

Determination Notice

Application to review a Premises Licence Licensing Act 2003, Section 52

To: Aloha Tikka Hut Ltd, [REDACTED]

On the 6th December 2017 Warrington Borough Council (“the Council”), being a relevant Licensing Authority, received an application for a review of **The Rag and Bone, Rusgan House, Barbauld Street, Warrington, WA1 2QZ** from Trading Standards, a Responsible Authority.

Premises no: WBC/PL0656

As required, the Council sent the application to the Licensed Premises Holder and Responsible Authorities

Mr. Neil Shillan was present to represent Trading Standards

Mr. Simon Lyon represented Public health.

The Premises Licence holder, Aloha Tikka Hut Ltd, was represented by. Mr. Paul Douglas. The Designated premises Supervisor Mr. T Cataldo was also present as was Mr. Neil Trainer the shareholder of the Premises Licence Holder.

The Police were present to observe. They had not made a representation and were not represented.

Caroline Sharkey presented the report for the Licensing Authority.

In reaching its decision, the Sub-Committee had regard to the following matters:

- (1) The written and oral evidence before them;
- (2) The Licensing Authority’s Statement of Licensing Policy;
- (3) The Guidance issued under section 182 of the Licensing Act 2003 by the Home Office (the “section 182 guidance”)
- (4) Human Rights considerations as set out in the First Protocol of the European Convention on Human Rights

The Sub-Committee were informed that, having advertised the application as required, the Licensing Authority had received a representation from Public Health, dated 3rd January 2018 which supported the application to review, and had also received supplementary information from Trading Standards. The basis of the review

is that the objective of protection of children from harm is being undermined by underage sale of alcohol to children.

Decision

The Sub-Committee In consideration of all the above factors, balancing the interests of the Premises Licence holder, Trading Standards, the representations of the Licensing Authority and giving considerations to the Licensing Objectives, the Sub-Committee resolved to reduce the hours of the licensable activities so that the licensable activities will cease at 23:30 and to reduce the opening hours of the premises to midnight. Members also removed the condition with regard to Clubscan.

Reasons

Members considered the representations made by Trading Standards and the representative from Public Health and were very concerned that despite changes having been made to the management of the premises, it had still been possible for a 16 year girl to purchase alcohol. Representations were made by Mr. Douglas that he had been denied the photograph of the young person to whom the sale was made. However, members were satisfied that as the seller had accepted a Fixed Penalty Notice for the offence and therefore accepted he had committed the offence, there was no resulting unfairness. Further, evidence was heard that the relevant Code of Conduct had been followed when conducting the test purchase. All parties accepted that an underage sale undermined the protection of children from harm objective.

Mr. Shillan submitted that as changes in management had failed to improve the operation of the Premises in that an underage sale had been made, he urged the Sub-Committee to revoke the licence. He pointed to the alleged breaches of condition identified by Ms. Shaunnessey on her compliance visit, stating that if these breaches had not occurred it was very likely that the under-age sale would not have been made. For these reasons, he submitted that the premises licence should be revoked. Members noted this but are required to consider whether any steps short of revocation were sufficient to provide an appropriate and proportionate response to address the causes of concern which instigated the review.

Members heard Mr. Douglas submit that the breaches were not as extensive as the Review Notice suggested. He pointed out that whilst there was a requirement for door staff to be briefed, there was no requirement for a record to be kept of the briefing, although records need to be kept of other aspects of the door supervisors' engagement. In respect of the other alleged breaches, he submitted that records of training did exist and had been made available. He produced these records for the inspection of members at the meeting and discussed what was covered in the training sessions at some length. He submitted that the 6 monthly training was to British Institute of licensing all equivalent standards but was personalised to the particular conditions of this Premises. He submitted that this Premises Licence holder took training very seriously and that the training programme supported the business operation. When considering the Statutory Guidance, Members considered

that the training programme, if carried out as described by Mr. Douglas and with full participation and engagement of the staff would support the licensing objectives and was responsible. They acknowledged however, that much depended on the training being reinforced and upheld by the Premises Licence Holder and the Designated Premises Supervisor.

When asked why the barstaff who sold the alcohol to the 16 year old had not been trained, Mr. Douglas explained that the individual had just missed the quarterly training session. However, he had received a briefing from the designated premises supervisor and had previous experience in the licensing trade. Mr. Douglas acknowledged that he had not carried out his duty properly. He also acknowledged that the door supervisors had not carried out their duties properly in that club-scan had not been used to check the young person's form of identity. Members considered paragraph 11.30 of the statutory guidance and noted that the sale had been made by a new member of staff.

Mr. Douglas submitted that in acknowledging the failings and to uphold the licensing objective, the PLH proposed that the mode of operation should be altered to concentrate on the food offering and no longer offer a late night bar. He offered to reduce the hours of trading in support of this, submitting that this would no longer attract a young clientele.

Members considered that the alteration of the business offering to concentrate on food, combined with earlier closing times would support the licensing objective in respect of protection of children from harm. Members would have liked to have known the view of the police in respect of the proposed alteration to the licensing hours but noted that there was no representation from the police and also noted that the premises were not associated with crime and disorder. They noted that the underage sale had been made at a time when the establishment was operating as a late night bar and considered that this was far less likely if they imposed a terminal hour of 23:30 with closing at 12 midnight. This would make the premises far less attractive to young drinkers. For this reason, they did not accept Mr. Douglas' suggestion that the licensable activities end at mid-night with closing at 00:30 but reduced the hours by a further 30 minutes. Members acknowledged that clientele could access the Premises up to 23:30 for the purposes of drinking only but accepted the assurance given that the intention of the business is to concentrate on meals and considered that the new terminal hour made this less likely. For the same reason, they considered that the use of clubscan was no longer required and determined that this could be removed from the conditions. The other conditions would remain and members noted that there are specific conditions for the protection of children which will uphold that objective and which must be followed.

The determination does not have effect:

- (a) Until the end of the period given for appealing against the decision,
or
- (b) If the decision is appealed against, until the disposal of the appeal.

Right of Appeal

There is a right of appeal against this decision to Warrington Magistrates' Court. Any appeal must be commenced within 21 days beginning with the day on which you receive notification of the decision.

Dated: 2nd February 2018



Paul Clisby
Legal Services Team Manager