

Cheltenham Borough Council Licensing Sub Committee-Alcohol and Gambling Minutes

Meeting date: 27 March 2025

Meeting time: 3.00 pm - 5.40 pm

In attendance:

Councillors:

Dilys Barrell, Steve Harvey and Dr David Willingham

Also in attendance:

Michelle Bignell (Licensing and Public Protection Manager) and Vikki Fennell (Senior Lawyer, One Legal)

1 Election of Chair

Councillor Willingham was elected as Chair of the committee.

2 Apologies

There were none.

3 Declarations of interest

Cllr Harvey declared that he holds a current DPS.

Cllrs Willingham and Barrell both declared that they sat on the committee last time the establishment was brought to the committee for review in September 2024.

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

The Licensing and Public Protection Manager introduced the report as published.

The Members then had the opportunity to ask questions, the responses were as follows:

- There is an official DPS in place now.
- There had not been any details of any online courses attended.
- The current DPS is not the same as when the premises last came to committee.
- There has been no further paperwork received by the licensing department.
- The day after the premises review they were found to be selling alcohol.
- It was explained that the licence holder is responsible for the activities that take place at the premises and the DPS is responsible for the sale of alcohol.

The responses to the solicitors question on behalf of the licence holder were as follows:

- It was confirmed that the licensing department had not received an email from the solicitor in February.

The review applicant was then given the opportunity to address the committee and made the following points:

- The licence holder did not take the warning made at the previous committee seriously, the police cannot be held responsible for the actions they choose to take.
- There was an argument made at the previous committee that the licence holder would be made homeless if they lost their licence, this is not a consideration for the police or the committee.
- When the premises was visited in January 2025 there was clearly alcohol on sale, an application had not been received but they had been selling alcohol since November 2024.
- The premises licence holder could not produce the relevant documents when requested. They were informed to cease alcohol sales immediately.
- The premises licence holder believed that the solicitor had dealt with everything on their behalf.
- The training that should have been completed with regard to under age sales had not been completed.
- As a recently qualified DPS they should have fresh knowledge of what is required of them.
- It remains the responsibility of the licence holder to operate within the terms of the licence.
- There was no choice but to bring the matter to the committee, the licensing authority is there to ensure that the rules are kept to.
- It was explained that they were asking for a revocation due to a blatant disregard of the rules.

The responses to Member questions were as follows:

- The review applicant confirmed that as the responsible authority they would have known if there had been documents sent.
- It was confirmed that the licence holder holds a licence at another premises.

The solicitor representing the licence holder then interjected and asked if the police had received an email that was sent to them in February – the officer confirmed that

it had not been received. After agreement from the Chair the meeting was then adjourned for the email to be circulated to the committee and the police.

The solicitor of the licence holder then addressed the committee and made the following points:

- The DPS has been trained and has the certificate, she would have not been awarded the licence in October without the training.
- The licence holder holds a personal licence and has previously had training.
- There was a company involved with assisting with the change of DPS, the company (referred to as PLC) failed to process the application and it had been forgotten about. They resumed trading on the assumption that PLC were dealing with it.
- The shop was closed as soon as they were made aware of the issue, once the application was dealt with the shop re opened.
- The solicitor confirmed that he had visited the shop on the day of the committee and saw the refusal book that they hold and the incidents that have been recorded in it. There is also a training manual in the shop.
- There was a trading standards visit to the shop on 24th November 2024 and there were no underage sales carried out.
- Training is carried out on a regular basis, underage sales are not taking place and the DPS holders husband is not allowed behind the counter.
- They were apologetic, they acknowledge that mistakes have been made. The solicitors were supposed to deal with the application and had let them down.

The matter went to Member questions and the responses were as follows:

- The Member stated that she was impressed the last time that the applicant came to the committee and was disappointed that things had not worked out. The solicitor explained that the company he works for has a department that deals with the paperwork and they failed to do that on this occasion.
- It was confirmed that once a licence application is granted it comes into immediate effect.
- There is no one selling alcohol that does not have a certificate.
- An application for a licence had not been received therefore there was not one on display in the premises.
- The PLC that has been referred to is a third-party business, the firm that the solicitor works for, that was paid to make the application.
- The solicitor apologised that there was no proof that the PLC company had not put in the application,
- The licence holder confirmed that she had sent everything to her solicitor prior to going on holiday. They could not find anyone suitable to cover for them whilst they were away so they had to close the shop.
- The applicant applied in 2021 to be a DPS and there is no evidence since then of any training. They do have a training manual but there is no evidence of having done any further training.
- The trading standards visit was for checks on sales of vapes rather than alcohol and proof of age was asked for.
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The following points were made during the right to reply :

- When the Head of Licensing and Public Protection visited the property she did offer advice to make a representation during the consultation period but nothing was received.
- The Police stated that no-one wants a revocation but this is not the first review hearing, this is the second in 7 months. There has been a lot of passing responsibility and one late email that is questionable to an extent. The committee made a strong decision last time but there appears to have been no lessons learned even though they are represented. No evidence was supplied even after notified of hearing. Suspension has already been tried and been unsuccessful the next obvious step is for revocation.
- Had there not been a visit by an officer it is highly likely that the premises would have continued trading and would have not submitted the DPS transfer application. One was not submitted even when explained that it was needed.

The committee then retired with the legal officer to make and write their decision. It was made as follows:

At the hearing the Sub-Committee heard from the applicant for the review – Gloucestershire Constabulary and the representative for the premises licence holder,.

The review of the licence was requested by Gloucestershire Constabulary under the crime and disorder licensing objective.

All relevant written and oral submissions have been considered.

Legal Matters

The Sub-Committee had due regard to:-

1. The Human Rights Act
2. The provisions of the Licensing Act 2003 which confer the powers of the Licensing Authority to deal with the application.
3. The obligation to promote the four licensing objectives.
4. The relevant sections of the Council's Statement of Licensing Policy and Statutory Guidance.

The Licensing Sub-Committee considered that it must carry out its functions with a view to promoting the four licensing objectives, as set out in Section 4(2) of the 2003 Act.

The Sub-Committee considered all relevant verbal and written submissions from the Applicant and the premises licence holder before making its decision on the application. They also had due regard to the council's Statement of Licensing Policy and Statutory Guidance.

The Sub-Committee looked at the issues –

Human Rights Act – The PLH have been given a fair hearing, every opportunity to provide documentary evidence to the police, the licensing authority, allowed a late submission which has a limited weight. PLC made an error, there is no evidence of this, no refusal log photocopies have been provided or training certificates save for the one received today,

The police have laid out their case in detail with evidence, the PLH has had multiple opportunities to present their evidence.

No public sector equality duty issues – the PLH is represented – we have considered if there are any

Police have said that whilst the LA are not here to look at guilt, in terms of the licensing objective of preventing crime and disorder they are failing and on balance of probabilities the police have said they failed to produce the licence – there was not one in existence, on balance they were selling without licence, keeping alcohol for unauthorised sale, ignorance of the law is not a defence.

The law puts the duty on the PLH and DPS and the fact that duty can't be delegated to others is down to them.

Previous history of the matter – selling alcohol persistently to children, not confident they are promoting the licensing objectives

The request for documents was not dealt with sufficiently – the administration of it was not up to scratch – heard words but no evidence

Being made homeless is not a material consideration. LA is looking at the licensing objectives only

Police have presented very clear evidence – they have been warned by the police, they were reviewed and conditions were changed and the DPS were changed, they have not sought to engage with the police or LA.

Police have applied a progressively higher level of getting compliance and they have failed to achieve compliance.

The only other thing the committee could do is ask for production of all logs and documents every month as a condition and the question then is we don't do it for anyone else and puts a burden on the licensing team to watch one premises. That is not a rational decision to make

All other options have been exhausted, tried changing DPS, modified the conditions, suspended the licence.

Ultimately if this is a genuine error they have the opportunity to appeal to the magistrates court and can produce all documents to the court for their deliberation.

Not had any evidence in document form in compliance with the constitution, limited weight to verbal assurances – there is no paper trail

Not respected the process, they have been given every opportunity, already been subject of a review 7 months ago

The Sub-Committee have no choice but to revoke the licence and this is its decision.

Appeal

All parties are reminded that there are rights of appeal against this the Licensing Authority's decision pursuant to Section 181 of and Schedule 5 to the Licensing Act 2003. An appeal must be made to the Magistrates' Court and commenced within 21 days of notification of the Authority's decision.

5 Any other items the Chairman determines to be urgent and which requires a decision

There were none.