

SHEFFIELD CITY COUNCIL

Meeting held 14 September 2020

(NOTE: This meeting was held as a remote meeting in accordance with the provisions of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020).

PRESENT: Councillors Karen McGowan (Chair), Ruth Mersereau and Vickie Priestley

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1. APOLOGIES FOR ABSENCE

1.1 No apologies for absence were received.

2. EXCLUSION OF PUBLIC AND PRESS

2.1 No items were identified where resolutions may be moved to exclude the public and press.

3. DECLARATIONS OF INTEREST

3.1 There were no declarations of interest.

4. LICENSING ACT 2003 - HANGINGWATER STORES, 87 HANGINGWATER ROAD, SHEFFIELD, S11 7ER

4.1 The Chief Licensing Officer submitted a report to consider an application made by the Sheffield Children's Safeguarding Partnership, under Section 51 of the Licensing Act 2003, for a review of the premises licence in respect of the premises known as Hangingwater Stores, 87 Hangingwater Road, Sheffield, S11 7ER (Ref No. 67/20).

4.2 Present at the meeting were Chris Grunert (John Gaunt and Partners, Solicitors, for the Premises Licence Holder), Basharit Khan (Premises Licence Holder), Julie Hague and Maureen Hannitty (Sheffield Children's Safeguarding Partnership, Applicants), Magda Boo (Health Improvement Officer), Catherine Jarvis (South Yorkshire Police Licensing Officer), Lisa Marsden (Sheffield Trading Standards), Paul Baxter-Gibson and Vicki Tulip (Local residents, speaking in favour of the Premises Licence Holder), Jayne Gough (Licensing Strategy and Policy Officer), Marie-Claire Frankie (Solicitor to the Sub-Committee) and Sarah Cottam (Democratic Services).

4.3 Marie-Claire Frankie outlined the procedure which would be followed during the hearing.

4.4 Jayne Gough presented the report to the Sub-Committee, and it was noted that representations had been received from the office of the Director of Public Health, South Yorkshire Police and Sheffield Trading Standards, and were attached at

Appendix 'C' to the report. Ms Gough added that, in addition to the representations, the Licensing Service had also received 40 letters of support for the premises from local residents who lived in the surrounding area, and were set out in Appendix 'D' to the report. All 40 residents had been invited to attend the meeting, with two attending.

- 4.5 Julie Hague provided a brief outline of the role of the Sheffield Children's Safeguarding Partnership (SCSP) in connection with the safeguarding of children and young people in the City. She stated that she had received no response from the premises management following numerous communications, and the only time they had responded was when they were served the application for this review. The management had made no attempt at all, until today, to try and address the concerns of the Partnership. The Partnership had initially engaged with the premises, in May 2018, when Ms Hague made a joint visit with Cheryl Topham (South Yorkshire Police), and spoke to Mrs Khan (the Premises Licence Holder's (PLH) wife), requesting that the management improve staff vigilance and training. This was followed up in writing, with the offer of free places on the safeguarding training course in July 2019 (Annexe 1 to the report). During the visit, Mrs Khan could not evidence a refusals log. In June 2018, following the receipt of a complaint from a school teacher, regarding concerns that the shop was making underage alcohol sales. A complaints check was made by Sheffield Trading Standards, whereby a secret shopper, who was over 18, but looked younger, was sent to purchase alcohol. The shopper was not challenged, or asked for any ID. No-one from the premises attended the training session in July 2019, and there was no response to the offer of advice or the letter sent.
- 4.6 Ms Hague stated that from February to June 2020, the Partnership received three further reports of under-age sales at the premises, one involved a child who was hospitalised after consuming alcohol purchased from the shop. Another complaint involved a parent finding their child drunk after purchasing alcohol from the shop. The Partnership received a further complaint via the Licensing Service, from a local resident, who made accusations of alcohol being sold to underage children, and indicating that the shop had a reputation for this (Annexe 3). On 19th February 2020, Julie Hague and Cheryl Topham visited the premises to investigate the complaints, and found neither the Designated Premises Supervisor (DPS) or the Premises Licence Holder (PLH) present. They spoke to Mrs Khan, who informed them that Mr Khan (PLH) was out of the country. They asked to view the premises CCTV, but were not able to as the equipment was in the cellar, which was locked, and Mrs. Khan stated that he did not have the key. Ms Hague stressed that CCTV was often critical in such investigations, and that it was unfortunate that they were unable to access the images on this occasion. They provided Mrs Khan with their contact details, with a request that Mr Khan contacts them on his return to the country. During the visit, they discussed their safeguarding concerns with Mrs Khan, recommending that all staff should receive refresher training to improve their vigilance. They provided Mrs Khan with a standard age verification pack, which contained everything a licensee would require, together with a further refusals log. Mrs Khan showed them a note containing a number of refusals, albeit on a scrap of paper. On 20th March 2020, Ms Hague wrote to the PLH, referring to the advice provided to Mrs Khan, and offering further assistance. She received no response to this letter. On 15th May 2020, the Partnership received a further complaint from

a social worker (Annexe 5), but, she was unable to visit the premises due to the lockdown restrictions that were in place at the time. She therefore wrote to the DPS and PLH (Annexe 6), expressing her concerns, and requesting action to address the risks highlighted. She also offered further assistance, and sent a further age verification pack. No response was received to this letter. A further complaint was received, via the Licensing Service, on 16th June 2020, from a school teacher who expressed concerns regarding underage sales at the shop. Ms Hague wrote to the DPS and PLH on 24th June 2020 (Annexe 7), requesting that they contact her to discuss the safeguarding concerns. On 6th July 2020, the Partnership received written confirmation of the complaint from the school teacher. Ms Hague stated that, in normal circumstances, she would receive a prompt response from a licensee, showing that they were being proactive, taking on the advice, keen to work with the Partnership, and attend any relevant training courses, and that it was unusual to receive no response at all. She believed that this lack of response was not typical, nor acceptable from a licensee who was demonstrating due diligence, or showing any kind of commitment towards acceptable safeguarding standards. She referred to the dangers of underage drinking, as well as its links with anti-social behaviour, substance misuse and unsafe sexual and other behaviour, and stressed that this was why the responsible authorities took such a serious view of the concerns raised regarding the premises. She stated that there was clear evidence of inconsistent and poor practice, and requested that the Sub-Committee took the complaints received very seriously.

4.7 Ms Hague referred to the representations made by local residents, in support of the premises, and stressed that the issue regarding the staff at the shop being very popular and helpful was not in dispute, but the issue was one of a lack of engagement with the responsible authorities, particularly given the number of attempts to try to get them to engage. She believed the management needed to focus on the escalating number of concerns raised with regard to the operation of the premises, and engage with the authorities as opposed to consistently and repeatedly ignoring them. Ms Hague referred to the suggested conditions offered by the PLH's solicitor, indicating that it was doubtful that these would make any difference for all the reasons already referred to. There was nothing in any of the conditions that differed to what the responsible authorities were asking the management to do already. Ms Hague also referred to the evidence provided by the solicitor, at a very late stage, regarding staff training which, again, highlighted the fact that they only responded when there was pressure on them to do so. She added that there was no reassurance that any of the conditions would be sustained or result in any major changes to the premises' operation. Any suggested conditions should refer to the competency of the management and staff, such as suggesting a change of the DPS or requesting that the PLH should remain on the premises at all times. The Licensing Act 2003 required the DPS and PLH to demonstrate due diligence in connection with the core objectives of the Act, which included the safeguarding of children from harm, and that the application being considered today highlighted that the management had failed to demonstrate this, or respond in any way to the serious concerns raised. Ms Hague concluded by requesting that the Sub-Committee takes relevant action to enable the management of the risk associated with alcohol sales at the premises.

4.8 In response to questions from Members of the Sub-Committee and Chris Grunert,

Julie Hague stated that the police had visited the premises, requesting CCTV images but, due to operational difficulties, they had not been able to revisit the premises. The country then went into lockdown at the end of March 2020, making it even more difficult for them to visit. There was no time limit on the premises licence regarding the retention of CCTV images, therefore it was believed that the images required following the various complaints had been deleted. The premises management had provided no clarification as to how long the footage would be retained. The issues regarding customers providing ID, such as whether the issue related to the premises staff not asking for ID, or failing to identify false ID, would have been discussed with the management if they had responded to requests to do so, and the issues regarding this could have been ascertained. If particular problems were identified where young people were trying to buy alcohol at a shop, such as specific days of the week and times, and such details were listed in a refusals log, the police could then be advised to undertake additional drive-bys or the PLH could be advised to put on extra staff at such times. Such information was not able to be confirmed on the basis that the PLH refused to engage with the responsible authorities. It was likely that the conditions on the premises licence regarding CCTV were outdated, but there was the possibility of the Sub-Committee requesting more up to date conditions thereon. In addition, there was no legal requirement for the premises management to provide CCTV footage within a certain time limit. Regardless of this, the PLH could still have updated the CCTV system. Ms Hague confirmed that the PLH had owned the premises since 1987, and that the first contact by the Partnership with the premises management had been in 2018, and that there had not been any issues regarding the operation of the premises up until this time. She stated, however, that whilst there had always been restrictions in terms of underage sales, the requirement on PLH's to safeguard children from harm had only been implemented in 2005. Safeguarding training was offered by the Partnership to all licensees, and not just those experiencing problems at their premises, and this may explain why so few licensees had signed onto the course, as set out in Annexe 2. Ms Hague next visited the premises on 19th February 2020, with Cheryl Topham (South Yorkshire Police) and, although they saw evidence of ID checks, there were concerns that details of such checks had only been made on a scrap of paper. They expected there to be more evidence, and in a better format, and offered Mrs Khan a further refusals log on the basis that they believed that the system was not being managed adequately. It was also believed that having a proper refusals log could also be a helpful management tool for the premises.

- 4.9 In response to further questions, it was stated that the business was a family-run business, with Mr and Mrs Khan working in the shop, and assisted by Mr Khan's sister (DPS) and their two sons and daughter when available. With regard to the request for CCTV footage, Julie Hague and Cheryl Topham had requested Mrs Khan to ask her husband to contact the police on his return from abroad and arrange for an officer to visit the premises to collect the footage, but this did not happen. In terms of the PLH not responding to letters sent to the premises, it was stated that there were no problems regarding the postal system at the time letters had been sent during lockdown and, whilst there was concern that the telephone number used by Ms Hague wasn't correct on the basis that she never received a response, she did receive a call from him on the mobile number she had. Ms Hague confirmed that she had hand-delivered the papers for this review application

to the premises, and accepted that the PLH had responded to the papers, but stressed that this was the first time he had responded. Ms Hague accepted that she had responded late to the suggested conditions submitted by the PLH's solicitor, but explained that this was due to her working part-time, and that it was the role of the Sub-Committee to make any decisions thereon.

- 4.10 Magda Boo referred to the letter she had written to the Chief Licensing Officer, regarding her representations, and indicating that the office of the Director of Public Health viewed the issue of facilitating underage drinking very seriously, referring to evidence showing the harm this could cause in later life. She stated that she believed in the partnership approach dealing with such issues, and expressed concern at the apparent lack of co-operation from the premises management following the attempts made by the SCSP to engage with them. She referred to evidence of medium and long-term damage that underage drinking could cause. She stressed that she had no recommendations in terms of the suggested conditions as this was not her area of expertise, but requested that the advice and evidence provided was taken very seriously.
- 4.11 Catherine Jarvis stated that she had only taken over the role of SYP Licensing Enforcement Officer from Cheryl Topham in March 2020, therefore had not been involved in the premises prior to this date. She therefore referred to the statements made by Ms Topham in her letter set out in the report, details of which had been referred to as part of the application made by the SCSP.
- 4.12 Lisa Marsden referred to a complaint received from a member of the public in December 2016, alleging that the shop was selling tobacco to underage children, indicating that, in response to this, an underage sales guidance pack had been sent to the premises. This pack provided information enabling the business to combat underage selling, including a refusals log and staff training literature. Ms Marsden referred to the test purchase made on 26th June 2018, during which a mystery shopper, who was 18 but looked younger, was sold tobacco without being asked to provide ID.
- 4.13 In response to questions from Chris Grunert, Magda Boo reported that she had nothing else to report, as part of her representations, other than the information set out in her letter, and confirmed that when referring to the problems and effects of underage drinking, she was referring to the position in Sheffield in general, and not specifically to problems related to the premises. Ms Boo confirmed that the office of the Director of Public Health had never directly tried to engage with the premises. Catherine Jarvis confirmed that, apart from the issue with the refusals log, everything else at the premises was in order during the visit made in May 2018. She confirmed that a responsible business would have CCTV in place, and confirmed that the last test purchase relating to underage alcohol sales (prior to the one in June 2018) was carried out in 2013, and was passed. Ms Jarvis stated that there was a number of things the responsible authorities could ask the premises management to do, either voluntarily or by amending the conditions on the premises licence, and stated that she would like to work with the management to see if they could adopt certain practices and, only if this didn't work, she would suggest drafting an Action Plan, requesting certain things be done. Such a Plan would be reviewed over a specified time period and, if this still did not help, a

suggestion would be made to vary the premises licence. Furthermore, if amending or adding conditions to the premises licence did not result in any improvement, she would consider a review on the premises. Ms Jarvis accepted that minor variations to the premises licence would have more significance and force as opposed to suggesting changes to operational practices on the basis that it would be more enforceable. She stated however, that she was aware of the cost implications for licensees, therefore would prefer to exhaust all other options first. She could not confirm whether the premises were adopting Challenge 25 or not in 2016, but stated that, regardless of this, the staff should have been challenging customers they suspected were underage. The test purchases arranged involved a mystery shopper over the age of 18 years purchasing cigarettes, and had been arranged simply to find out whether the premises were complying with the regulations.

- 4.14 Chris Grunert put forward the case on behalf of the PLH, indicating that he accepted the seriousness of the allegations put forward as part of the review application by Julie Hague. The premises management were fully aware of the issues regarding underage and proxy sales of alcohol, and also accepted that customers would always produce fraudulent ID. He reported that Mr Khan had been working at the premises since 1987 and, up until 2018, none of the responsible authorities had any cause for concern. This represented a period of 31 years, which was a significantly long time. Mr Grunert reported that representations had been received from 20 local residents, all voluntary, and all in support of the premises. Six of the 20 residents provided first-hand witness evidence of checks of underage people trying to purchase alcohol, and there had been no other evidence presented at this hearing to discount this. The CCTV system had been voluntarily installed at the premises, mainly to monitor anti-social behaviour and theft, and not to monitor the actions of the staff. The premises comprised a family-run store, with all the family living above the shop. Mr Khan's two sons and daughter helped out in the shop on an occasional basis. The fact that the CCTV footage requested could not be provided did not represent a breach of conditions on the premises licence. Mr Khan was very concerned with regard to the incidents referred to, but was confident that no underage child had been knowingly sold alcohol at the premises. It was apparent that, since 2018, everything had been in place at the premises, apart from the format of the refusals log, and Mr Grunert questioned whether these were sufficient grounds for a review. He referred to the 20 unsolicited representations from local residents, all including praise in terms of how well run the premises were, together with evidence of the premises staff being proactive in terms of challenging children trying to purchase alcohol. He stated that the letters sent by Julie Hague had not been received by Mr Khan. Whilst there was evidence that customers were being challenged, and that there were records made thereon, it was simply the format of such records that was the issue. Mr Grunert made reference to the proposed additional conditions, highlighting the fact that there had been no need to revisit the premises licence since the changeover from the old Justice's Licence system in 2005, which was very significant. Mr Grunert stated that there was no first-hand evidence in connection with any of the allegations made, and that Mr Khan had been surprised to receive the review application, particularly as there had been no real escalation of events at the premises. Mr Grunert stated that it was unusual to see so many letters of support in connection with a review of premises, and stated that Mr Khan believed that there would be many more letters in support if he had requested this

of his customers. It was only the residents who had seen the review notice on the premises who had written in. In conclusion, Mr Grunert stated that Mr Khan was a well-respected member of the community, Sheffield born and bred, and had raised three children on the premises.

- 4.15 Vicki Tulip, a school teacher and parent of a 16-year old child, indicated that she had lived in the area since 1991. She was writing in support of the premises, stating that, in all the years her family had used the store, they had never witnessed any problems. She was very surprised to hear the allegations, and had always found the shop professionally managed, and had never witnessed any young children trying to purchase alcohol, nor seen any young children hanging around outside the premises.
- 4.16 Paul Baxter-Gibson stated that he was a father of a 13 year old girl, and was confident that if she tried to buy alcohol at the shop, she would not get served. He also reported that his step-daughter had tried to purchase alcohol using false ID, and had been refused. Whilst he had witnessed incidents of anti-social behaviour in nearby Bingham Park, it did not involve young people who had been to the premises. He stated that Mr Khan was very diligent, and considers that the allegations made were both insulting to him and the local community. He concluded by stating that there appeared to be little reference to what the Council and other responsible authorities were doing to tackle problems of anti-social behaviour in and around the area.
- 4.17 In response to questions raised by Members of the Sub-Committee, Mr Grunert stated that local residents became aware of the review application because, as part of the process, Mr Khan had been required to post a notice on the door of the premises, providing brief details of the review, together with a deadline for representations. Mr Khan reported that he did not wish to encourage residents to submit representations in support as he did not wish to highlight the position on the basis that it would not reflect well on him or his family. He stated that the first he knew about the review was when he saw the notices posted on the door. In terms of the issue regarding the CCTV footage, Mr Khan stated that his wife had told him that the police would re-visit the premises to see him on his return from abroad. He stated therefore, that he was expecting a visit, but no one came. In terms of the training offered by the SCSP, Mr Khan stated that he could not recall receiving the invites. With regard to the allegations of sales being made to a child wearing school uniform, Mr Khan stressed that this would simply not happen, and that he and his family were professional enough not to serve such people. Further to the allegations of a child who had been served alcohol in the shop ending up in hospital, Mr Khan stated that he was not present on the date of the alleged sale, but had talked to his family about this, and they had all agreed that young people who did not look 18 could not be served alcohol without providing adequate ID. He stated that the child's mother had visited the shop, and admitted to staff that her daughter had used false ID. Mr Khan stated that he had not received the information regarding the safeguarding training sent by Julie Hague, as the only information he had received from her was the review application. The cellar door at the premises was usually locked, but was still accessible, and the CCTV equipment was in a separate room, to which only Mr Khan held the keys. Mr Khan was forced to go abroad at very late notice, and had forgotten to leave the key. In terms of

staff who worked at the shop, and their ages, there was Mr Khan (48), Mrs Khan (45), Mr Khan's sister (52) and their two sons (24 and 29) and their daughter (20). Not all of them worked full-time in the premises, but helped out when required. It was mainly Mr Khan, his wife and his sister who worked at the shop. The family would always discuss the issue of underage sales, and pass information between themselves. There had been no changes in staffing during 2018 and 2020. The fact that staff were recording refusals on a scrap of paper as opposed to an official refusals log, was not seen as significant as a number of other measures and, the applicant had offered a condition with regard to this issue, thereby meaning any future breaches would be punishable by law. The staff simply did not appreciate the significance of having an official refusals log. There were officially two postal addresses to the premises - 87 and 87A - which had caused some issues. The official shop address - 87 Hangingwater Road - did not have a letterbox, whereas the residential address - 87A Hangingwater Road - did have a letterbox. Those letters regarding the business were dealt with differently from any private mail sent to the family.

- 4.18 Julie Hague, Catherine Jarvis, Lisa Marsden and Chris Grunert summarised their cases.
- 4.19 Jayne Gough outlined the options open to the Sub-Committee.
- 4.20 RESOLVED: That the attendees involved in the application be excluded from the meeting before further discussion takes place on the grounds that, in view of the nature of the business to be transacted, if those persons were present, there would be a disclosure to them of exempt information as described in paragraph 5 of Schedule 12A to the Local Government Act 1972, as amended.
- 4.21 Marie-Claire Frankie reported orally, giving legal advice on various aspects of the application.
- 4.22 RESOLVED: That the Sub-Committee, in the light of the contents of the report now submitted, together with the representations now made, including the responses provided to the questions raised, agrees to modify the conditions of the premises licence in respect of the premises known as Hangingwater Stores, 87 Hangingwater Road, Sheffield, S11 7ER (Ref No. 67/20), by the addition of the following conditions:-
- (a) A CCTV system is to be installed with recording facilities. Such recordings shall be retained for a period of 28 days (except where such retention cannot be achieved due to reasonable periods of maintenance or repair). Footage must be made available within a reasonable time scale upon request by the police and authorised officers of the Council in accordance with data protection principles;
 - (b) The CCTV cameras shall, as a minimum, cover the front door, till area, any area where alcohol is available and the external area of the premises;
 - (c) At all times the premises are open, there must be a member of staff working in the premises that is able to access and operate the CCTV system;

- (d) The premises will operate a proof of age scheme and will require photographic identification from any person who appears to be under the age of 25 years and signage to this effect is to be prominently displayed within the premises, including the premises entrance and behind the service counter;
- (e) All members of staff involved in the retail sale of alcohol shall be trained in the prevention of underage sales of alcohol at least once every three months. The training must include:-
- What age restricted products are sold at the store;
 - The Challenge 25 policy and what this means;
 - What forms of ID the business will accept as proof of age;
 - How to complete the refusals log;

Details of all training will be recorded in an electronic or paper record, and this information shall be made available for inspection by the police or any other authorised person on request, with all such records being retained for at least 12 months.

Training records must specify:-

- The name of the trainee;
- The name of the trainer;
- The date the training was delivered;
- The nature of the training, i.e. induction/initial or refresher

The trainee must also sign a declaration confirming that they have undertaken and understood the training. The declaration document shall be made available for inspection by the police or any other authorised person on request and shall be retained for at least 12 months

- (f) The refusals log (or equivalent) shall be kept at the premises to record all instances where sale of alcohol is refused. Such records shall show:-
- The basis for the refusal;
 - The person making the decision to refuse; and
 - The date and time of the refusal

Such records shall be retained at the premises for at least 12 months, and shall be made available for inspection by the police or any other authorised person on request. The refusals log will be checked and signed off regularly by management. This document may be in a digital format

- (g) After 1st November 2020, a person who has attended and completed the safeguarding training provided by the Sheffield Children's Safeguarding Partnership must be on the premises at all times that alcohol is on sale.

(NOTE: The decision will be relayed to all interested parties following the meeting

and the full reasons for the Sub-Committee's decision will be included in the written Notice of Determination.)