

# Cheltenham Borough Council

## Licensing Sub Committee – 4 September 2024

### Licensing Act 2003: Determination of Application for Review of a Premises Licence

**Bargain Booze Select Convenience, 216 - 218 Hewlett Road, Cheltenham, GL52 6UJ**

#### Report of the Head of Public Protection

##### 1. Introduction

- 1.1 Under section 51 of the Licensing Act 2003, at any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter, or matters, arising at the premises in connection with any of the four licensing objectives.
- 1.2 In this case, an application for a review of the premises licence was submitted by Gloucestershire Constabulary on 16.07.2024 in relation to Bargain Booze Select Convenience, 216 - 218 Hewlett Road, Cheltenham, GL52 6UJ.
- 1.3 The ground for the review can be summarised as follows:

##### ***The Protection of Children from Harm***

*And offence of persistently selling alcohol to children (Section 147A of the Licensing Act 2003)*

*Within a 3 month period between 4th April and 25th June 2024, this premises sold alcohol to a minor DPS (Designated Premises Supervisor) conducted the sale and a separate member of staff failed a Test Purchase (TP) Operation selling alcohol to the 16yr old tester.*

*The same DPS also failed a previous TP OP in November 2022 serving alcohol to a 16yr old tester.*

*A staged approach has been adopted and efforts made to try to deal with the concerns at a local level, including PC 2309 Sansom visiting the store in person on two occasions, giving two written warnings and having numerous phone calls & emails with the DPS.*

*The premises licence holder, who is also the DPS (since 2021), has failed to demonstrate that she can run a safe and responsible premises and has failed to address issues that have arisen thus negatively impacting on the licensing objectives.*

- 1.4 Further grounds supporting this review application can be found in the appendices accompanying the application for the review (attached at **appendix 1** of this report).
- 1.5 A copy of the existing premises licence is attached at **appendix 2**.

##### 1.6 Implications

1.6.1 Legal	<p>The legal background is contained within the body of the report.</p> <p>The subcommittee must, having regard to the application for a review and any relevant representations, take such of the steps (if any) mentioned in paragraph 5.17 of the report as it considers appropriate for the promotion of the licensing objectives.</p>
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The decision of the sub committee can be subject to an appeal to the Magistrates' Court within 21 days of its decision.

**One Legal**

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## 2. Application (Ref. 24/01246/PRMR)

2.1 Applicant: Gloucestershire Constabulary

2.2 Agent: N/A

2.3 Premises: Bargain Booze Select Convenience, 216 - 218 Hewlett Road, Cheltenham, GL52 6UJ

## 3. Other Representations

3.1 Following an application for a premises licence review, the licensing authority is required to undertake a 28 day consultation period with responsible authorities or any other persons.

3.2 One further representation was received from Gloucestershire Trading Standards (on 25/07/2024) in relation to this review application. The Trading Standards and Financial Intelligence Officer submitted the following comments:

*The service carried out a project relating to the sale of e-cigarettes (vapes) to minors and used intelligence gained from complaints, to visit those stores to test their procedures with regards to the sale of disposable e-cigarettes. One of these stores visited was Bargain Beers and Wines (also known as Bargain Booze) who are based at 216-218 Hewlett Road, Cheltenham. Details as follows:*

*At approximately 13.10 on 28th May 2024, two volunteers aged 17 entered Bargain Beers and Wines in Hewlett Road, Cheltenham on my instruction, to attempt to purchase a disposable vape. The officers were able to witness the volunteers both inside and outside the store to provide a full picture on any interaction which occurred.*

*The volunteers approached the counter after entry and spoke with an older Sikh male behind the counter.*

*The cadets pointed to the vape they wanted, the male took the vape and scanned it through the till. The cost of the vape was £6.50*

*The volunteer handed over a £10 note and received £3.50 change along with the vape. The volunteers then left the store.*

*At no point during the transaction was any questions directed to the volunteers as to their age or whether they had identification.*

*The volunteers returned to the vehicle which was a short distance away and the vape was then handed to me along with the change. I bagged the vape which was a Bloody Mary – Meta Moon disposable vape, and securely sealed it with seal number KP4957466. On return to the office, the vape was placed in secure storage.*

*On 4th June 2024 I wrote to the store advising them of this failure and provided information about joining the No Proof Of Age No Sale Scheme which the service is currently offering free of charge to small businesses. I also confirmed I would be visiting the store to discuss this failure.*

*Unfortunately, due to current circumstances, I have not yet been able to visit the store but intend to visit the week commencing 5th August 2024. If you would like me to update you following the visit I am happy to do so.*

*I have to date, not received any response to my letter.*

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## 4. Local Policy (December 2020)

4.1 The objective of this policy is to:

- a) promote the four licensing objectives;
- b) ensure that the premises are appropriate for their proposed use;
- c) ensure the premises layout and condition is acceptable for the proposed use;
- d) ensure that the premises are being managed responsibly; and
- e) promote the policy vision statement.

4.2 In determining a licensing application, the overriding principle adopted by the authority will be that each application is determined on its merits. Licence conditions will be tailored to the individual application and only those necessary to promote the licensing objectives will be imposed.

4.3 The authority will also have regard to wider considerations affecting the residential population and the amenity of the area. These include littering, noise, street crime and the capacity of the infrastructure.

4.4 Each of the four objectives is of equal importance and will be considered in relation to matters centred on the premises or within the control of the licensee and the effect which the operation of that business has on the vicinity.

### Protection of Children from Harm

4.5 The authority needs to satisfy itself that there are appropriate measures in place to protect children from harm.

4.6 To this extent it will expect applicants, where necessary, to consider the measures necessary to promote the licensing objective of protecting children from harm when on the premises.

4.7 These measures may include staff training on how to control the entry of children and young people under 18 and the vetting of staff who will supervise them. Applicants will have to give particular regard to these measures in applications for licences involving:

- a) the sale of alcohol;
- b) children's performances; and
- c) attractions or performances likely to attract children.

4.8 It is an offence to sell alcohol to children. In this context, children are defined as individuals under 18. The provisions of the Act are that unaccompanied children under 16 should not be on "premises being used exclusively or primarily for the supply of alcohol" (eg "alcohol led" premises such as pubs, bars and nightclubs). In addition, it is an offence to allow unaccompanied children under 16 on premises licensed to sell alcohol for consumption on the premises after midnight but before 05:00.

4.9 Issues for consideration include:

- a) installing effective measures to check the age of those young people who appear under 21 to ensure that alcohol is not sold to those under 18 and those under 16 are accompanied in alcohol led premises;
- b) exclusive or primary purpose of the services provided at the premises;

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- c) accompanied children under 16 on the premises of which the primary purpose is supply of alcohol for consumption on the premises are taking a table meal or are being entertained by a live performance;
- d) the hour to which accompanied children under 16 are proposed to be on the premises where the exclusive or primary purpose of the services provided at the premises is the supply of alcohol for consumption on the premises;
- e) due regard is paid to industry codes of good practice on the labelling and display of alcoholic drinks;
- f) are there adequate procedures for identifying unaccompanied or lost children and ensuring that they are kept safe and adequately supervised until they can be handed over to a responsible adult;
- g) the likelihood of children being attracted to the premises by the nature of activities or facilities provided whether or not these are licensed;
- h) is there evidence of heavy, binge or underage drinking on the premises;
- i) if the premises commonly provides entertainment or services of an adult or sexual nature;
- j) is there a strong element of gambling on the premises;
- k) age restricted films are to be shown classified in accordance with the recommendations of the British Board of Film Classification;
- l) the number of adults required for the supervision of children and the suitability and vetting of those adults to ensure they pose no risk to children.

## 5. National Statutory Guidance (December 2023)

- 5.1 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 5.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.
- 5.3 The licensing objectives are:
- a) The prevention of crime and disorder;
  - b) Public safety;
  - c) The prevention of public nuisance; and
  - d) The protection of children from harm.
- 5.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

### Protection of children from harm

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- 5.5 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 5.6 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered.
- 5.7 Licensing authorities should give considerable weight to representations about child protection matters.

**Offences relating to the sale and supply of alcohol to children**

- 5.8 Licensing authorities are expected to maintain close contact with the police, young offenders’ teams and trading standards officers (who can carry out test purchases under section 154 of the 2003 Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. Licensing authorities, alongside the police, are prosecuting authorities for the purposes of these offences, except for the offences under section 147A (persistently selling alcohol to children). Where, as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

**Reviews (section 51 and 52)**

- 5.9 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 5.10 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 5.11 Responsible authorities and other persons may make representations in respect of an application to review a premises licence or club premises certificate. They must be relevant (i.e., relate to one or more of the licensing objectives) and, in the case of other persons, must not be frivolous or vexatious. Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right.
- 5.12 Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 5.13 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this cooperation.
- 5.14 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

5.15 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

5.16 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

5.17 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

5.18 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

5.19 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

5.20 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

5.21 Licensing authorities should also 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. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

## 6. Licensing Comments

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- 6.1 The committee must determine this application with the view of promoting the licensing objectives. Members can do whatever you consider appropriate for the promotion of the licensing objectives, noting that each objective is of equal importance.
- 6.2 The committee is also required to have due regard to the statutory guidance issued under s.182 of the Licensing Act 2003 and the authority’s Licensing Policy Statement – relevant extracts of both referred to above.
- 6.3 With this in mind, and taking into account this report and the evidence it hears, the committee can resolve to:
- modify the conditions of the premises 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.

5.4 In considering this case, officers make the following comments:

- a) Whilst all four licensing objectives are of equal importance, the principle objective relevant to this application is the protection of children from harm.
- b) Members will note from the statutory guidance that the protection of children is seen as particularly serious, and that the Government believes that it is completely unacceptable to sell alcohol to children. To this end, the statutory guidance also makes clear that it expects licensing authorities to give considerable weight to representations about child protection matters.
- c) As outlined in the review application, the police have attempted to engage with the premises licence holder in order to address the concerns prior to making a formal application to review their premises licence. The premises licence holder has not engaged with the police which has left the police with no confidence in the premises licence holder’s ability to run a safe premises. Members are to note that – at 5.16 above – the statutory guidance considers this an aggravating factor and that licensing authorities should take the lack of engagement into account when considering what further action is appropriate.
- d) Linked to the above, whilst the committee has the discretion to impose or vary the premises licence’s conditions, if there is an issue with confidence in the premises licence holder’s ability to operate the premises responsibly, new or varied conditions may not be an effective means to promote the licensing objectives.
- e) Following the two test purchase failures in April and June, the police requested additional licence condition added to the premises licence. Whilst an application was submitted, it was incomplete and was subsequently declared invalid. As a consequence, the requested licence conditions were never imposed on the premises licence.

If Members are minded to impose conditions as the appropriate outcome for this review, the police’s requested licence conditions are attached at **appendix 3** for reference.

- f) Furthermore, it is worth noting that the premises licence holder and the DPS (Designated Premises Supervisor) are the same person. This is relevant if the committee is minded to remove the DPS from the licence. The relevance of this being that, if the committee is does not have confidence in the DPS to fulfil their duties, the committee should consider how this applies to the premises licence holder – who is the same person.
- g) For reference, the DPS is the key person who will be responsible for the day-to-day management of the premises by the premises licence holder including upholding the licensing objectives. DPS’ are required to pass a level 2 qualification (Level 2 Award for Personal Licence Holders). Topics covered include:

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- legal duties as a personal licence holder
- the roles, responsibilities and functions of licensing authorities
- the licensing objectives and why they're so important
- how the nature and strength of alcohol can affect your customers
- the law relating to protecting children on a licensed premises

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**Background Papers**

Service Records

**Report Author**

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