

Decisions of the Licensing Sub-Committee

24 August 2016

Members Present:-

Councillor John Hart (Chairman)
Councillor Alison Cornelius
Councillor Clare Farrier

Officers:

Daniel Pattenden – Licensing Officer
Bob Huffam – HBPL Legal Officer
Abigail Lewis – Governance Officer

Responsible Authority:

PC John Akeis
PC Vicky Wilcox
PC Francesca Downes

Applicant:

Ali Kuran
Legal Representative – Robert Sutherland
Staff Member – Okam Ulug
Solicitor – Kenan Demir

1. APPOINTMENT OF CHAIRMAN

RESOLVED: That Councillor John Hart be appointed as Chairman

2. ABSENCE OF MEMBERS (IF ANY)

None

3. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)

None

4. LICENSING SUB-COMMITTEE HEARING PROCEDURE

The Chairman noted the procedure following an introduction of the members of the sub-committee, the officers, objectors and the applicant.

5. REVIEW OF PREMISES LICENCE- CASTLE FOOD AND WINE, NW2 2HG

The Sub-committee considered a Review of Premises Licence for Castle Food and Wine, 50 Cricklewood Lane, London, NW2 2HG, together with submissions from the Licensing Officer, Responsible Authority and Applicant.

6. MOTION TO EXCLUDE THE PRESS AND PUBLIC

RESOLVED: That the parties be excluded from the meeting, together with the press and public, in accordance with regulation 14(2) of the Licensing Act 2003 (Hearings and Regulations) 2005.

7. REVIEW OF PREMISE LICENCE - CASTLE FOOD AND WINE - RESTRICTED
8. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION

The Sub-committee retired in private session, accompanied by the council's legal and governance officers, to consider the facts of the application and the measures necessary (if any) to ensure the promotion of the licensing objectives.

9. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE

The parties to the application were readmitted to the meeting and the chairman conveyed the Sub-Committee's decision as follows:

This is a Review of the licence for Castle Food and Wines 50 Cricklewood Lane, NW2 2HG. It was initially set for 16 August but was adjourned in the public interest at the request of the licensee.

This is a Review of the licence for Castle Food and Wines 50 Cricklewood Lane, NW2 2HG. It was initially set for 16 August but was adjourned in the public interest at the request of the licensee.

The review is brought by the Police based on a list of events in which the licensee has allegedly been in breach of licensing conditions and regulations while Mr Kale and his family have been in effective control of the premises despite a condition that he should not be. We have noted the statement from HMRC concerning visits to the premises and those at 48 Cricklewood Lane on 16 May 2016, 7 January 2016, and going back to 16 March 2006. These attendances disclosed in particular that there were numerous items for sale on which no duty had been paid. There were other breaches in addition.

The Police also refer to incidents in 2005/6 when alcohol was sold at the premises when it did not have a licence to do so. On 15 December 2005 a closure notice was served on Mr Kale. In 2012 a review of the licence was held in which the Police stated that Mr Kale was still operating the business. The licence was later surrendered but a new one granted again with a condition that Mr Kale took no part in licensable activities at the premises.

In 2015 there were visits in which the condition relating to CCTV seemed to be being breached. The Police argue that the latest incidents in January and May 2016 were serious enough but that taking into account the history of the premises it would be appropriate to revoke the licence.

The licensee accepts all of the above incidents. On 1 August 2016 the premises licence was transferred to Mr Ali Kuran who has also been appointed as the DPS. He says that he did not know Mr Kale until he agreed to buy the business from him, and is not a front man put forward by Mr Kale in order to defeat the review. He has produced an assignment of the goodwill of the business to show that he has no ties with Mr Kale.

Paragraph 11.27 of the guidance to the Licensing Act 2003 sets out various matters that are to be treated as being particularly serious and these include the sale of smuggled

tobacco and alcohol. If it is determined that the crime prevention objective is being undermined we are expected to consider seriously the revocation of the licence even in the first instance. Here this type of contravention has happened twice in 2016 and once in 2006.

Clearly it would be inappropriate to base a review on events that happened between 10 to 4 years ago. They may however be taken into account when considering whether the owners of the premises or any DPS are able or indeed willing to comply with the legal requirements of holding a licence and what action is appropriate to promote the licensing objectives in view of the problems at these premises.

We have to consider whether the licensing objective of the prevention of crime and disorder would be promoted by allowing Mr Kuran to perform licensable activities at the premises, or whether the likelihood is that the problems at the premises would continue. The Police say that on previous occasions when the licence has been in jeopardy there have been applications to transfer the licence or to replace the DPS, but that none of these have stopped the problems.

We have sought in our questioning to ascertain whether Mr Kale would continue to have an interest in the business. We have mentioned the Assignment document, but this refers to a Gamze Gul assigning the goodwill to Mr Kuran for the sum of £20,000, whereas the clear evidence from Mr Kuran was that the sale of the goodwill was an agreement with Mr Kale, who has so far received £5,000 of the sale price. It is not clear why a document drafted by Solicitors should fail to reflect the facts of an agreement in this way. It seems instead that Gamze Gul is the immediate landlady to Mr Kuran who will pay her rent only as she had no interest in the business. Mr Kuran could not give any accurate or verifiable figures for the value of the stock in the premises when he bought the goodwill or how much was allowed for such goodwill. No inventory had been taken. The price for the business seems to be low although Mr Kuran did say that this reflected the possible problems with the licence. It seems that the price did not include a premium. There was no evidence that the agreement was conditional on the outcome of this review or the transfer application although this would be usual in an arms length transaction. It is not clear whether Mr Kale still owns or has any leasehold interest in the property. Mr Kuran accepted that Mr Kale had told him about the problems he was facing and therefore knew of the history of the premises but despite this knowledge he could not confirm that there were no non duty paid items still on the premises.

It is clear that Mr Kuran has been working in the licensing trade for some thirteen years assisting his various brothers who own shops mostly in the High Wycombe area. He is not however a personal licence holder. His uncle and a partner Mr Okan Ulug will cover the opening hours between themselves and Mr Kuran will be present when his duties at his brothers' shops are done. We are concerned that the low number of staff in the shop, which has seen more than its fair share of problems, would undermine the licensing objectives.

We do not make any finding of fact insofar as the agreement is concerned but we do not believe that the present situation will promote the licensing objectives and note in particular the history of the premises and our concerns above.

We considered the removal of the DPS, the exclusion of a licensable activity from the licence, and modifying the conditions on the licence. The Police have asked for revocation but have also drafted some proposed conditions agreed by Mr Kuran if revocation is not ordered. Our issue with these conditions is that they really add nothing

to the conditions already in force which seek to remove Mr Kale from any activity in the business. The trail of problems show how little this has worked. We do not therefore consider that these alternatives are appropriate.

If the licence were to be suspended for up to three months we do not believe that the licensing objectives would be promoted when the suspension expired.

The premises have failed to promote the licensing objectives over more than a ten year period, and the review is based on events that are to be taken particularly seriously. The premises seem to have been badly run, and the only appropriate course of action is to revoke the premises licence.

Right of Appeal:

Any party aggrieved with the decision of the Licensing Panel on one or more grounds set out in schedule 5 of Licensing Act 2003 may appeal to the magistrates' court within 21 days of notification of the decision.

10. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT

None

The meeting closed at 14.05