

**LICENSING PANEL
2 FEBRUARY 2015
2.23 - 3.50 PM**



Present:

Councillors Thompson (Chairman), Allen and Leake

In Attendance:

Simon Bull, Legal Adviser to the Panel
Laura Driscoll, Licensing Team Leader
John Garside, Environmental Health
Jillian Hunt, Drug & Alcohol Services
Mike King, Thames Valley Police
Hannah Lumley, Trading Standards
Amanda Roden, Democratic Services Officer

9. Declarations of Interest

There were no declarations of interest.

10. The Procedure for Hearings at Licensing Panels

The Chairman confirmed that all parties understood the procedure to be followed for the hearing.

11. New Application for RP-Jai's Liquor Stores, Unit 1, Market Street, Bracknell, RG12 1JG

The Panel's decision was that the application for a new premises licence in respect of RP-Jai's Liquor Stores Unit 1, Market Street, Bracknell, RG12 1JG shall be granted, subject to the conditions at Annex 1 Mandatory Conditions of Annex K of the agenda papers and subject also to the amended proposals from mediation and the conditions as amended at Annex K, Annex 2 and Annex 3, as set out hereafter. This meant that the applicant could operate both the premises and the delivery service for 16 hours between 07.00 and 23.00 rather than the 24 hour opening that was sought by the applicant.

The Panel carefully considered all the information presented, both written and oral, from:

- the Licensing Team Leader, who outlined the issues;
- the applicants, Mr & Mrs Dhaliwal and their agent, Mr Panchal;
- the responsible authorities Ms Hannah Lumley, Trading Standards; Mr John Garside, Environmental Health; Mr Mike King, Thames Valley Police who submitted oral and written representations;
- the interested parties, Ms Jillian Hunt, Drug & Alcohol Services, who submitted oral and written representations, and three other written representations.

These representations were considered together with reference to the appropriate Licensing Objective: The Prevention of Public Nuisance, Crime and Disorder and the Protection of Children from Harm, the Council's own Licensing Policy and the Secretary of State's guidance.

At the conclusion of the licensing panel, having heard all participants present, the participants and particularly the applicant confirmed that they had been given the opportunity to say all they wished to say.

The Panel noted that three of the responsible authorities had made representations. The Panel were advised that Trading Standards, Environmental Health and Thames Valley Police had considered the application for a new premises licence for RP Jai's Liquor Stores, and together with four other representations, had the following concerns:

Crime and Disorder

- The proposed off licence was situated in a Designated Public Places Order (DPPO) within the area of Bracknell Town Centre and accessibility to alcohol would under undermine this control.
- The impact of noise from potential customers on close neighbours, living less than 50 yards from the premises and in the general area, arising from the opening hours proposed by the applicant.
- The increased likelihood of incidents occurring in the area of the premises due to migration from the off licence to other parts of the town centre. Together with migration from other licensed premises which would have closed prior to the applicant's premises, had the 24 hour opening been granted.

Sale of Alcohol

- The hours for the sale of alcohol being applied for as 24 hours a day could and would encourage increased occurrences in the evenings, particularly in the warmer months.
- The vicinity of other licensed premises nearby; currently there was only one other independent off licence operation in the DPPO which operated between 09.00 and 17.30. The granting of a 24 hour licence would seriously undermine the impact and effectiveness of the DPPO.
- Thames Valley Police were investigating the regular sale of alcohol to street drinkers, and the town centre was a popular gathering place for teenagers in the evenings. The Police who were the lead agency for crime and disorder adamantly objected to the 24 hour licence on crime and disorder grounds and the panel found their argument persuasive as they were the agency on the ground that were aware of the concerns in the area. The Panel were also aware that it was only rarely that the police made representations from the applications which had been heard since the introduction of the Licensing Act. Therefore when they did make representations and objected the Panel gave weight and cogency to their evidence. The Panel did not just accept the evidence solely because it came from the police, they weighed the evidence and balanced it with the licensing objective of crime and disorder and concluded that the police evidence was very compelling.
- The Panel heard oral submissions from the Drug and Alcohol Service and whilst they agreed that the geographical close proximity of the unit to the licensed premises was not conducive to the aims of drug and alcohol rehabilitation, the Panel were not able to give great weight to this evidence. The unit closed well before the licensed premises (subject to this application) would close at 23.00 and therefore the part of the application that was refused

would not impact upon the effectiveness of the drug and alcohol rehabilitation unit. The licensee also could not be prejudiced by the close proximity of the unit to the licensed premises as the unit was operating out of business premises. In light of the town centre activities it may not itself be best placed if proximity to licensed premises was an issue for the unit. The Goose pub at the bus station and train station would be open during the unit's hours of operation as would other licensed premises near to the unit. The concern for the Panel was the impact from the late evening until the morning when the other licensed premises were closed or closing.

- During the hours that the licence would be operating the panel required the following in respect of alcohol sales from the premises (see below in respect of delivery sales): Staff would need to be trained on their responsibilities regarding the sale of alcohol and this training should be undertaken at least twice a year. A record of training and its content should be maintained and made available on request to responsible authorities; and the premises should maintain a refusals register with sufficient detail as required by the responsible authorities and this should be reviewed and signed by a responsible member of staff at least once a week.

Litter

- The service yard behind the premises was used as a through fare for people going to the shops at the Peel Centre, accessing the train station or offices and businesses on Market Street. At night time the service yard was badly lit and secluded and there had already been issues of loitering and littering.
- There was a kebab van outside the premises every evening. This combined with the 24 hour sale of alcohol in the street would encourage anti-social behaviour.

Incidents

- The multi-story car park attracted groups of young people in the evenings and there had been incidents of underage drinking and subsequent criminal damage to the site.
- The popular bowling alley at The Point, also within the DPPO, had issues regarding underage drinking and the proximity of this off licence would undermine the Police's efforts to resolve this issue.
- The Late Shop on Station Road had demonstrated that late hours had a negative effect within the area and since its closure there had been a noticeable reduction in alcohol related incidents attributed to the site.
- A late night bar in the street had undertaken work with the police to try to eradicate alcohol abuse and employed security to help with this, and alcohol being available 24 hours a day could encourage disorder.

Protection of Children from Harm

- The premises needed to operate a Challenge 25 policy to prevent customers under the age of 25 purchasing alcohol without photograph identification, such as a British driving licence or passport, or a nationally approved proof of age card.
- Even with the supply of a credit card for deliveries, if a person appeared to be under the age of 25 then identification should still be requested.
- New Hope, a drug and alcohol support centre, was located at rear of the premises and the close proximity of an off licence would have a detrimental effect on the vulnerable clients who attended the centre. The service was open six days a week; 08.00 to 20.00 or 09.00 to 20.00 Mondays, Tuesdays and Thursdays, and 10.00 to 14.00 on Saturdays, and had an average monthly footfall of 800 visits.

- The Ark, who supported disabled vulnerable adults, was open until 22.00 three evenings a week. Sessions were run in the evenings for children and young adults. Some members of The Ark also accessed New Hope's services.

However, although the panel considered carefully the impact on the New Hope and the Ark that was not determinative of the Panel's decision because the premises would operate beyond the opening times of New Hope and The Ark and it was the late evening and night time sales from the premises and by delivery that would not promote the licensing objectives as explained above.

Delivery of Alcohol

- There should be no sale of alcohol directly from a vehicle.
- Deliveries should be made only to dwellings or a place of work with a recognisable post code.
- For every delivery a customer should sign a delivery note with sufficient detail for the responsible authorities.
- No more than 1 litre of spirits should be delivered to a premise in any 24 hour period.
- Payment for deliveries should only be via credit card and delivery only made to the credit card holder.
- Deliveries should not be made outside the hours of 07.00 to 23.00.
- Where any delivery was made by a lone worker (unaccompanied delivery person), the delivery person should wear fully functioning and operative Body Worn Video recording equipment or alternatively deliveries should be made by two or more members of staff. The panel noted that for the first 6 months of operating the licence the applicant indicated, via their representative, that it was their intention to use two people to make delivery as the costs of the requisite video equipment would need to be measured against the commercial viability of the delivery service to see if it was worth the capital outlay.

The Panel took into consideration the distance of the BP garage and Waitrose from the premises but noted that Waitrose was licenced until 21.00 during the week and large supermarkets were able to greatly reduce alcohol issues due to their large resource capability such as staff numbers, tills and security guards. Again, it was operating during the late evening and through the night when other premises were closed or closing that were the concerns for the Panel in respect of the licensing objectives identified above.

The Panel noted that the applicants had offered to keep a refusal book and incident book at the premises and would erect signs asking customers to leave quietly and that there would be no purchases from cold callers. The applicants offered to install CCTV after six months when the business was expected to be performing well; to promote a Challenge 25 policy; and to undertake staff training every three months with a staff training manual on site. The Panel was assured that the premises would operate a robust schedule which promoted the four licensing objectives and that the drivers used by the premises would be aware of the Challenge 25 policy.

The applicants offered to change their opening hours to 07.00 to 02.00 every day, with a door supervisor in attendance between 23.00 and 02.00. The applicants proposed to use two drivers for the first six months of the premises being open and then would use Body Worn Video for one driver deliveries after this time. Items for delivery would be collected from the premises by staff and paid for by credit card by customers. The premises would have a system which could tell if someone was paying by debit or credit card, and proof of ID would also be requested on delivery if

needed. In relation to condition 33 of the additional conditions, a 'function' related to, for example, a wedding or birthday party where there was a pre-arranged delivery which would exceed 1 litre of alcohol. These deliveries needed to be arranged at least 24 hours in advance.

The Panel noted that:

- i) the applicants had previous experience of market trading and a transport business, but not the operation of an off licence;
- ii) The responsible authorities, after mediation and oral submissions at the panel hearing, maintained their concerns regarding the premises being operational 24 hours a day and the need for there to be two delivery drivers, or one delivery driver with Body Worn Video from the start of the premises being opened;
- iii) the proximity of the premises to housing nearby, businesses, the car park, and New Hope;
- iv) migration from other licenced premises nearby, all undermined the licensing objectives.

The Panel decided that the applicant had made no submissions in writing or orally at the hearing which had persuaded the Panel that the licensing objectives would be promoted if the premises was operational until 02.00. This was a concession made by the applicant at the hearing. The original application was for 24 hour opening. The Panel agreed that the premises licence could be granted for the hours of operation between 07.00 and 23.00 with no sale or delivery of alcohol outside of these hours. There would need to be two or more members of staff operating deliveries, or if just one member of staff, they would need to wear fully functioning Body Worn Video recording equipment from the start of the premises being open.

The Panel noted that as a result of mediation with the applicant and some of the interested parties, some additional conditions had been agreed. The additional conditions were revised and further conditions added at the hearing. However, these did not remove the Panel's concerns about the promotion of the licensing objectives in the late evening and during the night.

The proposed conditions at Annex 2 and Annex 3, of Annex K of the agenda papers were amended. Additional steps (licensee) intended to take in order to promote the licensing objectives:

Annex 2 - Conditions consistent with the Premises Operating Schedule:

- (5) All stock shall be purchased from reputable wholesalers or cash and carry premises.
- (6) Alcohol shall be delivered by a reputable recognised delivery firm.
- (7) All delivery drivers shall be trained in the Challenge 25 policy.
- (8) The appropriate safety equipment and emergency lighting shall be installed and maintained at the premises.
- (9) A management policy shall be implemented to take into account the external areas of the premises and the conduct of customers.
- (10) A notice to customers regarding consideration for neighbours shall be displayed in a prominent location at the premises.
- (11) Staff shall monitor CCTV for any anti-social behaviour.

- (12) Alcohol shall not be displayed near the children's confectionary shelves.
- (13) All spirits and cigarettes shall be kept behind the counter.
- (14) The online order system shall use 'Experian Prove ID' software or similar to ensure the ID provided by purchasers is legitimate and to ensure they are over the age of 18.
- (15) A digital CCTV system shall be installed, in accordance with current Home Office Guidelines relating to UK Police Requirements for Digital CCTV Systems. The system shall be maintained and operated correctly to the satisfaction of Thames Valley Police (TVP), ensuring ALL licensed areas of the premises (except toilet facilities) are monitored, including all entry and exit points enabling frontal identification of every person entering and in any light condition.
- (16) All cameras shall continually record whilst the premises are open to the public and the recordings shall be kept and available for a minimum of 31 days with time and date stamping. Except for mechanical breakdown beyond the control of the licence holder recordings shall be made available upon request to TVP and authorised officers of Bracknell Forest Council (BFC). Recordings shall be made available to these officers together with facilities for viewing with immediate access by a person qualified to operate the system.
- (17) Any breakdown or system failure will be notified to the Police immediately and remedied as soon as practicable. Any request from TVP or BFC for a recording to be made for evidential purposes must be carried out within forty eight hours.
- (18) In accordance with the Data Protection Act 1988 a sign advising customers that CCTV is in use shall be positioned in a prominent position at all entrances to the premises.
- (19) Alcohol shall not be sold in open containers or be consumed in the licensed premises.
- (20) The licensee shall ensure that the footway and public space in the vicinity of the premises is swept and kept free of litter at regular intervals whilst the premises are open and at the close of business, and litter and sweepings disposed of in an appropriate manner.
- (21) All staff employed in the sale of alcohol shall be trained and a record of their training shall be maintained in respect of: (a) The legal obligation with the sale of alcohol; (b) Advice and procedure on handling refusals; (c) Understand the company's proof of age policy; (d) Understand the policy on the recording of refusal and incidents of note. This training shall formally take place at least every 6 months. Records of this training shall be maintained. These records shall be made available on request to any authorised officer of the Council or TVP.
- (22) The licence holder and their staff (including delivery drivers) shall be able to communicate with customers, the public, and representatives of statutory agencies to a level that satisfies TVP and BFC that they are able to meet the four licensing objectives.
- (23) An incident book shall be used to record details of incidents that occur in and around the venue. The incident book shall truly reflect what has occurred and shall be specific in detail. If incidents involve members of staff, including any door supervisors,

their names shall be entered. All incidents shall be signed off weekly either by the DPS or a nominated individual when the DPS is not on site.

(24) The premises shall maintain a refusals register. This will detail the following information:

- (i) Date and time
- (ii) Member of staff
- (iii) What product was requested
- (iv) Whether ID was produced, if so what ID, or specify reason for refusal.
- (v) If relating to a delivery the address.

A responsible member of staff will review and sign the refusals register at least once a week.

(25) The premises shall at all times operate a Challenge 25 policy. This will require any customers who attempt to purchase alcohol and who appear to staff members to be under the age of 25 years to provide identification. This policy shall be in written form and retained at the premises and shall be made available on request to any authorised Officer from TVP or BFC.

(26) Only a valid British driver's licence showing a photograph of the person, a valid passport or a nationally approved proof of age card showing the 'Pass' hologram (or any other similarly nationally recognised scheme) are to be accepted as identification.

(27) Notices advertising the Challenge 25 policy and 'No proof of age no sale' shall be displayed in prominent positions at the entrance to and throughout the premises, including any shelves containing alcohol and till points.

(28) Deliveries will only be made to residential dwellings or a place of work with a recognisable postcode. The delivery will take place only if the person receiving the alcohol is inside the property, or inside a communal doorway, and able to prove to the person delivering the alcohol they are a resident or employee at the premises.

(29) Alcohol shall not be delivered to a person who is in a public place e.g. in a street, a park etc. and no sales will take place directly from the vehicle.

(30) All payments for alcohol to be delivered shall be made by credit card only.

(31) Upon receipt of an order including alcohol to be delivered, the customer shall be clearly advised that the delivery will only be made to the person named on the credit card and that if they appear to be under the age of 25 they shall be required to produce an approved form of identification, the name of which corresponds with the name on the credit card. Failure to provide the requested identification and or credit card shall result in non-delivery of the alcohol and a refund in respect of that part of the order which relates to the alcohol only.

(32) For every delivery a customer will sign a delivery note which will contain:

- (i) Date & time
- (ii) Name of person making order
- (iii) Address of delivery
- (iv) Details of ID provided if Challenge 25 policy applies
- (v) Items delivered
- (vi) Member of staff making delivery

(33) No more than 1 litre of spirits will be delivered to any one address, customer or premises in any 24 hour period unless the alcohol is being delivered to fulfil an order made at least 24 hours prior to the delivery.

Annex 3 - Conditions attached after a hearing by the Licensing Authority:

(34) The opening hours of the premises shall be restricted to 07:00-23:00 every day of the week. No alcohol shall be sold or delivered outside of these times.

(35) Deliveries of alcohol to customers shall only be made by two or more members of staff, although deliveries may be made by one person if they are wearing body worn video recording equipment. All images shall be kept for a period of at least 6 months and made available to TVP or BFC on request.

The Panel decided that granting the new premises licence, as amended by mediation and the amended licensing conditions at Annex K, within the hours of 07.00 and 23.00, would promote the four licensing objectives; Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, and Protection of Children from Harm. The Panel found no evidence to justify refusing the new application but restricted the hours between 07.00 and 23.00.

If in the future there were any concerns which would have an adverse effect on the Licensing Objectives, the case could be reviewed by a Licensing Panel. In reaching its decision on the operating hours the Panel believed that its decision demonstrated a proportionate response to the promotion of the licensing objectives identified above.

The decision making process was a matter of judgement by the Panel having weighed all the evidence. Having weighed all the evidence the panel believed that on the balance of probabilities it was more likely than not that operating the license in this location would undermine the licensing objectives if a 24 hour licence was granted or a licence until 02.00 was granted. The evidence pointed clearly to granting the licence for the sale and delivery of alcohol between the hours of 07.00 and 23.00. Within these times the licensing objectives should be able to be promoted. If they were not then any interested party affected could seek a review.

CHAIRMAN