

Decisions of the Licensing Sub-Committee

23 May 2017

Members Present:-

Councillor Alison Cornelius Councillor Brian Salinger
Councillor John Hart

Also in attendance

Officers:

Mariesa Connolly – Licensing Officer
Jack Dowler – Trading Standards Officer
Baljeet Virdee - HB Public Law Legal Officer
Kirstin Lambert – Governance Officer

Applicant

PC Vicky Wilcock – Applicant
PS Jane Tuffin – Applicant
PC John Acres - Applicant
Daniel Pattenden – Licensing Authority acting as Responsible Authority

Others:

Mr Thiyagarajah Kanthakumar – Licensee
John Ioannou, Devereaux Solicitors for Licensee
Mr Madhura Shiralkar – Agent for Licensee

1. APPOINTMENT OF CHAIRMAN

Councillor Alison Cornelius, seconded by Councillor Brian Salinger, nominated Councillor John Hart to preside as Chairman for the evening.

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 explained the procedure that would be followed for the meeting.

5. REVIEW OF PREMISES LICENCE - BURNT OAK OFF LICENCE, 140 BURNT OAK BROADWAY, LONDON HA8 0EJ

The sub-committee considered a Review of the premises licence for Burnt Oak Off Licence, 140 Burnt Oak Broadway, London HA8 0EJ, together with submissions from the Licensing Officer, the Applicant, and Trading Standards Enforcement.

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. DELIBERATION BY THE SUB-COMMITTEE IN PRIVATE SESSION

The Sub-Committee deliberated in private session, accompanied by officers from HB Public Law and the London Borough of Barnet Governance Service.

8. 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 that the Committee's decision would be advised to the applicant and the respondent within 5 working days. The Committee further deliberated the case and it was RESOLVED that the licence for the premises is revoked.

Decision Notice

This was an application for a review of the premises licence for Burnt Oak Off Licence, 140 Burnt Oak Broadway, London HA8 0EJ. The review of the premises licence, under s.51 of the Licensing Act 2003, was made by the Metropolitan Police and relates to the licensing objectives of the prevention of crime and disorder and public safety. It follows a search of the premises on 24th January 2017 whereby alcohol and tobacco, suspected to be non-UK duty paid were found in the premises.

The Sub-Committee has reviewed and considered the written and oral evidence and representations set out within the papers and put forward by the parties.

We have heard representations from the premises licence holder and DPS, Mr Thiyagarajah Kanthakumar who attended the hearing today with his representative.

We have heard representations from the Metropolitan Police, that following a search of the premises on 24th January 2017 with both HMRC and the London Borough of Barnet's Trading Standards team and Licensing Team, a significant quantity of alcohol and tobacco was found on the premises which was suspected to have been smuggled into the UK and be non-UK Duty paid. According to their evidence, this was due to the pricing of a lot of the alcohol being indicative of UK duty not having been paid and that there was alcohol that had not been packaged

for sale in the UK. Following the inspection, HMRC confirmed that cigarettes and alcohol to the value of £7,909.42 had been seized by HMRC.

In addition to the goods seized, two further concerns have been raised by the Police, namely customers are being provided with the means to mix their drinks and consume alcohol on the street. Plastic cups were found behind the counter of the premises which were identical to cups found discarded outside the premises together with miniature spirit bottles and soft drink cans. Furthermore two metal bars were found behind the counter, although it was not clear what they were used for..

A further visit was carried out on 11th April 2017 by the Metropolitan Police and a representative from Imperial Tobacco UK & Ireland. Polish Marlborough Lights were found under the counter near the till. These cigarettes were seized as they were believed to be sold under the counter. We are advised that the alcohol was competitively priced throughout the premises although slightly cheaper than typical pricing in other stores.

We have also heard representations from the London Borough of Barnet's Licensing Team and Trading Standards team that was consistent with the Police's evidence regarding the inspection on 24th January 2017 and in relation to the value of the alcohol and tobacco seized by HMRC. It was submitted that the keeping of goods on the premises where UK-duty had not been paid was a breach of section 144 Licensing Act 2003.

Mr Kanthakumar is the sole designated premises supervisor for the licensed premises yet the evidence provided to the Sub-Committee is that on both inspections another person, who initially provided a false name to the Police and who was later identified to be Mr Rajaji Duraisami Naidu, was found to be alone on the shop premises whilst it was open for business. Following further investigation Mr Naidu was found to be in the country illegally.

Mr Kanthakumar informed the Sub-Committee that Mr Naidu was a friend of his and that he had been helping out Mr Naidu since January 2017 but was not employing him. Mr Kanthakumar admitted that Mr Naidu had not been given any training regarding managing or dealing with licence activities and stated he believed he was in the country on a tourist visa. He admitted he had not asked to see any of Mr Naidu's documents regarding the entitlement of his entry into the UK. Nonetheless, Mr Kanthakumar acknowledged that it was totally unacceptable that he had left Mr Naidu in his shop alone whilst it remained open for business and also admitted this had happened on more than the two occasions the Police carried out their inspections. This was a very serious breach of the premises licence.

The Police submitted that there were a number of plastic cups and discarded alcohol bottles found outside Mr Kanthakumar's premises, and that similar plastic cups had been found behind the shop counter. Whilst they could not prove these were definitely obtained from the premises, they did consider there was a high likelihood these items had been purchased or obtained from the premises.

We heard representations from Mr Kanthakumar who stated he had obtained the large quantities of alcohol and tobacco and cigarettes from cash and carry vendors and had no knowledge of them having had no UK duty paid. Mr Kanthakumar accepted that there may some non-UK duty paid items within this stock but denied there were any counterfeit items. In relation to the two metal bars, Mr Thiagarajah Kanthakumar alleges these were for moving items on the top shelves of the store.

During the hearing, the Police also referred to a test purchase of alcohol made by a 15 year old Cadet at the premises on 7th March 2017, where the cadet allegedly purchased alcohol despite being underage. This information was not contained in the papers before the Sub-Committee and was also contested by Mr Kanthakumar, and therefore, for the avoidance of doubt, the Sub-Committee has not taken this in to consideration in making its decision.

Mr Kanthakumar also sought to provide further evidence in the form of invoices from the cash and carry vendors he allegedly purchased his alcohol from, which had also not been previously provided in representations to the council and was not contained in the papers before the Sub-Committee. The Sub-Committee was unable to verify that the contents of the invoices related to the goods in question.

The evidence before the Sub-Committee was also that none of the alcohol or tobacco at the premises was believed to be counterfeit.

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. Our role is to determine what steps should be taken in connection with the premises licence, namely the prevention of crime and disorder and public safety objectives in the interests of the wider community.

We must consider whether Mr Kanthakumar is 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. What we have to consider however is not punishment, but how to promote the licensing objectives.

After hearing and considering all the evidence and the representations made by the parties today, we are not satisfied that Mr Kanthakumar can comply with the conditions of the licence or indeed licensing regulations. It seems inappropriate therefore to modify the conditions of the licence, remove the DPS or exclude a licensable activity.

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

The Sub-Committee were not satisfied that the other options that were available to it would allay their concerns and that the only option in the circumstances would be the revocation of the licence. The Sub-Committee were gravely concerned that the premises have failed to promote the licensing objectives over a period of time, and the premises licence holder had failed to comply with its obligations under the Licensing Act 2003 and were in breach of its licence conditions. The Sub-Committee viewed this non-compliance particularly seriously.

The Sub-Committee therefore believes it is appropriate to revoke the premises licence for these premises in order to further the licensing objectives, namely the prevention of crime and disorder, and therefore the Sub-Committee has resolved to revoke the licence.

Right of Appeal

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

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

None.

The meeting finished at 1.03 pm