

MINUTES OF THE LICENSING SUB COMMITTEE MEETING HELD ON MONDAY, 1ST AUGUST, 2022, 7.00PM - 8.15PM

PRESENT:

Councillors: Ajda Ovat (Chair), Emily Arkell, and Elin Weston

1. FILMING AT MEETINGS

The Chair referred to the notice of filming at meetings and this information was noted.

2. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Holly Harrison-Mullane. Councillor Elin Weston was in attendance as substitute.

3. URGENT BUSINESS

There was no urgent business.

4. DECLARATIONS OF INTEREST

There were no declarations of interest.

5. SUMMARY OF PROCEDURE

The Chair provided a summary of the procedure for the meeting.

6. APPLICATION FOR A REVIEW OF A PREMISES LICENCE FOR STAR FOOD & WINE, 23 WESTBURY AVENUE, WOOD GREEN, LONDON, N22 6BS (NOEL PARK)

Daliah Barrett, Licensing Officer, introduced the report which presented an application for a review of a premises licence for Star Food & Wine, 23 Westbury Avenue, Wood Green, London, N22 6BS (Noel Park). The Licensing Officer explained that the review had been submitted by Trading Standards, as responsible authority, and related primarily to the prevention of crime and disorder licensing objective. It was noted that the application was set out at Appendix 1 to the report.

It was stated that the application primarily concerned an incident at the premises on 22 March 2022 during a Trading Standards inspection. During the search, a locked

safe was seized following an indication from tobacco search dogs; the safe was subsequently found to contain illegal tobacco.

The Licensing Officer noted that the premises licence holder was Hunter Supermarket Ltd and the Designated Premises Supervisor (DPS) was Mr Kemal Avci. It was noted that the premises was licensed for the following:

Supply of Alcohol

Monday to Sunday 0000 to 0000 hours

The opening hours of the premises:

Monday to Sunday 0000 to 0000 hours

It was noted that the Committee could modify the conditions of the licence, exclude a licensable activity from the scope of the licence, remove the Designated Premises Supervisor, suspend the licence for a period not exceeding three months, or revoke the licence.

The Licensing Officer noted that the premises had a prior licence that had been granted in 2005 and was set out in full in the agenda papers. This licence had some extensive conditions in place and it was commented that these were mainly identical to those requested as part of the review application. It was explained that, under the previous licence holder, a quantity of illicit tobacco was also found on site and, in response to the concerns raised by Trading Standards, it was agreed that a minor variation to include additional conditions was the best course of action. It was noted that the minor variation had been submitted by the current premises licence holder.

In response to questions from the Committee, the following responses were provided:

- It was clarified that, of the conditions proposed by Trading Standards, only one would be materially new to the conditions of the existing licence.
- It was confirmed that the request to transfer the licence from the previous to the current premises licence holder had been submitted on 12 July 2021 and the minor variation had been submitted on 19 July 2021.

Michael Squire, Trading Standards Specialist Officer, and Felicia Ekemezuma, Trading Standards Manager, introduced the application. Michael Squire explained that, in early January 2022, intelligence was received that suggested illegal tobacco was being sold at the premises. There had been an inspection on 19 January 2022 where Mr Avci was present. During inspection, no illegal tobacco products were found but there was a locked safe which, when asked, Mr Avci could not open as he stated that the keys were not on the premises. Advice was given that keys should be kept on the premises and that there would be a future visit. It was noted that there was another inspection on 22 March 2022 where an officer had returned with a tobacco detection dog. It was requested that the safe was opened but, as there were no keys on the premises, the tobacco dog was deployed and indicated the presence of tobacco; following this, the safe was seized. Mr Avci and his representative were asked to attend for the opening of the safe which contained 140 cigarettes, which were seized, and some cash, which was returned to Mr Avci. It was explained that the

cigarettes were not from the UK and it was noted that it could be an offence to keep non-duty paid goods on the premises.

Following the inspections, a letter had been sent to Mr Avci as Director asking some questions about the seizure. In the response, it was stated that Mr Avci had deliberately stored the cigarettes in the safe to avoid detection and that they were not for sale but were for the use of the shopworkers only. It was also stated that Mr Avci kept the keys off the premises to prevent burglary. The Trading Standards representative noted that they had been informed of some independent test purchases that had been conducted on 17 February 2022 and 4 March 2022 where a test purchaser had been able to obtain illegal cigarettes from the shop. It was noted that the person selling these cigarettes was not Mr Avci but appeared to be a shop worker. Michael Squire explained that Trading Standards had concerns about the amount of illegal tobacco in the shop and had a number of recommendations which were set out in the agenda papers. It was acknowledged that the majority of the recommended conditions were already included in the licence already but that one additional condition was proposed relating to the availability of safe keys or codes on the premises.

In response to questions, the following responses were provided:

- It was noted that the test purchases had been undertaken before the safe had been seized.
- In relation to a question about the impact of the additional condition, the Trading Standards Specialist Officer explained that the condition would require access for officers at future inspections. It was noted that hiring a tobacco dog was expensive, at approximately £600 per day.
- It was noted that there were multiple figures for the duty value of the products in the safe. The Trading Standards Specialist Officer stated that the duty lost for Her Majesty's Revenue and Customs (HMRC) was approximately £420.
- It was noted that tobacco had been seized at the premises in 2021 under a previous premises licence holder. It was explained that a review application had been submitted but that, as the premises had been sold to Mr Avci, it was agreed with Robert Sutherland that the issue would be resolved if the new applicant applied for a minor variation to avoid any issues relating to the sale of illicit tobacco. It was clarified that the variation had been submitted and approved. It was also confirmed that Robert Sutherland had represented the previous and the current premises licence holders.
- Robert Sutherland stated that all of the conditions put forward by Trading Standards were agreed. The Trading Standards Specialist Officer noted that some of the proposed conditions inadvertently replicated existing conditions on the licence but clarified that condition 21 was requested as a new condition. Robert Sutherland requested that the Trading Standards wording was used for conditions 14 and 15 as this was considered to be more relevant than the current wording.
- The Trading Standards Specialist Officer stated that a suspension of the licence, rather than a revocation, had been requested as this was a first occurrence. It was added that Trading Standards generally considered that suspension was sufficient as revocation could significantly affect the livelihood of a shop.
- The Legal Advisor noted that any revocation was based on the promotion of the licensing objectives and was not about giving sanctions.

Maria Ahmad, Public Health Officer, stated that Public Health had concerns about the ability of the premises licence holder to uphold the licensing objectives. It was stated that, even where a premises licence holder was not at the premises, it was their duty to ensure commitment to the licensing objectives. It was commented that the shop was located in a residential area with five nearby primary schools and that this was a gateway into smoking, as well as something that could negatively impact on health and crime. The Public Health Officer stated that there was a likely impact on young people and that the cost of living crisis meant that more people were likely to use illicit tobacco. It was noted that smoking widened health inequalities and that there was a high prevalence of smokers in the ward. It was commented that Public Health had concerns that the premises were open 24 hours a day and that the premises licence holder would not be able to promote the licensing objectives. The Public Health Officer stated that the licence had contained a number of conditions which did not have an impact and that Public Health was requesting that the licence was revoked or, if not, that the trader was asked to join the Responsible Retailers Scheme.

In response to questions, the following responses were provided:

- In response to a question about the protection of children from harm licensing objective, the Public Health Officer stated that there was no evidence that children had been encouraged to buy illicit tobacco at this premises but that research suggested that children and young people were more susceptible.
- It was noted that the submission from Public Health suggested that the application would exacerbate issues in the area and it was enquired whether there was evidence of this. The Public Health Officer noted that the area had high instances of conditions such as diabetes that were likely to be exacerbated by smoking.
- The Public Health Officer stated that the prevalence of smoking was higher in the local area: West Green, Noel Park, and Haringay wards. It was noted that there were 13 licensed premises in the area and it was explained that these were referenced in the Public Health submission as alcohol and tobacco use were highly correlated behaviours.

Kemal Avci (Premises Licence Holder), Robert Sutherland (Solicitor), and Kenan Demir (Solicitor and interpreter) addressed the Committee. Robert Sutherland noted that he had been involved in both the current and previous reviews but that he did not want this to be taken against his client in any way. He stated that the sale of the premises from the previous premises licence holder had been a genuine, arms-length sale.

It was highlighted that Mr Avci wanted to apologise for the illicit tobacco sales. As set out the documentation, Mr Avci intended to use the majority of the tobacco for his own use but accepted that, had the opportunity arisen, he would have sold it. It was stated that the premises licence holder and his representatives were working with Trading Standards to make sure that there were no further issues. It was acknowledged that there had been undercover sales of the illicit tobacco in February and March 2022. Although the details of the member of staff were not provided, it was noted that Mr Avci had dismissed a member of staff for selling illicit tobacco; it was stated that this might have been the same member of staff. Robert Sutherland commented that he commended the steps taken, that Mr Avci intended to promote the licensing objectives, and that all of the proposed conditions were accepted. It was added that invoices and documentation for the current quarter were stored at the premises but

that it would be possible to obtain fuller documentation from the accountant at short notice if required.

In response to questions from the Committee, the following responses were provided:

- Robert Sutherland confirmed that Mr Avci had held a personal licence since July 2021 and that he only had responsibility for this premises.
- It was noted that the existing licence stated that the licensee would join the Responsible Traders' Scheme. Robert Sutherland stated that this may be partially his responsibility as, when the change was made to the existing licence, he had believed that someone from the Council would be in contact. He explained that this process was now underway; it was understood that the application only needed personal details from one of the three personal licence holders.
- Robert Sutherland stated that the premises licence holder had not intended to organise sales of illicit tobacco on the premises; this had been a more opportunistic situation. It had been stressed to the premises licence holder that no sales of illicit tobacco were permitted and this was understood.

There were no further questions.

The applicants for the review were invited to summarise. Michael Squire, Trading Standards Specialist Officer, noted that Trading Standards sought a suspension of the licence and asked for an additional condition to be added to the licence.

Maria Ahmad, Public Health Officer, stated that Public Health was asking the Committee to consider revocation and, if this was not considered to be appropriate, asked that the applicant joined the Responsible Retailers Scheme. She noted that there were a number of schools in the local area and a high prevalence of smoking and that the premises could increase the burden on local people and the NHS. It was commented that a number of relevant conditions were already included on the licence and that this had not had an effect on practice.

The representatives of the premises licence holder were invited to summarise. Robert Sutherland asked the Committee to replace the existing conditions with the wording proposed by Trading Standards as it was more applicable than the wording of the existing conditions. He stated that suspension of the licence was considered to be more appropriate than revocation as there was no direct evidence of the impact of the licence on children and this was strongly disputed by the premises licence holder. It was added that the premises had been closed for several months already for refurbishment and it was requested that the Committee considered a short period of suspension.

At 8pm, the Committee adjourned to consider the application.

RESOLVED

The Licensing Sub Committee carefully considered the application for a review of a premises licence for Star Food & Wine, 23 Westbury Avenue, Wood Green, London N22 6BS. In considering the application, the Committee took account of the London Borough of Haringey's Statement of Licensing Policy, the Licensing Act 2003, the

Licensing Act 2003 section 182 Guidance, the report pack and the written and oral representations of the Parties.

The Committee resolved to:

- (i) To suspend the licence for a period of 6 weeks; and
- (ii) Modify the conditions on the licence to incorporate the recommendations of Trading Standards as set out on pages 14 and 15 of the Committee agenda pack as follows:
 1. All tobacco products which are not on the covered tobacco display cabinet or on the under counter shelf marked for 'Tobacco Stock' shall be stored in a container clearly marked 'Tobacco Stock'. This container shall be kept within the storeroom or behind the sales counter.
 2. Tobacco shall only be taken from the covered tobacco display cabinet behind the sales counter or the undercounter shelf marked for 'Tobacco Stock' in order to make a sale.
 3. Where a locked safe, cupboard or stock storage area is maintained at the licensed premise immediate access to these locked areas shall be provided on request to any Police or Authorised Council Officer who wishes to carry out an inspection during licensable hours. Where keys or codes necessary to access these locked areas are not immediately available to staff on the premises they shall be provided by a responsible person/keyholder within 20 minutes of a request for access or within a reasonable time as agreed at the discretion of the Authorised officer.

Reasons

The Committee had careful regard to the fact that the premises had been used in connection with criminal purposes, namely the sale of illicit tobacco, which the Guidance advises should be treated as being particularly serious.

The Committee considered that, as a minor variation had resulted in numerous additional conditions being placed on the licence following an agreement with Trading Standards in July 2021, the Licence Holder would have been in no doubt that the sale of illicit tobacco was an offence and that such an offence would have put his licence at risk. It concluded that there was a clear and deliberate failure by the Licence Holder to uphold and promote the Licensing Objectives of the prevention of crime and disorder and public safety.

The Committee was troubled by the Licence Holder's admission that, had the opportunity arisen, he would have sold the illicit tobacco found on the premises. Further, the Committee was concerned to hear the reports of the industry test purchases during which illicit cigarettes were purchased from the Premises.

The Committee considered the Licence Holder's representation that an employee had been dismissed for selling illicit cigarettes but found it to be unsatisfactory that the

Licence Holder could not confirm whether it was the same employee who had made the test sales.

The Committee further considered the Licence Holder's representation that he has recently installed an updated CCTV system to enable him to increase his supervision of employees.

The Committee seriously considered whether to revoke the licence or impose a period of suspension; the Committee recognised that a revocation or suspension of the licence could have a serious financial impact on the Licence Holder's business. Overall, the Committee concluded that it would be appropriate and proportionate to suspend the licence for 6 weeks to act as a deterrent to the Licence Holder from using the premises for criminal activity in the future and to provide the Licence Holder with time to resolve any outstanding personnel issues and ensure all training was up to date and of a satisfactory standard.

Informatives

The Committee wanted the Licence Holder to be in no doubt that the Licensing Objectives have to be promoted and it is for the Licence Holder to take affirmative action to ensure this happens. Notwithstanding the same, the Committee decided that it would afford the Licence Holder a further opportunity to demonstrate that he would comply fully with the law and his obligations as a licence holder. The Committee wanted the Licence Holder to be aware, however, that should this matter come before the Committee again it would take a dim view of any repetition of the activities highlighted in this review.

The Committee would like to encourage the Licence Holder in joining the Responsible Trader Scheme as evidence of the Licence Holder's commitment to promoting the Licensing Objectives.

Appeal Rights

This decision is open to appeal to the Magistrates Court within the period of 21 days beginning on the day upon which the appellant is notified of the decision. This decision does not take effect until the end of the appeal period or, in the event that an appeal has been lodged, until the appeal is dispensed with.

7. NEW ITEMS OF URGENT BUSINESS

There were no new items of urgent business.

CHAIR: Councillor Ajda Ovat

Signed by Chair

Date

