

# **MINUTES OF THE MEETING OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON TUESDAY, 27TH APRIL, 2021, 14.00 – 15.29**

## **PRESENT:**

**Councillors: Peter Mitchell (Chair), Luke Cawley-Harrison and Sarah Williams**

### **1. FILMING AT MEETINGS**

The Chair advised that the meeting would be live streamed on the Council's website.

### **2. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

### **3. URGENT BUSINESS**

It was noted that, it being a special meeting of the Sub-Committee, under Part Four, Section B, Paragraph 17 of the Council's Constitution, no other business would be considered at the meeting.

### **4. DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **5. REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003, ATAKAN SUPERMARKETS, 315-321 WEST GREEN ROAD, N15**

Before Daliah Barrett, Licensing Officer, introduced the report, Mr Mahir Kilic, Applicant's Representative, requested that the public and press be excluded from the hearing as he suggested that some substantial allegations made by the Police had not been publicly made available and not backed up by evidence. In response, Khumo Matthews, Legal Officer, stated that it was a meeting held in public and that it was purely the role of the Committee to consider the application for a review of the application.

Daliah Barrett stated that this request had not been made in advance of the meeting. Ms Barrett informed the Committee that the Council had not carried out the transfer of the Designated Premises Supervisor to Atakan Kartal and therefore he was not the current interim premises licence holder. An application had since been submitted for the transfer of the licence to Atakan Kartal which had received objections from the Police. This matter would subsequently come to committee in due course.

Following the request from Mr Kilic, the Chair stated that the papers for the meeting had been published and due notice given, therefore the meeting would continue in

public. It was also confirmed that the additional materials submitted by the Police had been published on the Council's website as supplementary material to the agenda.

Daliah Barrett, Licensing Officer, introduced the report, as set out on pages 1-4 of the agenda.

In response to a question from Mr Kilic regarding the sale of nitrous oxide canisters, it was confirmed that it was not illegal to sell them however the illegal activity related to the way that they were intended to be used as an illegal high.

PC Mitcham, Police, referred to their representation, as set out in the supplementary pack to the agenda.

In response to a question regarding the intelligence search, as detailed in the Police representation, which stated that on 8 September 2020 an area of the premises was in fact used as a cannabis farm, PC Mitcham confirmed that this had not been observed on that date.

In response, Mr Kilic also referred to the Police representation from the 8 September 2020 and the suggested use of part of the premises used as a cannabis farm and expressed concern that this information could mislead the public as there was no material evidence to back up the allegation. PC Mitcham stated that the information had been taken from indices when the premises had been searched and was not based on material evidence.

In response to a request for clarification from the Committee regarding an incident on the 26 June 2020 where a female had allegedly purchased nitrous oxide and used it in her car with a balloon outside the premises, PC stated that a call had been made to the Police from a member of the public and it had been responded to appropriately.

Michael Squire, Trading Standards, outlined his representation, as set out on pages 10-13 of the agenda pack. The representation related to the licensing objectives to prevent Crime and Disorder and the Protection of Children from Harm. The representation specifically concerned two incidents which took place at the premises, most recently on 20<sup>th</sup> January 2021 and a prior incident on 3<sup>rd</sup> November 2020. On both occasions' seizures of Non-Duty Paid and incorrectly labelled cigarettes and tobacco were made. The earlier seizure also included a large quantity of nitrous oxide canisters. (Psychoactive Substances). It was noted that the licence holders were not present on the 20 January 2021 when Trading Standards had visited the premises.

In response to a question regarding the refusals book and whether it was common practice for these to be made available, Mr Squire stated that if an operator had signed up to the Council's Responsible Trader Scheme they were obliged to keep one and it was expected that it would be kept up to date. However, it was noted that this was not a legal requirement and there were instances where some operators may not have them available or up to date.

The Committee questioned the canisters that were on the shelves and whether these could still be seized. In response, it was explained that it was legal to sell the canisters for their legitimate purpose. Mr Squire added that in order for an offence to be proved

in a criminal court there was a need for greater evidence and proven knowledge on the part of the licence holder that they had knowledge of how they would be used when selling them.

In response to a question regarding the location of the canisters within the shop and whether they were situated alongside baking products, it stated that the shop did not have a specific baking section and that the number of canisters found on the premises was not the amount you would expect from a small supermarket.

Reference was made to the cigarettes and it was questioned whether these posed a health risk to anyone smoking them. In response, it was explained that cigarettes that did not have the duty paid were not necessarily dangerous, however counterfeit cigarettes could contain harmful chemicals. There was however no evidence to prove that the cigarettes seized at the premises were counterfeit.

In response to a question regarding Mr Metin Kartal and a court appearance, Mr Kilic confirmed that Mr Metin Kartal had admitted to the offence of selling non duty paid cigarettes and had paid the fine.

Mr Kilic, Applicant's Representative, outlined their representation to the application for a review, as follows:

- Mr Metin Kartal, alongside his partner Mr Aksu had been in operation at the premises since 2001, under the previous Licensing Act 1964. This licence was then converted under grandfather rights in 2005. The premises had not received any applications for a review during this time, until now.
- Mr Metin Kartal was currently in Turkey as he was unable to travel due to Covid and his underlying health conditions. Mr Kartal had left the operation of the premises to his partner and members of staff.
- Reference was made to the second visit to the premises in January 2021 when the illegal tobacco products had been sold. It was explained that these had been sold by one of the cashiers and a friend to the local community and this member of staff had been dismissed on the 31 January 2021. Mr Metin Kartal had appeared in court in February 2021 regarding this offence and had pleaded guilty and paid the fine.
- It was suggested that back in 2005 when the licence was converted there was insufficient conditions placed on the licence. An additional 23 conditions had been proposed if the licence was to remain, which the operators felt were necessary to promote the licensing objectives.
- Since January 2021 Atakan Kartal had been working full time at the premises and there had not been a single incident. The premises had since stopped stocking the canisters.
- There was no suggestion that Atakan Kartal would not uphold the licensing objectives.
- The premises had been in operation for 20 years with the same individuals and this was their first review. The premises was taking measures to trade responsibly, with an application submitted to replace Metin Kartal with his son as the Designated Premises Supervisor. There would be 3 members of staff that held a personal licence.

- The operators provided assurance that the mistakes would not happen again at the premises.

In response to a further question regarding the use of the canisters within the in store bakery and whether these were positioned within a specific bakery section, Mr Kilic stated that the canisters had been purchased to be used in the in store bakery section. However, he added that the bakery section now focused mainly on bread and therefore most of the canisters had now been returned.

Reference was made to the illegal cigarettes and the Committee wished to know whether the licensed premises holder felt that it was acceptable to sell these at the premises and that the premises was being responsibly managed. In response, Mr Kilic stated that Mr Metin Kartal had accepted responsibility for the sale of illegal cigarettes and had pleaded guilty to the offence and paid the fine. It was noted that his son now held a personal licence for the premises.

The Committee also expressed their concerns that the amount of canisters found on the premises was not what you would expect for the size of the supermarket and did not feel the explanations for why they were on the premises and their intended use were credible.

Reference was made to the raid at the premises which took place on the 20 January 2021 and the Committee questioned whether the licence holders were aware that the illegal cigarettes were being sold at the premises. In response, Mr Kilic stated that Mr Metin Kartal was in Turkey during that time and his son was self-isolating due to Covid and therefore they were unaware that these illegal cigarettes were being sold at the premises.

Further questioning took place regarding the two raids at the premises and the seizure of illegal cigarettes, as the Committee were unclear as to whether Mr Metin Kartal was at the premises during both of those visits. Following further discussion, it was confirmed that Mr Metin Kartal was in attendance at the first raid in November 2020 and not during the one in January 2021. The Committee therefore questioned why Mr Kartal would allow further sale of illegal cigarettes after being arrested and charged for the same offence previously.

Following this discussion, Ms Barrett informed the Committee that it had proved to be very difficult to gain contact with the Designated Premises Supervisor when trying to serve the review notice.

The Chair made reference to the applicant's representation and the suggestion that there may be insufficient conditions attached to the licence. The Chair stated that it was the Premises Licence Holder's responsibility to uphold the licensing objectives and that they should be aware of their obligations as licence holder. In response, Mr Kilic stated that the premises had been granted a licence under the previous 2005 licensing regime and therefore the conditions attached to the licence were the same as originally granted and that there had not been an opportunity for additional conditions to be added. He added that the applicant welcomed any additional conditions which the Committee felt were appropriate.

Ms Barrett added that licences that were subject to grandfather rights often came over with existing conditions, including the statutory mandatory conditions, and there was often the opportunity for additional conditions to be added when a review application was being considered.

In summing up, Mr Squire stated that there had been two incidents at the premises in quick succession and he believed there was a lack of control and management. Mr Squire referred to the £12,950 worth of illegal cigarettes seized at the premises and stated that this gave the premises unfair competition against other operators and also posed a public health risk. He was also concerned about the large number of canisters found at the premises, as well as the information contained in the Police representation.

Mr Kilic stated that steps had been taken to ensure that the premises was appropriately managed whilst Mr Metin Kartal was not in the country and it was proposed that his son, Mr Atakan Kartal would become the new Designated Premises Supervisor and had been taking over the day to day running of the premises and would continue to promote the licensing objectives. Mr Kilic added that there would be a premises licence holder at the premises at all times and that all staff would be given training on the sale of alcohol to underage persons. Reference was made to conditions 21 and 22 which he felt were unnecessary, as the canisters would only be used in the bakery section and would not be sold in the premises or be visible on the shop floor.

## **RESOLVED**

The Licensing Sub Committee carefully considered the review application and representations put before it, the Council's statement of licensing policy, the Licensing Act 2003, and the section 182 Licensing Act 2003 guidance.

In light of the evidence it heard, the Committee decided it was appropriate and proportionate to:

- i) Suspend the licence for a period of 3 months.
- ii) Remove the designated premises supervisor.
- iii) Apply the following conditions to the licence, as proposed by Trading Standards:
  - 1. The business shall adopt a "Challenge 25" policy.
  - 2. A refusals register shall be maintained to record instances where sales of ages restricted products are refused. Including products restricted by other conditions attached to the Licence. These records shall be made available for inspection by Police and Authorised Council officers on request.
  - 3. All staff responsible for selling alcohol shall receive regular training in the requirements of the Licensing Act 2003 and all other age restricted products stocked on the premises. Written records of this training signed and dated by the person receiving the training and the trainer

shall be retained and made available to Police and authorised council officers on request.

4. Posters shall be displayed in prominent positions around the till advising customers of the “proof of age” required under the “Challenge 25” policy at the premises.
5. Only Employees of the business who have been formally trained on Licensing requirements and age restricted sales may serve behind the counter.
6. A refusals book shall be kept at the premises to record details of all refusals to sell alcohol and age restricted products. This book shall contain:

The date and time of the incident,

The product which was the subject of the refusal

A description of the customer,

The name of the staff member who refused the sale

The reason the sale was refused.

This book shall be made available to Police and all authorised council officers on request.

7. The Premises Licence Holder and Designated Premises Licence Holder shall ensure alcohol is only purchased from a wholesaler registered with HMRC under the Alcohol Wholesaler Registration Scheme (AWRS).and shall produce receipts for the same upon request for inspection.
8. The Premises Licence Holder and Designated Premises Supervisor shall ensure persons responsible for purchasing alcohol do not take part in any stock swaps or lend or borrow any alcohol goods from any other source unless the source is another venue owned and operated by the same company who also purchase their stock from an authorised wholesaler.
9. The Premises Licence Holder shall ensure all receipts for alcohol goods purchased include the following details:
  - I. Seller's name and address
  - II. Seller's company details, if applicable
  - III. Seller's VAT details, if applicable
  - IV. AWRS registration number
  - V. Vehicle registration detail, if applicable

Legible copies of receipts for alcohol purchases shall be retained on the premises for six/twelve months and made available to Authorised Officers on request.

10. An ultraviolet light shall be purchased and used at the store to check the authenticity of all stock purchased which bears a UK Duty Paid stamp.
11. Where the trader becomes aware that any alcohol may be not duty paid they shall inform the Council of this immediately.
12. Only alcohol which is available for retail sale shall be stored at the licensed premises.
13. All tobacco products which are not on the covered tobacco display cabinet shall be stored in a container clearly marked 'Tobacco Stock'. This container shall be kept within the storeroom or behind the sales counter.
14. Tobacco shall only be taken from the covered tobacco display cabinet behind the sales counter in order to make a sale.
15. Only tobacco which is available for retail sale can be stored at the licensed premises.
16. The Designated Premises Supervisor shall regularly check the refusals book to ensure it is being consistently used by all staff. They shall sign and date when inspected.
17. After evidence of any legal non-compliance relevant to the promotion of the Licensing Objectives is found, the licensee shall attend a meeting, upon reasonable request, with appropriate Responsible Authorities at the Council Offices or other suitable location. This condition does not require the licensee to say anything while under caution.
18. CCTV shall cover the area of the sales counter and copies of recordings in a readily available format shall be provided on request by Police or Authorised Council Officers.
19. All Staff left in charge of the premises should be trained in the operation of CCTV and the production of copies of recordings.
20. No gas cartridges, including cream chargers and Nitrous oxide cartridges shall be stored, stocked or sold on the premises.

## **Reasons**

Having heard evidence from the Responsible Authorities, namely the Local Authority Environmental Health/Trading Standards and the Police, the Committee was satisfied that there had been a failure on the part of the licence holder to promote and uphold the licensing objectives relating to crime and disorder and the protection of children from harm.

The Committee gave the following reasons for the suspension of the licence and the removal of the designated premises supervisor: -

- Given the instances that had taken place at the premises, in quick succession, the Committee felt that there was a lack of management at the premises.
- The Committee had a lack of confidence in the Premises Licence Holder's ability to run the premises and uphold the licensing objectives.
- The Committee believed that the Premises Licence Holder had shown a wilful disregard of the licensing objectives and was not a suitable Designated Premises Supervisor. The licence holder had been operating for some time and was familiar with the obligations that the Licensing objectives impose with regard to operating responsibly but chose to ignore them.
- The Committee believed that the Premises Licence Holder had not adhered to the standards expected of those premises that had signed up to the Council's Responsible Trader Scheme.

The Committee found the evidence of the responsible authorities to be credible but could not say the same for the evidence put forward on behalf the licence holder. The Committee had lost confidence in the licence holder's ability to comply with and uphold the conditions on his licence.

In addition, the committee had real concerns about the impact that the manner in which the premises operated and its impact on young people in the vicinity. As regards young people, the Committee also invited the licence holder to immediately cease the sale of energy drinks to children.

The Committee only made its decision after considering all the evidence and was satisfied that the licensing objectives were being undermined. The measures being taken were considered to be an appropriate and proportionate response to the matters that were put before it.

### **Informative**

It was noted that given the quick succession of instances that had taken place at the premises, ordinarily the licence could be revoked. In this instance, it was felt that, given the evidence received, it was not proportionate to revoke the licence on this occasion. However, the Committee wished to state that if any further instances of failure to uphold the licensing objectives were reported and verified at any further review hearing, consideration would have to be given to revoking the licence.

### **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.



CHAIR: Councillor Peter Mitchell

Signed by Chair .....

Date .....