

# **MINUTES OF THE MEETING OF THE SPECIAL LICENSING SUB COMMITTEE HELD ON MONDAY, 29TH NOVEMBER, 2021, 7:55PM- 8:55PM**

## **PRESENT:**

**Councillors: Gina Adamou, Luke Cawley-Harrison, Barbara Blake**

### **7. FILMING AT MEETINGS**

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

### **8. APOLOGIES FOR ABSENCE**

There were no apologies for absence.

### **9. 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.

### **10. DECLARATIONS OF INTEREST**

There were no declarations of interest.

### **11. SUMMARY OF PROCEDURE**

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

### **12. APPLICATION FOR A REVIEW OF A PREMISES LICENCE AT TIGER FOOD AND WINE, 20 LORDSHIP LANE LONDON, N17**

Ms Daliah Barrett, Licensing Team Leader, informed the Sub-Committee that:

- This was an application for review of a premises licence.
- The application had been submitted by Trading Standards and mainly related to the objective of crime and disorder but also related to the protection of children from harm.
- The premises had been found to in possession of non-duty-paid cigarettes and hand rolled tobacco after an inspection on 30 April 2021.

- The CCTV cameras were found to not be recording footage and this was a breach of conditions.
- On 1 September 2021 an underage test purchase had been made at the premises. A can of Gordon's gin was sold to a 16-year-old female.
- The licence was held by Mr Burcin Yurga. He was the premises licence holder and the DPS and therefore was responsible for overseeing the sale of alcohol at the premises.
- The premises operated between 05:30–01:00 across the week.
- Representations in support of the application included Public Health and the Licensing Authority.
- The licence was transferred to the premises licence holder in 2011.
- The review application related to crime and disorder and smuggled goods were found on the premises. This related to the non-duty-paid cigarettes.
- The Sub-Committee was to take into account the historical elements of the premises and any other relevant information, but could not judge the application based on criminality as it was the Sub-Committee's duty to primarily consider the promotion of the crime and disorder (or any other) licensing objective in relation to the application.

Mr Michael Squire, Trading Standards Officer, informed the Sub-Committee that:

- On 30 April 2021, Trading Standards carried out an inspection of the premises and at the time, neither the premises licence holder or the DPS was present.
- A total of 180 non-duty-paid cigarettes and 500g of hand rolled tobacco was found behind the counter in a box. A further 1,600 cigarettes were found in the rear of the premises.
- Large stocks of Polish beer were also found and enquiries were made regarding the invoicing for the beers.
- The tobacco found at the premises did not have standard UK health warnings or packaging. This could be considered a criminal offence.
- It was an offence under the Licensing Act to stock non-duty paid goods on the premises.
- The premises licence holder had stated that the tobacco was for personal use and provided an invoice for the tobacco.
- Invoices were provided for the goods found at the premises, but no delivery notes had been found.
- A letter was also sent to Mr Burhan Yurga, the Director Kaplan Food and Wine (who owned the business) and he had stated that the premises had not stocked the Polish beer before and that they were all delivered on the morning of the visit from Trading Standards from various Cash and Carry companies. The dates of the invoices were dated the day after the visit from Trading Standards.

- Selling tobacco with no English language health warning could be a criminal offence as well as selling tobacco with non-standard packaging. It was also a criminal offence to sell non-duty-paid items.
- A response had been received from the premises licence holder and his responses had been documented. He said the tobacco was for personal use and had provided an invoice for the tobacco.
- Invoices had been provided but there were no delivery notes.
- A letter had also been sent to the director of Kaplan Food and Wine, Mr Burhan Yurga and he had stated that the premises had not sold the Polish beer before and they had all been delivered on the morning of the Trading Standards visit to the premises. However, the invoices were all dated the day after the visit to the premises.
- The explanation offered by the premises licence holder had not been accepted by Trading Standards regarding the tobacco as the tobacco had been stored in various places and the various kinds of tobacco made it less likely that the use of it would be by one individual person. It was usually the case that most smokers would regularly smoke the same brand of tobacco.
- There was no CCTV footage on the premises that was made available to officers upon request.
- It also seemed unlikely that the invoices would be dated day after the Trading Standards visit when the goods had been delivered to the premises on a previous day.

In response to questions, Mr Squire informed the Sub-Committee that:

- The Polish beers were legal to sell but UK duty needed to be paid upon them. It was quite common that when large quantities of Polish beers were found in a licensed premises and invoices were not available when requested, then it was possible that the goods had not been purchased from a legitimate source. All beers should be purchased from a legitimate wholesaler and invoices should be available for that beer.
- There was also a sale made on 21 September 2021 via test purchase whereby a can of Gordon's Gin was sold to an underage person.
- The purpose of a refusals register was to demonstrate due diligence. The maintenance of the refusals register was not a legal requirement, but premises licence holders were asked to maintain a refusal to register as part of being a responsible trader.
- He had been informed that CCTV footage was not available.
- An exact count of the beers in relationship to the invoices had not been taken. He had requested evidence from a legitimate source for the sale of the alcohol.
- The individual present on the premises on 1 September 2021 was Mr Burhan Yurga. Mr Yilmaz (another employee) was present at the premises on 30 April 2021.

Ms Maria Ahmad, Public Health, informed the Sub-Committee that:

- The representation had been made under the licensing objective of protection children from harm.
- The premises was located in the area where there were many colleges and secondary schools. There were eight primary schools within 10 minutes of walking distance of the premises. This was an area where many children lived and studied.
- If alcohol was being consumed by children under the age of 18, it would have serious wider public health consequences in particular to antisocial behaviour and other health issues.
- There was a risk of young people becoming dependent on alcohol at a young age.
- There were still young patients in the borough that displayed symptoms of excessive consumption of alcohol.
- The borough was making a concerted effort to prevent and tackle the consumption of alcohol in children and young people.
- Inside Platform was an organisation that provided support for children at risk of trying or using alcohol. There were also other projects in the borough dealing with similar issues.
- The undermining of the protection of children from harm objective also undermined the efforts made by Public Health to tackle alcohol consumption amongst young people.
- Despite knowing the consequences of selling alcohol to those underage, the premises licence holder had failed a test purchase.
- The premises licence holder had not taken reasonable steps to avoid committing the offence.
- The Sub-Committee was asked to consider revoking licence.

In response to questions, Ms Ahmad and Ms Marline D'Aguilar, Public Health, informed the Sub-Committee that:

- The Sub-Committee was asked to consider revoking licence. The response from Public Health was based on the perspective of Public Health and not necessarily in conjunction with Trading Standards or Licensing representations.

Ms Noshaba Shah, Licensing Officer, informed the Sub-Committee that:

- She was mindful that the premises staff was not capable enough to comply with licensing conditions.

- The premises had failed to maintain the Challenge 25 policy by having failed the test purchase.
- The premises had also taken steps to conceal smuggled goods.
- The premises licence holder was aware of the legal obligations for selling alcohol.
- The licensing conditions had not been adhered to.
- The premises licence holder had signed up to the Responsible Retailers Campaign.
- She would recommend that the licence be revoked, but if the Sub-Committee were not minded to revoke the licence, then she would recommend a lengthy suspension.

In response to questions, Ms Shah informed the Sub-Committee that:

- There had been no historical complaint history, but there were some issues regarding fly tipping and not having disposed of waste properly.
- The premises have been visited by the ASB team and the waste team and had visits from the Covid Marshall. There was a test purchase made in 2014 which the premises licence holder had passed.
- The proposed reduction in the operating hours at the premises was to help the premises licence holder be able to comply with licensing objectives. If the premises had less time to sell alcohol, it would be more likely that the licensing objectives would be met.

Mr Michael Rogers, representing the premises licence holder and Mr Burcin Yurga, the premises licence holder, informed the Sub-Committee that:

- The premises licence holder had submitted a witness statement and some points would be highlighted from the statement itself.
- The premises licence holder had been the DPS for approximately 10 years and it was a small business which he ran with three full-time members of staff and a part-time member of staff, one of whom was his father.
- The premises licence holder had not had any previous licensing issues in the past and was very shocked and saddened to find himself in the situation he was in.
- In relation to the visit on 30 April 2021, it was important to stress that the tobacco found on the premises was understood to belong to the premises licence holder's father and not the premises licence holder. The premises licence holder had accepted the serious mistake and had stated that it should not have happened and would not happen in the future.
- The premises licence holder had stated and provided evidence that he had brought tobacco from visible suppliers and the Sub-Committee may wish to issue a condition whereby only the DPS was allowed to buy any tobacco to be sold the premises.

- The premises licence holder had stated and provided evidence that he bought alcohol from reputable suppliers. It was not clear why the Polish beer found at the premises was unlawful.
- In relation to the underage test purchase, the premises licence holder had stated that his father was behind the counter on that date and had made an error between two drinks, one of which was non-alcoholic. Clearly, on that occasion, the premises licence holder had not complied with the Challenge 25 policy which was not currently a condition on the premises licence.
- The premises licence holder's father had at the time suffered a bereavement and was not in the correct frame of mind and had made a mistake on that day.
- The premises licence holder had made a commitment to ensure that staff will be properly and regularly trained.
- In relation to the CCTV issues, the premises licence holder had explained that CCTV had been in place for a number of years and the requirements on the licensing conditions were not particularly stringent. The CCTV was not in proper working order on 30 April 2021 and the CCTV had been subsequently upgraded. Evidence for this had been provided.
- The premises licence holder had taken positive steps to make sure that he was practically seeking ways to promote the licensing objectives and proposals put forward by him were reflected in the conditions that had been put forward by Licensing and Trading Standards including putting forward a Challenge 25 Policy.
- The premises licence holder had also provided guidance for his staff and has shown on a number of occasions where alcohol and tobacco had been refused and this had been recorded in refusal books. Many of the required processes were already in place.
- The premises licence holder had explained that he and his staff had received refresher training and he had produced a record and evidence of the recent training. He was also taking a practical attitude in making sure that all staff were promoting the licensing objectives at all times.
- There was ultraviolet light available at the premises to ensure that authenticity of all stock could be checked and that there were duty paid stamps for all appropriate products. The process would ensure that nothing arrived on the premises that was not duty-paid.
- It was notable that Trading Standards had originally proposed a temporary suspension and not a revocation and had asked that a number of conditions be put in place. The premises licence holder had agreed to all the conditions and in many cases, the conditions were already in place. Therefore, it would not take a particularly lengthy period of time to implement any further requirements as anything remaining could be resolved in hours or days.
- The premises licence holder was surprised that he had received representations from Public Health and Licensing proposing a revocation given the period of time that he had operated the business lawfully. The conditions proposed by Public Health had been accepted in full and many had been already Incorporated.
- It was hard to understand the logic of reducing the number of hours that the premises licence holder would be operating as the applicant had operated from the hours of

05:30 until 01:00 and these hours have been operated for some time without any issues arising.

- This present time the premises licence holder operated from 06:30 until 23:00. This was largely due to the coronavirus crisis. He had also closed the premises earlier at times especially since the start of the crisis.
- Many of the conditions proposed by Licensing appeared to be sensible but it was not clear why the proposals regarding the strength of beer have been proposed as this condition would be reserved for potential issues regarding antisocial behaviour, crime or street drinking.
- Page 61 of the agenda papers appeared to show conditions in place at current time was limited and adding the extra conditions would ensure that the premises licence holder was able to take positive steps forward for the licensing objectives and reduce the risk of not being able to meet the licensing objectives in the future.
- It was important for the Sub-Committee to be aware that the premises licence holder had taken into account what had happened and had already put in place sensible measures to tackle any issues.

In response to questions, Mr Rogers and Mr Yurga informed the Sub-Committee that:

- There had been an electrical problem with the CCTV on the previous day before the visit of officers to the premises. Previously to this incident, officers had received CCTV footage whenever it was requested. The camera was not set to record after it had been reset but the camera was currently recording.
- He had known the Cash and Carry company for many years and had developed a trust with them so he was able to order, take the products and pay later including authorisation of the invoices. He had similar relationships with other cash and carry companies.
- After the CCTV was faced with the electrical problems, there were various changes that needed to be made in re-enabling the CCTV camera and it was possible that the CCTV had not been set to record as settings were being re-enabled.
- There were different types of Red Bull drinks and they came in several colours and the premises licence holder's father thought that he was selling an energy drink not an alcoholic drink at the time of the test purchase. The premises had never sold alcohol or tobacco to any underage persons previously.
- The premises licence holder's father had received a refresher training.
- The premises licence holder had a refusals register.
- The premises licence holder dealt with the cash-and-carry businesses in the morning and has his father covered the night time shift, but it was the premises licence holder who brought the goods and the products and it was he who stayed in the premises for longer hours. He was at the premises for about 8-9 hours a day.

- The tobacco found at the premises was going to be given to his the premises licence holder's father's friends. They were heavy smokers. The tobacco was not for sale.
- The premises licence holder's father was not aware that he had sold the alcohol when he had sold it at the time of the test purchase. It was not until officers had informed him that he realised that he had sold it.
- Refresher training had been given staff and this entailed instructions on how to meet the licensing objectives fully and checking ID for individuals who are potentially underage for certain products. Risk assessments had also been carried out.

At this point in the proceedings, Ms Felicia Ekemezuma, Trading Standards Manager, informed the Sub-Committee that complaints regarding the premises had been received in 2018 regarding the sale of illicit tobacco. Officers had also noticed the sale of single cigarettes and in 2020 it was found that the premises licence holder did not have a refusal book at the premises at the time.

Also at this point, Ms Barrett informed the Sub-Committee that there were issues of antisocial behaviour in the location which the premises was located. There was a business across the road from the premises which had people congregating outside on the streets and complaints had been received regarding alcohol consumption nearby the premises itself. There was also noise generated by the groups of individuals spending time in the area.

Ms Ekemezuma stated that a visit had taken place on 29 January 2020 and a letter was sent to the DPS stating that a refusals book was required on the premises. Refusals books were sent to premises licence holders as part of the Responsible Retailers Pack sent out by the Council.

Ms Barrett stated that need for a refusal book was not part of the current conditions of the premises licence and therefore there had been no breach of conditions from the premises licence holder's perspective. Public Health had implemented the Responsible Retailers Scheme to assist premises licence holders on how to meet the licensing objectives. It was considered to be a significant withdrawal of commitment if a premises licence holder agreed to sign up to the scheme and not meet the expectations.

To summarise, Mr Squire stated that there was a substantial duty evasion of tobacco - a total of £645.50p. Explanations given regarding the beer was not adequate and the premises licence holder had not met the licence conditions regarding the availability of CCTV footage. It was also important to note that an alcoholic drink was sold to a 16-year-old. He was seeking a suspension of the premises and additional conditions to be added to the premises licence.

To summarise, Ms Ahmed stated that the business was aware of the consequences and of the penalty of underage sales and of the responsibility to promote the licensing objectives. Despite this, an underage sale had been made via a test purchase and a refusal was not logged onto a refusals register showing that the premises licence holder had not taken due diligence. It was the responsibility of the DPS to take steps to ensure that licensing objectives were met and ensuring that premises staff checked relevant identification. The premises was located in the area with many educational institutes and children and young people living in the area. Therefore, the DPS needed to be considerably cautious when selling alcohol and she supported the Trading Standards' position to suspend the licence.

To summarise, Ms Shah stated that the premises licence holder had taken steps to meet the licensing objectives and this was recognised. However, it was important that there was a trust



between the authorities and the licensed premises. A revocation or a suspension of the licence would be reasonable.

To summarise, Mr Rogers stated that page 61 of the agenda papers would demonstrate that the conditions on the premises licence at present state was limited and there were many steps that had not been taken at the premises which could be taken now. For example, there was no reference to a refusals log. The Challenge 25 policy was also not present as part of the licence, but the premises licence holder had gone further than implementing simply those requirements and was keen to take further steps to show that he was promoting the licensing objectives. It was also important to note that the agenda papers displayed how some alcoholic containers could be similar to non-alcoholic containers and there were different types of Red Bull that could be confused with alcoholic drinks. At times, there could be similarities between a Gordons Gin and Red Bull. More stringent conditions were required and the applicant had agreed to meet those conditions.

At 8:31pm, the Sub-Committee adjourned to consider the application.

## **RESOLVED**

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

The Committee resolved:

- a. To suspend the Licence for a period of 3 months.
- b. To impose the following conditions on the Licence
  1. The business shall adopt a "Challenge 25" proof of age scheme.
  2. Posters shall be displayed in prominent positions around the till advising customers of the "proof of age" required under the "Challenge 25" scheme at the premises.
  3. A refusals register shall be maintained to record instances where age restricted product sales are refused. These records shall be made available for inspection by Police and Authorised Council officers on request.
  4. The refusals register 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.

5. All staff responsible for selling alcohol shall be receive training on induction and refresher training every 6 months thereafter, on 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.
6. Only Employees of the business who have been formally trained on licensing requirements and age restricted sales may serve behind the counter.
7. Alcohol sales will only be conducted by a member of staff who is a Personal Licence Holder.
8. 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.
9. Only the Premises Licence Holder or Designated Premises Supervisor shall purchase alcohol or cigarette/tobacco stock.
10. The Premises Licence Holder and Designated Premises Supervisor shall ensure that they 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.
11. 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
12. Legible copies of receipts for alcohol purchases shall be retained on the premises for six months and made available to Authorised Officers on request.
13. 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.
14. If the Licence Holder or Designated Premises Supervisor becomes aware that any alcohol may be not duty paid, they shall inform the Council of this immediately.
15. Only alcohol which is available for retail sale shall be stored at the licensed premises.
16. 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.
17. Tobacco shall only be taken from the covered tobacco display cabinet behind the sales counter in order to make a sale.

18. Only tobacco which is available for retail sale can be stored at the licensed premises.
19. 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.
20. After evidence of any legal non-compliance relevant to the promotion of the Licensing Objectives is found, the Premises Licence Holder 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.
21. A CCTV system should be installed and maintained which should be able to record colour footage for a period of 31 days and be able to capture clear video of persons faces and shoulders when they enter the premises and cover the area of the sales counter. These images should be able to be loaded onto disc or other electronic media should a Police Officer or Authorised Council Officer require a copy. Where copies of recordings are requested, they should be provided in a reasonable time and in a format which can be viewed without specialist software. Any malfunction in the operation of the CCTV system shall be reported to the Licensing Authority within 24 hours.
22. All Staff left in charge of the premises should be trained in the operation of CCTV and the production of copies of recordings ‘

## **Reasons**

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 Licence holder 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 2015.

The discovery of illicit tobacco on the premises on 30<sup>th</sup> April 2021 in circumstances where it was possible that it was being offered for sale is of considerable concern. The Committee did not find the licence holder's explanation that the tobacco belonged to his father and was for his personal use and for giving to friends, credible, because different brands were found, there was a combination of cigarettes and hand rolled tobacco and they were found behind the counter and in the stock room. The cigarettes being found in a box with money also suggests that they were for sale.

The Committee were also not convinced by the Licence holder's explanation that the non duty paid alcohol found at the premises had been delivered that morning and consisted of beers he was trying for the first time. The Licence holder was unable to produce an invoice or delivery note on 30<sup>th</sup> April 2021. The invoice he did produce was dated the next day 1<sup>st</sup> May and stamped as paid that day suggesting that the alcohol was purchased and paid for that day. The explanation that the Licence holder gave that he was able to order, take the products and pay later was not credible. There was no evidence that they were bought from a legitimate source earlier than 1<sup>st</sup> May 2021.

On 30<sup>th</sup> April 2021 the Licence holder had breached the licensing condition requiring him to have CCTV in operation at all times, when Trading Standards Officers found the CCTV not to be recording. The explanation that there had been electrical problems the day before and that the Licence holder had erroneously and unbeknown to him not fully carried out the steps to re-enable the CCTV cameras, was also difficult to believe.

The Committee were concerned about the failed test purchase on 1<sup>st</sup> September 2021 when a 16 year old was sold alcohol by the Licence Holder's father. It accepted that he may have had personal issues that were affecting him, but that does not excuse him not undertaking his due diligence in checking whether alcohol was being sold and seeking the appropriate ID. If any member of staff was unable to comply with their legal obligations the Committee would expect the Licence Holder to ensure that they were not serving customers.

This review arises in connection with crime relating to the sale and storage of smuggled tobacco and alcohol which the Licensing Authority takes very seriously, plus a breach of the licensing condition relating to CCTV and an underage sale. The Impacts of underage sales on young people is considerable and set out in the Public health representation and the premises are located very close to educational establishment increasing the potential risks. In light of these factors the Committee seriously considered revocation of the Licence in accordance with paragraph 11.28 of the statutory guidance. The Licence holder's explanations for the failings that led to the review were not credible and indicated poor management of the business. The Licensing Authority's trust and confidence in the licensee's ability to comply with his obligations has broken down as a result.

The committee however considered the representations made by the Licence holder and gave him credit for trying to turn things around. He has arranged refresher training for all staff, is operating a refusals register, has ensured that the CCTV is operational, will always have a personal licence holder on shift, is operating a Challenge 25 policy, has agreed to all of the conditions suggested by Trading Standards and has agreed to a condition that only the Premises Licence holder or DPS will purchase alcohol or tobacco stock.

The Committee thought that proportionality was very narrowly tipped in favour of a period of suspension, and allowing the licence to continue (as opposed to revocation), subject to far more robust conditions to give the Licence holder an opportunity to demonstrate his ability to promote the licensing objectives.

The Committee could not stress enough how seriously the prevention of crime and disorder and protection of children from harm licensing objectives had been undermined and therefore imposes the maximum 3 month suspension to act as a deterrent to the Licence holder allowing these breaches in future. The Committee understands that a high proportion of the business' revenue comes from the sale of alcohol and that Christmas trade will be affected, but the suspension is proportionate in light of the failings leading to the review and how close the Committee came to revoking the licence.

#### Informative

The Committee wanted the License holder to be in no doubt that the licensing objectives have to be promoted and the Licence holder has to be actively involved to make sure this happens. If he 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 DPS.

CHAIR:

Signed by Chair .....

Date .....