

MINUTES OF THE MEETING OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON THURSDAY, 20TH JULY, 2017, 10am

PRESENT:

Councillors: Dhiren Basu, Zena Brabazon (Chair) and Clive Carter

26. FILMING AT MEETINGS

Noted.

27. APOLOGIES FOR ABSENCE

None.

28. URGENT BUSINESS

None.

29. DECLARATIONS OF INTEREST

None.

30. SUMMARY OF PROCEDURE

The Chair outlined the procedure to be followed during the meeting.

31. YESIM SUPERMARKET, 260 PHILIP LANE, N15

Daliah Barrett, Licensing Officer, introduced the application brought by Trading Standards for a review of the premises licence. The licence was granted to Mr Ali Taze in 2005 under grandfathered rights. In addition to the application made by Trading Standards, representations had been made by the Licensing Authority and Public Health.

Rebecca Whitehouse and Michael Squire, Trading Standards, presented the application for a review of the premises licence. Mr Squires outlined the history of the premises: on 15 October 2014, a joint visit by HMRC and Trading Standards resulted in the seizure of 72 bottles of illicit spirits, along with illicit cigarettes and tobacco. On 19 November 2014 packets of tobacco were seized from the premises, and on 11 December 2014 Mr Taze made an underage sale as part of a test purchase operation. Mr Taze accepted a simple caution on 8 December 2015 for the underage sale. A further visit was made to the premises on 16 May 2017, where illicit tobacco was found on the premises. Mr Taze was not at the premises at the time of the visit, and

the member of staff present, Mr Koca, was unable to prove that the tobacco was for personal use, as stated by him when questioned by officers.

Mr Taze had been a member of the Responsible Retailers Scheme since June 2014, a voluntary scheme, which would have provided Mr Taze with the necessary guidance and support for running a licensed premises. Trading Standards considered that Mr Taze should have been less likely to break the law in this way, as he would have received the support and guidance of the Responsible Retailers Scheme.

Trading Standards had contacted Mr Taze by letter to invite him to review his premises licence and apply for a minor variation to strengthen the licensing conditions, and had not received a response. Trading Standards took the decision to submit a review application and requested that the Committee revoke the licence.

In response to questions from the Committee, Ms Whitehouse confirmed that two letters had been sent to Mr Taze regarding the minor variation, but no response had been received. The letters had not been sent out by Special Delivery.

In response to questions from Robert Sutherland, Mr Taze's representative, Ms Whitehouse explained that the delay in issuing the simple caution from December 2014 to December 2015 was due to the fact that the team was small, and so it had taken some time to get through the system. Ms Whitehouse also confirmed that Mr Taze was not at the premises in May 2017, but explained that as the Premises Licence Holder and Designated Premises Supervisor, it was his responsibility to ensure that the premises was compliant with its licence and the law.

Monica Ukandu, Public Health, outlined the representation made by Public Health as set out in pages 32-33 of the agenda pack. The recommendation of Public Health was that the licence should be revoked, but if the Committee decided not to take that decision, that conditions should be added to the licence.

Robert Sutherland, Mr Taze's representative, responded to the review application. He outlined Mr Taze's position in that whilst he accepted that errors and mistakes had been made, these had taken place in 2014, and nothing had occurred since this time which would affect the promotion of the licensing objectives. Mr Sutherland informed the Committee that Mr Taze would be happy to accept all conditions put forward by the Responsible Authorities, but that to revoke the licence would be a step too far.

Mr Sutherland informed the Committee that Mr Taze had been out of the country at the start of 2016 due to deaths in his family, and had not received the letters sent by Trading Standards, nor had anyone else in his property. Mr Sutherland also noted that there had been no visits carried out to the premises in 2016.

Mr Sutherland referred to the evidence submitted on behalf of Mr Taze, which showed copies of the refusals book and briefings carried out with his staff in relation to the licensing conditions and the running of the premises. He explained that when Mr Taze was not present in the shop, all staff had been instructed to take notes of any refusals made, and Mr Taze completed the refusals book when he came back to the premises. Mr Sutherland added that Mr Koca was no longer working for the premises.

The Chair asked all parties to sum up.

Ms Whitehouse stated that following three occasions of a breakdown of due diligence, Trading Standards no longer had confidence in Mr Taze to ensure that the licensing objectives would be adhered to. She requested that the licence be revoked.

Mr Sutherland reiterated that there had been no incidents reported since 2014, and that there were sufficient measures in place to ensure that the licensing objectives were adhered to. He considered that revoking the licence was not an appropriate action to take.

RESOLVED

The Committee carefully considered the application for a review of the premises licence, the representations of Trading Standards, the Licensing Authority, Public Health and the licensee, the Council's Statement of Licensing Policy and the s182 Licensing Act 2003 Statutory Guidance.

The Committee resolved:

- (i) To impose the conditions recommended by Trading Standards and Public Health at pages 16, 17, 18 and 33 of the agenda pack, save where they overlap, the condition relating to refusals book to include that it be complete by staff in English at the time of sale ;
- (ii) To impose a condition that CCTV shall operate at all times while the premises remain open to the public and all images captured will be recorded and stored on site for a minimum period of 31 days, and
- (iii) To suspend the licence for a period of 3 months.

The Committee had regard to the 182 guidance which recommends that where licensed premises are being used for criminal activity such the sale or storage of smuggled tobacco or alcohol, this should be treated particularly seriously. The Guidance also requires licensing authorities to take very seriously the illegal sale of alcohol to minors.

The Committee were satisfied that the licensee was aware of his statutory obligations and the requirements of good practice in respect of the licensed premises, having been a member of the Council's Responsible Retailer Scheme since June 2014 and having received support from the local authority under that scheme in complying with his obligations.

Incidents on 15th October 2014 and 19th November 2014 where illicit non duty paid alcohol and tobacco were found to be on sale illustrated a lack of due diligence in sourcing legitimate products for sale. The underage sale by the licensee on 11th December 2014 was also a cause for serious concern. The December 2014 offence was admitted and a caution was accepted by the licensee in December 2015. Trading Standards had decided to take a stepped approach in relation to these historic incidents and over a year later on 8th January 2016 and 29th January 2016, they sent letters offering to deal with them by way of adding conditions to the license, failing which they would seek a review of the licence.

The Committee heard evidence that the licence holder was in Turkey at the time that these letters were sent and had not received the letters. They doubted that neither letter came to the

licence holder's attention, but as the letters were not sent by recorded delivery there was no evidence that they had been delivered.

On 31st January 2017 a visit by Trading Standards discovered that there was no refusals book in operation at the premises. Whilst this is not a condition of the licence, it is best practice to have a book and an obligation to which the licensee had voluntarily agreed under the Responsible Retailer Scheme. Pages from the refusal book were presented as evidence at the hearing but the Committee had some doubt as to whether these pages, some of which purported to cover the January period, were contemporaneous, given the discrepancies in the way that they were completed. The lack of the refusals book is reflective of the licensee's level of commitment to complying with his obligations.

The discovery of a small quantity of illicit tobacco on the premises on 16th May 2017 in circumstances where it was possible that it was being offered for sale is of concern given the history of previous offences. The Committee were not convinced that the tobacco seized belonged to Mr Koca because he could not produce the cigarette papers that he would have used with the tobacco. It was noted that the licensee has taken disciplinary action against Mr Koca and is having regular staff meetings at which he reminds his employees of their obligations.

The Committee seriously considered revocation of the licence, but stopped short because Trading Standards had not followed through on the stepped approach that it intended to take in January 2016 and sought a review following the licensee's failure to agree conditions. Over two years have now passed since those incidents, no further visits were undertaken during 2016 and there was no evidence whether any offences took place in 2016. These delays meant that proportionality did not favour revocation despite the finding on 16th May 2017. The Committee decided that the trust and confidence in the licensee's ability to comply with his obligations had not broken down to the extent that only revocation could promote the licensing objective of the prevention of crime and disorder. For those reasons the Committee was prepared to give the licensee one last chance to demonstrate compliance with his obligations and to strengthen the conditions on the licence.

It was the Committee's decision that the conditions proposed by Trading Standards and Public Health, together with the installation of CCTV offered by the licensee and a period of suspension would be appropriate and proportionate to promote the licensing objectives of the prevention of crime and disorder.

In considering suspension in addition to imposing conditions, the Committee balanced the financial impact that a period of suspension could have on the business against the fact that where illicit tobacco or alcohol are being sold or underage sales are taking place, this poses a serious risk to the health of the wider community. It noted that the business is a supermarket and so could continue trading. It concluded that criminal acts that had taken place and risk posed to public health favoured suspension and outweighed the financial interests of the individual licensee. The committee concluded that the seriousness with which the statutory guidance advised these offences be dealt with, and the need to provide a deterrent to the licensee so that he would ensure that he took the necessary steps to promote the licensing objectives going forwards, both justified the imposition of the maximum suspension of the licence for 3 months.

Informative

The Committee wanted the licensee to be in no doubt that the matters giving rise to the review warrant the most severe sanction short of revocation and any repeat would put his license at risk.

If the licensee is unable to exercise the necessary control over the day to day running of the business he should consider whether to appoint someone else as Dedicated Premises Supervisor.

CHAIR: Cllr Zena Brabazon

Signed by Chair

Date