee to consider suspension of the premises licence until conditions were adequately implemented.

Licensing Authority

Paul Jones, Licensing Officer addressed the Sub-Committee outlining that the Licensing Authority representation was in support of Trading Standards application to review the premises licence.

The Sub-Committee was informed that based on Policy 1 of the Council's Statement of Licensing Policy, it was appropriate for the Licensing Authority to support the application to review the premises licence with regards the following matters identified:

- the location of the premises and the character of the area;
- the views of the responsible authorities;
- past compliance history of the current management
- the type and number customers likely to attend the premises
- whether the applicant is able to demonstrate commitment to a high standard of management, for example through active participation in the Safe and Sound meetings and pub watch.

The Licensing Officer informed the Sub-Committee that the premises licence holders had failed to promote

- The prevention of crime and disorder

- The protection of children from harm licensing

The premises was located in a residential area on a direct route from a nearby secondary school.

The concerns raised by Trading Standards were shared by the Licensing Authority which was responsible for issuing, monitoring and enforcement with regard to such licences.

The review application demonstrated that Responsible Authorities have had a lengthy series of interventions with the premises licence holders over a period of years which appeared to have had little effect upon the licence holders' ability or willingness to comply with the provisions of the premises licence.

The location of the premises was on a direct route for secondary school children. The Sub-Committee heard that Mr Jones had seen children enter the premises on their way home from school. Repeated alcohol test purchase failures at the venue, coupled with a daily influx of child customers at the premises causes the Licensing Authority great concern that the children of the area were not been adequately protected from potential harm when in the premises. None of the failed test purchases were to children from the secondary school, and the test purchasers were not in school uniform.

The reason for the review application been brought was due to repeated alcohol test purchase failures that demonstrated an on-going track record of failure to comply with legal requirements under licencing Policy 8. Such failings do not demonstrate a commitment to a high standard of management.

The Sub-Committee heard that under Policy 10, it was evidenced that the premises has repeatedly sold alcohol to test purchase volunteers aged under eighteen; therefore, it seems quite clear that the premises licence holders had failed to prevent the sale of alcohol to children, contrary to the policy and, more importantly, contrary to law. The Policy indicated that it would consider reviewing the licences to impose additional restrictions and controls to prevent or minimise the impact. Given that Trading Standards, the appropriate responsible authority, had brought the review application the Licensing Authority suggests that the premises licence holders have consistently demonstrated a failure to promote the licensing objectives, in particular the prevention of crime and disorder and the protection of children from harm. We are therefore of the view that, in line with this policy's requirements, the only failsafe method to ensure that similar failures do not recur at McIntosh News is to remove the premises licence holder's authority to sell alcohol, or, in other words, to revoke this premises licence.

The Sub-Committee was informed that under Policy 19 it was incumbent upon the Licensing Authority, as well as those individuals directly involved with the sale of alcohol, to promote the licensing objectives and in so doing to protect children from harm. The Licensing Objective had been

consistently ignored at the premises. Mr Jones stated that Mr & Mrs Patel seem unable or unwilling to comply with the provisions of the premises licence.

Licensing Policy 20

The Sub-Committee were informed that Marshalls Drive connected the premises to Marshalls Park Secondary School. Marshalls Park Secondary School was 375 metres as the crow flies from McIntosh News, thus placing it within the 400 metre radius identified in the policy. The main exit to the school was at the junction of Pettits Lane and Marshalls Drive. Marshalls Drive therefore provided a direct transitory route for school children on their way to and from secondary school. The Licensing Authority would ask whether the premises that had repeatedly sold alcohol to children to continue to sell alcohol at the shop.

The Licensing Officer made clear, that the premises' management had repeatedly demonstrated that it was unable or unwilling to comply with the basic standards of diligence any reasonable person might expect when it comes to the protection of children from harm. Action plans had been agreed and ignored, training opportunities had been agreed and ignored, alcohol had been repeatedly sold to children over an extended period of time and the premises was on a direct transitory route for the pupils of Marshalls Park Secondary School.

It was for these reasons that the Licensing Authority was of the view that the safety of children would be compromised if the premises continued to sell alcohol. The Licensing Authority was therefore of the view that the licensing sub-committee should give serious consideration to whether the premises licence should remain in force.

Metropolitan Police

PC Belinda Goodwin addressed the Sub-Committee to reiterate the representation on behalf of the Metropolitan Police. PC Davies's representation repeated most of what was included in the representation submitted by Trading Standards

The Metropolitan Police Licensing Officer for Havering supported the application for a review of the premises licence, on the basis the following two of the four licensing objectives:

1. The prevention of crime and disorder
2. The protection of children from harm

The Sub-Committee was informed that the designated premises supervisor was Mr Janak Patel. Mr & Mrs Patel were joint premises licence holder and together ran the business without any other staff members employed.

The Police highlighted that the premises was the only licensed premises within the vicinity of two schools nearby; St Peter's Primary School on Dorset Avenue

and Marshall's Park Secondary School situated on Pettits Lane.

The Police representation indicated that the Police had issued Mrs Patel with a penalty notice order on two previous occasions for the sale of alcohol to a person under the age of 18 years whilst Mr Patel made a sale of alcohol to a person under the age of 18 on 4 August 2015.

The Police were in attendance when Mr Patel attended an interview on 21 September 2015. Mr Patel admitted to the sale of alcohol to a child. He stated that he had a heavy work load and that he was not concentrating when the underage alcohol sale was made.

Other issues of concern that were identified during the meeting further to the due diligence of Mr Patel included the non-installation of a CCTV system on the premises despite many follow up visits. The premises had not displayed a copy of the premises licence and no training records were available. The Police stated that these were clear breaches of the premises licence.

Mr Patel was asked if he wanted to continue to sell alcohol at the premises as it appeared during an inspection that there was little alcohol stock within the premises. The premises holder responded that he did not sell much but also did not want to give up the licence as his intention was to sell the business as a going concern. Mr Patel was advised at the meeting that if he wanted to continue to sell alcohol he had to comply with all the conditions on the premises licence. Mr Patel was unable to state why he had not implemented the conditions on the licence.

Mr Patel had been asked to submit evidence that the premises was on the market for sale, but to date no such evidence had been provided.

The Police had no confidence in Mr & Mrs Patel with regard to promoting the licensing objective that refers to the prevention of harm to children. Mr Patel has not demonstrated to Police satisfaction that he was not going to sell alcohol in the future to children. The proximity of schools to McIntosh News presented a clear risk to the prevention of harm to children and caused great concern to the Police.

Mr Patel was given the opportunity to surrender his licence but he was adamant that he did not want to do this. Police had no choice but to make representation against the continuation of this premises licence authorising the sale of alcohol based upon the prevention of harm to children objective.

The Sub-Committee was informed that following the test failure of 2011, Mr Patel attended a meeting organised by Trading Standards and Police. The outcome of the meeting was for the implementation of the following action plan that was agreed was agreed by Mr Patel:

- Installation of a CCTV system
- A personal licence holder must be on the premises at all times
- Proof of age checks to be made
- Adopt 'Challenge 25' policy
- To record all alcohol refusals in a refusals register
- To remind customers they suspect of buying alcohol for anyone underage that it is an offence to do so

A condition that recommended for Mrs Patel not to be allowed to sell alcohol was rejected by Mr Patel. It was mentioned that Mrs Patel would be enrolled for a refresher training course.

The Police representation also detailed that on 10 August 2015 a Local Authority Licensing Officer attended the premises and found that a total of nine conditions on the premises licence were been breached.

The Police were in attendance when Mr Patel attended an interview on 21 September 2015. Mr Patel admitted to the sale of alcohol to a child. He stated that he had a heavy work load and that he was not concentrating when the underage alcohol sale was made.

It was pointed out to Mr Patel that he was breaching the conditions of his premises licence as the Refusal book that was tendered at the meeting did not have entries from 2015 and there were still no training records available.

Mr Patel was asked to surrender his licence as he indicated that he was selling the business and no action plan was agreed but no proof that the premises was up for sale had been provided to any of the responsible authorities.

PC Belinda Goodwin concluded that the Police had no confidence in Mr & Mrs Patel not to sell alcohol to an underage person.

Children and Family Services

There was no representative of the Children & Young People's Services present at the hearing but the Sub-Committee noted the written representation that was part of the Agenda for the hearing..

6. Response the premises licence holder

Mr Graham Hopkins a Licensing Agent was present and responded on Mr Graham Hopkins a Licensing Agent responded on behalf of premises owner Mr J Patel.

The Sub-Committee was informed that the premises licence holder had over 30 years' experience in the trade. That Mr Patel was not contesting the issues raised by the Responsible Authorities in the review.

Mr & Mrs Patel tendered their apologies for all that happened in the past and for not engaging with the responsible authorities.

The Sub-Committee heard that Mr & Mrs Patel had not persistently failed test purchases as stated by trading standards and the licensing authority, and that a variation was agreed in 2012 to deal with the concerns of the Licensing Authorities.

That the Premises had complied with the agreed conditions and installed a CCTV system and now had a Refusal Register.

The Sub-Committee was informed that Mr Patel had tried to sell the business privately last year. He was successful with the sale of his other business premises in Hornchurch.

Mr Hopkins stated that Mr Patel would like to sell the premises with the Premises Licence.

Mr Hopkins indicated that Mr Patel had offered to be removed as the DPS and to waive the 21 days appeal process in order to remain a licence at the premises. Mr Hopkins invited the Sub-Committee to remove the supply of alcohol from the Premises Licence instead of revoking the licence.

7. Consideration of Application

Consequent upon the hearing held on 7 June 2016 the Sub-Committee's decision regarding the review of the premises licence for McIntosh News, 19 McIntosh Road, Romford, RM1 4JU is set out below, for the reasons shown:

The Sub-Committee determined the application with regard to the promotion of the 4 licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

The Sub-Committee considered the representations by the responsible authorities present.

The Sub-Committee also noted that the premises licence holder had offered to remove licensable activity from the premises licence as Mr Patel was looking to sell the business.

The Sub-Committee noted that the premise licence holders had demonstrated that they were unable or unwilling to comply with the basic standards of diligence with regards the objective of protection of children from harm.

Decision:

Having listened carefully to the evidence from all parties, given the seriousness of the offences and failure to follow the conditions set out in the Premises Licence that had led to repeated sales of alcohol to underage persons, the Sub-Committee revoked the Premises Licence.

Chairman