

Licensing Sub-Committee – Meeting held on Thursday, 25th September, 2014.

Present:- Councillors Davis (Chair), Bains and Rasib

Officers Present:- Teresa Clark, Senior Democratic Services Officer
Neil Fraser, Trainee Democratic Services Officer
Dean Cooke, Senior Trading Standards Officer
Melanie Sagar, Licensing Officer
Michael Sims, Licensing Manager
Niall Toru, Solicitor

PART 1

41. Declarations of Interest

None were declared.

42. Guidance on Predetermination/ Predisposition - To Note

Members confirmed that they had read and understood the Guidance on Predetermination/Predisposition.

43. Premises Licence Review, Drinks Direct, 256 High Street, Langley, Slough SL3 8HA

At the commencement of the hearing Mr Somarakis of Gordon Dadds Solicitors, representing Mr Balbir Singh, made an application for a deferral of the hearing due to the inclusion of statements within the Committee papers that in his opinion should not have been included. He was concerned that these statements could prejudice Mr Singh's right to a fair hearing and requested that the review application be decided by a newly constituted Sub-Committee.

The Sub-Committee adjourned to consider the application and, following advice from Mr Toru, Solicitor for the Sub-Committee, determined that there would be no breach of Article 6 of the European Convention of Human Rights (the right to a fair trial) should the hearing continue. The request for a fresh hearing was rejected.

During the presentation of evidence by Thames Valley Police Officers, further verbal information was divulged which was not included in the police's written representations circulated to the parties before the hearing. Given the nature of this addition information Mr Somarakis made a further application for a deferral, on the grounds that this information should not have been disclosed and would prejudice Mr Singh's right to a fair hearing. The Sub-Committee accepted this second application and determined that the hearing be adjourned until such time as a newly-constituted Sub-Committee could be convened.

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Resolved- That the hearing of the Premises Review be rescheduled for determination by a newly convened Sub-Committee with new Members.

44. Premises Licence Review, Metro Food and Wine (Slough Ltd), 193 Farnham Road, Slough

Following introductions the procedure for the hearing was outlined. The Chair confirmed that all parties had received a copy of the relevant paperwork. Mr Gaba attended the hearing and was represented by Mr Somarakis of Gordon Dadds Solicitors and Mr Panchal of Personal Licensing Courses Ltd.

Introduction by Melanie Sagar, Licensing Officer, Slough BC

Ms Sagar, Licensing Officer, introduced the report and advised that the premises licence review for Metro Food and Wine (Slough) Ltd, had been brought by the Licensing Manager on behalf of the Authority.

Mick Sims, Licensing Manager, Slough BC

Mr Mick Sims, Licensing Manager, outlined a report which related to an application for a Review of the Premises Licence for Metro Food and Wine (Slough) Limited, 193 Farnham Road. Mr Sims confirmed that he was the Applicant, on behalf of the Licensing Authority and he maintained that the Review was necessary as this was the second such occasion that Mr Gaba had been subject of possession of illegal products and this clearly showed his total disregard for the law and for public health and safety as counterfeit alcohol, and illegal cigarettes, could pose a serious health hazard to any member of the public that purchased them.

The Officer discussed the recommendations and the options available to the Committee as set out in the report and the Sub-Committee was reminded of the need to have regard to the principles for making decisions, and the relevant policy and legislation when reaching its decision. Members were also requested to consider and make use of the 'Yellow and Red Card' system as directed and recommended by The Department of Culture, Media and Sport (DCMS), and also to have regard to Slough Borough Council's Revised Statement of Licensing Policy 2014-2019.

The Officer confirmed that the Designated Premises Supervisor was Mr Gaba, who was responsible for the day to day management of the premises.

The Licensing Authority was satisfied that the application for a Review met the appropriate legislative requirements within the Licensing Act 2003 and was therefore a valid application to be considered by the Licensing Sub-Committee

Background to the Review Application

Mr Sims, set out the background to the review application.

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Members noted that in 2007 the previous licence holder of the premises was convicted of the possession of counterfeit alcohol and in 2009 he was further convicted along with a staff member and the company for possession of illegal cigarettes. Mr Gaba became the owner of the business in November/December 2009.

On 26th April 2010 Trading Standards officers seized counterfeit Bollinger Champagne from the premises and both Mr Gaba and Metro Food and Wine Limited were prosecuted and convicted of a number of offences relating to this seizure.

In May 2010, Mr Gaba made an application to transfer the Premises Licence, transfer the role of the DPS to himself and change the name of the premises to Metro Food and Wine (Slough) Limited. On 8th January 2014, Trading Standards Officers visited the premises and seized 150 packets of illegal cigarettes which were hidden under shelving in the front store. The cigarettes carried no English health warnings and bore no statutory pictorial health warnings. The Officer reminded the Sub-Committee that possession of the items constituted offences under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2007 and the Consumer Protection Act 1987. It was highlighted that Mr Gaba would be the subject of legal proceedings for possession of the illegal cigarettes.

The Applicant recommended that due to the illegal activities that continued to take place at the premises, the premises be issued with a Red Card and the Premises Licence be revoked. The reasoning for this was the history and track record of the premises, particularly with regards to Mr Gaba's involvement in the business.

Representations made by Mr Cooke, Senior Trading Standards Officer, Slough BC

The Officer advised that on 8th January 2014, a visit was made to Metro Food and Wine (Slough) Ltd, 193 Farnham Road, Slough, for a routine premises inspection. A number of items were found, that contravened consumer protection legislation.

Behind the main counter, five pouches of 'Udta Panchhi' chewing tobacco were found, without the correct statutory health warnings on the packaging. A close inspection of shelving showed that space underneath was being used to store illegal cigarettes. These cigarettes bore no English health warnings or pictorial labelling. The Officer concluded that these items were smuggled, had not been subject to tax or duty, and were an obvious health risk to whoever purchased them. It was confirmed that the street value of these items was approximately £1,050.00.

Mr Cooke confirmed that as the legal owner of the business, Mr Gaba was the legal owner of all items found on the premises. The Officer advised that Mr

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Gaba's employment under the previous owners of the business would have given him first hand experience of the consequences for such actions, and that it was clear that no due diligence had been observed to ensure the business complied with the law. Furthermore, the fact that the items were hidden suggested that it was known that such items were illegal.

The Officer stated that the history of the business and the ongoing behaviour at the premises showed a blatant disregard for the law, and that by purchasing such illegal items for sale at the premises, Mr Gaba was seeking to obtain an unfair market advantage over honest traders. The Officer therefore supported a revocation of the Licence in view of the history and track record of the premises, together with Mr Gaba's involvement with the business.

Representations made by Ms Pearmain, Thames Valley Police (TVP)

Ms Pearmain addressed the Sub-Committee and confirmed that Mr Gaba was being investigated for trading Standards offences. It was confirmed that this was the second such occasion that Mr Gaba had been found to have illegal products at the premises.

The Officer concluded that Mr Gaba had no regard for the law, and she supported the application for a revocation of the licence.

Questions

A Member asked Mr Gaba to confirm his understanding of the four licensing objectives. Mr Gaba was unable to do so. When pressed as to why he did not know the objectives, Mr Gaba confirmed that these were unknown to him until Trading Standards made him aware of them.

A Member went on to ask Mr Panchal whether, as part of the training provided to clients such as Mr Gaba, the four licensing objectives were confirmed. Mr Panchal replied that these were taught to all clients, but the onus to retain the information was on the client themselves.

A Member sought clarification as to Mr Gaba's role at Metro Food and Wine prior to becoming owner, and his relationship to the previous owners. Mr Gaba confirmed that when he worked at the premises previously he was employed to stack shelves. He advised that the previous owners were his cousins and that although they were close he was not aware of the previous activities and convictions at the premises.

Mr Gaba was asked to confirm how much time he spent daily at the shop, and how he had not noticed the marks on the floor which suggested that the area was being used to hide the illicit products. Mr Gaba confirmed that he spent approximately four hours at the premises daily, before moving on to his second business. With regard to the floor, Mr Gaba advised that he had not noticed the marks.

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Mr Cooke advised that during the PACE interview held on 22nd January 2014, Mr Gaba was asked whether he was aware that the items had been purchased by Mr Singh, Mr Gaba had confirmed that Mr Singh had telephoned him to ask permission to purchase the cigarettes, and that the money to purchase the items had come from the till.

Mr Somarakis accepted that this was the context of the interview, and agreed that Mr Gaba allowed Mr Singh to purchase the cigarettes. However, Mr Gaba had not instructed Mr Singh to purchase illegal cigarettes.

A Member asked whether Mr Gaba had inspected the goods he had instructed Mr Singh to purchase. Mr Gaba replied that he had not.

Representations made by Metro Food and Wine

Mr Somarakis, of Gordon Dadds Solicitors, representing Mr Gaba, made the following representations:

- The track history of the premises before Mr Gaba assumed ownership was irrelevant and the Sub-Committee was directed to review only the history of the premises since Mr Gaba had become the Licence Holder and DPS. Since then, there had been no suggestion of wrongdoing beyond possession of counterfeit Bollinger champagne in 2010, and the most recent issue regarding the illegal cigarettes.
- As the owner of multiple businesses, Mr Gaba had left the day to day running of Metro Food and Wine (Slough) Ltd to a staff member, Mr Singh. It was Mr Singh who purchased the cigarettes, and stored them within the premises. Mr Gaba was unaware that the cigarettes were illegal, that they had been hidden within the store, and that Mr Singh was selling them on the premises. Mr Gaba had subsequently dismissed the staff member.
- Since the incident in question Mr Gaba had been vigilant in conducting stock checks and reviewing CCTV footage to allay any further wrongdoing.
- Prior to this most recent incident, Trading Standards had visited the premises on several occasions over a four year period and found that nothing was out of order and that Mr Gaba was fully compliant with the licence conditions.
- Mr Somarakis suggested several conditions that could be imposed on the licence, including instigating training for all new staff and that all stock purchases must be made at wholesalers such as Cash and Carry with valid receipts for inspection and the appointment of a new DPS.
- Mr Somarakis concluded that the imposition of a red card and the revocation of the licence would not be proportionate in this case.

Mr Panchal confirmed that he offered training to licence holders such as Mr Gaba. This training was designed to provide such clients with sufficient knowledge of the licensing objectives and laws to ensure that they could successfully abide by and promote the objectives throughout their tenure as license holders. Mr Panchal confirmed that Mr Gaba was a client, and that Mr Gaba also instructed all staff to attend Mr Panchal's training as standard.

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Summing Up- Mick Sims

Mr Sims was satisfied that the evidence clearly demonstrated that Mr Gaba and his staff did not observe the requirements of the Licensing Act and had failed to promote the licensing objectives. The Sub-Committee was reminded that the sale of illegal tobacco products was a serious offence. He re-iterated that Mr Gaba was the Licence Holder and Designated Premises Supervisor. It was therefore his responsibility to comply with the conditions of his Licence and not the responsibility of his staff.

Mr Sims reminded the Sub-Committee that guidance from the Secretary of State indicated that failures which could lead to the prevention of children from harm were completely unacceptable. Mr Sims therefore concluded that the Sub-Committee should issue a red card and revoke the Licence, and that this action would be proportionate.

Summing Up- Metro Food and Wine

Mr Somarakis reiterated that Mr Gaba was not aware of the illegal activities being conducted at his premises, and that the history of the premises prior to Mr Gaba's ownership was not relevant.

Mr Somarakis went on to confirm that Mr Gaba's only prior misdemeanour, the counterfeit Bollinger champagne, was over four years prior, and that Mr Gaba had received a nominal punishment for this.

Mr Somarakis outlined the suggested conditions that the Sub-Committee could impose upon Mr Gaba's premises license, which included:

- The stipulation that all goods must be purchased from a reputable wholesaler such as Cash and Carry, with valid receipts for inspection;
- That periodic audits could be undertaken to ensure all retail areas were not used to hide illicit products;
- That the Sub-Committee could consider naming someone else to act as DPS for the premises;

Mr Somarakis concluded by asserting that a Red Card and revocation of the premises license would not be proportionate in this case.

Decision

The Sub-Committee carefully considered all of the evidence submitted and asked several questions regarding the incidents and management of the premises. With regard to the finding of illicit tobacco products bearing no English health warning, Members were mindful that supplying such products was an offence under the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, as amended by the Consumer Protection Act 1987.

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In reaching its decision the Sub-Committee had regard to its duty to promote the licensing objectives, and in particular to the 'Prevention of Crime and Disorder' and the 'Protection of Children from Harm'.

When reviewing the evidence the Sub-Committee had particular regard to the following points:

1. Mr Gaba's apparent lack of understanding of the licensing objectives when asked what these were - and therefore his inability to promote them;
2. Apparent inconsistencies in the evidence presented by Mr Gaba, for example statements made by Mr Gaba during the pace interview that Mr Gaba subsequently refuted at the hearing;
3. A lack of credibility in Mr Gaba's assertion that he was not aware that the cigarettes purchased were illegal, and that they were being stored on the premises;
4. Concerns over the history of illegal activity at the premises, and Mr Gaba's involvement with the business previously (though this factor was given less weight).

The Sub-Committee noted Mr Gaba's assertion that the actions taken by his staff were not known to him, however it was confirmed that the Designated Premises Supervisor was responsible for the actions undertaken at his/her premises. In view of the above points, the Sub-Committee unanimously decided to revoke the Premises Licence and considered the penalty to be proportionate in this case.

Resolved- That the Premises Licence be revoked.

45. Committee Reconvened

The Sub-Committee concluded matters considered under the Licensing Act 2003. The Sub-Committee then reconvened as the General Licensing Sub-Committee to consider an application for a private hire drivers' licence.

46. Exclusion of the Press and Public

Resolved – That the press and public be excluded from the remainder of the meeting as the items to be considered contained exempt information relating to individuals as defined in Paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972 (as amended).

47. Private Hire Driver Application (Reference 01-14)

The Licensing Sub-Committee was asked to consider whether Applicant (Reference 01-14) was a fit and proper person to be granted a private hire drivers licence.

Mick Sims, Licensing Manager, summarised the background to the application where Thames Valley Police (TVP) had highlighted the existence

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of 'other relevant information' on a DBS certificate leading to the referral of the application to the Sub-Committee. The Applicant had advised that he was currently licensed with Cherwell District Council and that he wished to be licensed by Slough Borough Council as had moved to the area.

The Officer advised that the Applicant had previously received a fixed penalty notice, had committed two driving offences and was stopped in Slough during a taxi check operation and found to have a defective tyre. At this time it was discovered that he was working for a Slough Operator and regularly worked in Slough.

The Sub-Committee was advised that the DBS certificate indicated that a number of separate allegations were against the Applicant but TVP were unable to pursue any further action due to lack of witnesses and parties willing to act as a witness. TVP considered however that the information disclosed indicated that the Applicant may pose a risk and this outweighed any prejudicial impact to the Applicant.

The Applicant addressed the Sub-Committee and denied the accusations. He advised that his Solicitor had contacted the DBS in July to ask why the alleged incidents were added to the certificate eight years after they allegedly took place when no charges were ever made, but no response had been received. The Applicant made reference to his financial circumstances but the Officer reminded the Sub-Committee that this was not a relevant consideration in determining his application review (the case of *Cherwell District Council v Anwar* had dealt with this issue).

The Sub-Committee asked the Applicant a number of questions of detail. The Applicant denied that any of the alleged incidents took place and he requested that the Sub-Committee grant him a licence.

The Sub-Committee carefully considered all the evidence at its disposal. The Sub-Committee was aware that a person need not necessarily have been convicted or cautioned in respect of a criminal offence for their behaviour to be taken into account when deciding whether to grant a Licence.

Having carefully considered all the evidence the Sub Committee:

Resolved – That the Applicant's (Ref 01-14) Private Hire Licence application be refused.

Chair

(Note: The Meeting opened at 10.20 am and closed at 3.40 pm)