

## **Decisions of the Licensing Sub-Committee**

1 March 2019

Members Present:-

Alison Cornelius  
Claire Farrier

Barry Rawlings

### **1. APPOINTMENT OF CHAIRMAN**

**RESOLVED** that Councillor Alison Cornelius be appointed as Chairman.

### **2. DECLARATION OF MEMBERS' DISCLOSABLE PECUNIARY INTERESTS AND NON PECUNIARY INTERESTS (IF ANY)**

None.

### **3. LICENSING SUB-COMMITTEE HEARING PROCEDURE**

### **4. REPORT OF TRADING STANDARDS & LICENSING MANAGER**

### **5. 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 Licencing Act 2003 (Hearings and Regulations) 2005.

### **6. 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.

### **7. RE-ADMISSION OF THE PRESS AND PUBLIC: ANNOUNCEMENT OF THE DECISION OF THE SUB-COMMITTEE**

**Decision:** BARNET COUNCIL, as the Licensing Authority for the area in which the Premises is situated, has determined to **Revoke** the Licence.

This was an application for a review of the Premises licence for WATLING WINES, 90 WATLING AVENUE, EDGWARE, HA8 0LU (herein after referred to as the "Premises"). The Premises is licensed for the sale of alcohol off the Premises only.

The application for review of the Premises licence, under s.51 of the Licensing Act 2003, is made by the Metropolitan Police Department in an application dated 6<sup>th</sup> January 2019. The application is supported by Witness Statements from officers from the Metropolitan Police.

The Metropolitan Police as the responsible authority say that the Licensing objectives of the Prevention of Crime and Disorder, ensuring Public Safety and the Prevention of Public Nuisance

are being undermined and as such the Licence should be revoked. There are concerns regarding the ability of the Premises to promote the Licensing objective as a result of the following:

- 1) Repeated failure to comply with Conditions 5 to 9 of Annex 2 of the Current Premises Licence, namely a failure to install and maintain CCTV equipment, with images being retained for a period of not less than 31 days on a digital system or hard drive (capable of being burned onto a CD), and being made available to the Police and the Council on request;
- 2) Serving Alcohol on the Street without a Street Trader Licence to individuals known to the Licence holder to be prohibited from entering the Premises further to conditions imposed by a Criminal Behaviour Order and the individual being both vulnerable, intoxicated and a perpetrator of Anti-Social Behaviour within the vicinity of the Premises;
- 3) Using the Premises to sell non-duty paid/smuggled goods, in the form of illegal Romanian Cigarettes, Tobacco and Alcohol;
- 4) Allegations of the Licence Holder purchasing stolen goods from perpetrators of theft and Anti-Social Behaviour in the area of the Premises and selling such stolen goods to members of the public;
- 5) Sale of single can alcohol in contravention of an oral agreement with the Council which has greatly contributed to the congregation of street drinkers and resultant Anti-Social Behaviour in the area surrounding the Premises (although it was noted that this is not a current Licence Condition).

The Sub-Committee heard submissions from the Applicant, PC Kirby Beresford who highlighted specifically the failure of the Licence holder to comply with the conditions of the existing Licence in relation to CCTV, the discovery that the Licence Holder has been found to purchase and re-sell non-duty paid/smuggled goods from the Premises and selling alcohol on the street without a street trader licence to individuals the Licence Holder was aware were not permitted to enter the Premises as per the conditions of a Criminal Behaviour Order.

The Sub-Committee heard submissions from the Licence Holder's Counsel who confirmed that the Licence Holder accepts that there have been failings since the granting of the Licence. It was submitted that the Premises now has a new CCTV system in place and it was averred that CCTV evidence was provided to the Police in or around October 2018 which resulted in a conviction. It was submitted that the Licence Holder and the Premises is being unfairly targeted by the applicant and that the issue of street drinking and ASB is larger problem within the immediate area and that there are other Off-Licence Premises in close proximity which have not been targeted by the Applicant.

A Bundle of documents was provided to the Sub-Committee which had not been provided previously. In said bundle counsel for the Licence Holder proposed 8 new conditions to be applied to the Licence namely:

- 1) That the Layout of the Premises be changed so that all spirits and beers are kept behind the counter;
- 2) No spirits or beers to be available until full payment is received prior to purchase;
- 3) A log book to be maintained at the Premises to record all incidents;
- 4) CCTV to be checked for its full operation every day at the time of opening with a record to be kept of its operational status;
- 5) For CCTV to be provided within 24 hours of request in writing;
- 6) The Premises to not sell any beer, larger or cider exceeding the strength of 6.5% abv or higher unless 3 or more bottles/cans are purchased together. This restriction to not apply in respect of specialist branded, premium priced, products – for example craft ales, local or microbrewery specialist products, boxed gifts or national celebratory/commemorative beer, larger or cider with an alcohol content of 6.5% abv or greater;

- 7) A personal Licence holder will be on duty at all times the alcohol is sold;
- 8) Sale and retail of alcohol from 09:00 Sunday to Thursday.

It is submitted by Counsel for the Licence Holder that the revocation of the Licence would be draconian and that no written warning had been provided to the Licence Holder. In closing it was submitted that that both a review and a revocation are a last resort and the Licence Holder should be granted a final chance as per the conditions proposed to retain the Licence.

Evidence was heard from PCs Beresford, O'Sullivan and Wilcock in support of the applicant, citing the longstanding issue, previous oral warning and conversations with the Licence Holder and his staff as to the Police Concerns, previous inspections and findings, testimonies and evidence from other residents and business owners and also from those alleged to have conducted ASB. It was also averred that the Premises has been closed for a number of weeks which has led to a reduction of street drinking and ASB in the area.

Evidence was also heard from the Licence Holder's agent who commented that there had been no previous written warnings provided to the Licence Holder, no written agreement as to not selling single cans with the council, that the Licence Holder denies selling alcohol on the street to anyone, that it is denied that the Premises has been closed and that they have credit card invoices and CCTV to disprove this assertion. The Licence Holder's agent averred that the Applicant had been inappropriately gathering a petition against the Premises which was denied by the applicant. The Sub-Committee noted that it had not been presented with any such petition.

The Sub-Committee put questions to parties, in particular the Sub-Committee notes:

- 1) The Licence Holder was asked to explain why he sold non-duty paid/smuggled goods, how much profit was made and why he believed this to be acceptable. The Licence Holder responded that he purchased goods at a 50% reduction in price and sold them at a 25% profit. The Licence Holder alleged that he did so as other shops in the vicinity also did this and he need to remain competitive. It was noted that there is no evidence that any other shops in vicinity of the Premises were selling such items and the Police confirmed that inspections were carried out at the other Premises with no such findings. The Sub-Committee does however note that the Licence Holder did co-operate with the authorities and HMRC and as such received a reduced penalty;
- 2) the Licence Holder was asked to comment as to the allegation that he had been purchasing stolen goods from Tesco and selling such items on. The Licence Holder denied this stating that he had receipts to prove the items were bought and not stolen. The Licence Holder was presented with the account of the Police, in particular PC O'Sullivan that the items clearly still had their security tags attached and statements had been received from other businesses and the Tesco manager that the items were stolen. The Licence Holder then admitted that this was done by a member of staff who was immediately fired as a result.
- 3) The Licence Holder was asked why he had failed to address the CCTV issue at the Premises for so long despite repeated incidents threatening his own staff members and warnings by the Police. The Licence Holder responded that he was unable to understand how to work the original CCTV system and that on other occasions the installation had been faulty without his knowledge. It was averred that there is now a working CCTV system and footage was provided in October 2018 to the Police which led to a conviction. The Licence Holder's assertion that CCTV footage had been provided in October 2018 was denied by the Police and it was averred that the Police were informed that no CCTV was available of the incident.

The Sub-Committee has also received, considered and have had regard to representations received from Cllr Sara Conway, Ward Officer PC Daphne Smith and a Local Business Owner in support of the Applicationand has also received, considered and have had regard to

representations and emails and documents from the Licence Holder's agent opposing the application.

The Licensing panel has considered all the written and oral representations made, as well as the legislation, the statutory guidance and Barnet's Licensing Policy in reaching its decision;

The Sub-Committee has considered all options available to it as set out in S.52 (4) of the Licensing Act 2003 and notes as follows:

- a) As to modifying the conditions, the Sub-Committee has found the proposed conditions by the Licence Holder to be wholly lacking in substance with a number of such issues including the change of layout, etc. as being issues which could have taken place already and not a term that should be imposed as a Licensing condition.

Other proposed conditions such as the maintenance of a log are items which should already be done and most importantly the proposals as to CCTV are more lenient than conditions already in place in the Licence which are not being complied with. The Sub-Committee has no confidence that the proposed conditions are adequate.

The Sub-Committee has considered alternative conditions however in the circumstances and based on the representations received, the answers provided by the Licence Holder to the questions posed and the longstanding failure to comply with previous Licence conditions, does not consider the modification of the conditions to be in the interest of promoting the Licensing objectives.

- b) The Sub-Committee is not satisfied that there is a Licensable activity the exclusion of which would promote the Licensing objective while allowing the Licence Holder to retain the Licence.
- c) The Sub-Committee is not satisfied that the removal of the designated Premises supervisor would promote the Licensing objectives and notes that the designated supervisor appears to be the Licence Holder in any event. The Sub-Committee finds that the issues at hand are as a result of poor company practice or policy and the mere removal of the designated Premises supervisor will not be an inadequate response to the problems presented
- d) The Sub-Committee is not satisfied that suspending the Licence for no longer than 3 months would promote the Lisencing objective or address the issues at hand;
- e) The Sub-Committee has sought to establish the cause or causes of the concerns that the representations identify and finds a revocation of the Licence to be an appropriate and proportionate response to address the causes of concern that instigated the Review. The Purpose of the Revocation is not to punish the Licence Holder for previous activities but however is the most appropriate option available in promoting the Licensing Objectives in light of the facts of the matter at hand.

The Sub-Committee accepts that as per Paragraph 11.10 of Guidance to the Licensing Act 2003 ("the Guidance"), that where authorised persons and responsible authorities have concerns about problems identified at Premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. The Sub-Committee accepts that the repeated incidents including visits and comments by the Police to the Licence Holder amounts to such warnings, which have been repeated.

Further the Sub-Committee accepts that as per Paragraph 11.17 of the Guidance, the Licensing Authority may decide that the review does not require it to take any further steps appropriate to

promoting the Licensing objectives. In addition, there is nothing to prevent a Licencing Authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that Licensing Authorities will regard such informal warnings as an important mechanism for ensuring that the Licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

However, as per Paragraph 11.18 of the Guidance, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, Licensing Authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. The Sub-Committee is satisfied that the Licence Holder has received repeated oral warnings by the police that the terms of the Licence have been breached and that he is failing to uphold to the Licensing objectives and does not consider a further warning to be appropriate in light of the circumstances.

#### **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.

#### **8. ANY OTHER ITEM(S) THE CHAIRMAN DECIDES ARE URGENT**

None.