

Licensing Sub-Committee – Meeting held on Monday, 17th June, 2013.

Present:- Councillors Mittal, Davis and Plimmer

Officers Present:- Mrs Clark (Democratic Services), Ms Okafar, (Legal Services), and Miss Hughes (Democratic Services).

PART 1

1. Declarations of Interest

Councillor Plimmer declared that in respect of Agenda Item 4, Drinks Direct Supermarket, 256 High Street, Langley, Slough, the premises was in his Ward but he had not visited the premises for more than 9 years. He would view the item with an open mind.

2. Minutes of the Last Meeting held on 8th March, 2013

Resolved – That the minutes of the meeting held on 8th March be approved as a correct record.

3. Guidance on Predetermination/Predisposition - To Note

Members confirmed that they had read and understood the guidance note on Predetermination and Predisposition.

4. Review of Premises Licence, Drinks Direct Supermarket, 256 High Street, Langley, Slough.

Following introductions the procedure for the hearing was outlined. The Chair confirmed that all parties had received a copy of the relevant paperwork.

Introduction by the Council's Licensing Officer

Mr Sims, Licensing Manager, referred the Sub-Committee to the report set out in the agenda papers. Options available to the Sub-Committee were outlined for Members' consideration.

It was confirmed that the Licence Holder was Mr Charanjit Singh Arura and that the review had been requested on the grounds of the Prevention of Crime and Disorder, Public Safety, and the Protection of Children from Harm.

Representations made by Trading Standards

Mr Cooke, Senior Trading Standards Officer, advised that the review was brought following an inspection of the premises by Trading Standards on 10th April, 2013 when a number of goods were seized. These included 36 packs of cigarettes with non English health warnings; 9 packs of tobacco 'Shisha' with no government health warnings; 9 bottles of counterfeit Jacobs Creek Wine and packets of imported prescription only medicines. It was highlighted by the

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Trading Standards Officer that illegal possession of the above items constituted offences under the Trade Marks Act 1994, the Consumer Protection from Unfair Trading Regulations 2008 and the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 (as amended).

The Officer advised that the premises was the subject of a previous Review Application in 2012 again made by Trading Standards Service for selling alcohol to an underage person, selling cigarettes to an underage person, selling fireworks in breach of the fireworks licence conditions and being found in possession for sale of counterfeit alcohol, condoms and batteries. In 2007 counterfeit Durex condoms and imported cigarettes were seized and in 2008 a written warning was given to Drinks Direct following the seizure of counterfeit vodka and Durex condoms. The Sub-Committee noted that advice on underage sales had previously been given to the business in October 2005, January 2008 and July 2009. Members also noted the detail of previous convictions and fines imposed. The Officer highlighted that the sale of counterfeit goods also presented revenue issues in terms of tax avoidance and this was detrimental to taxpayers.

The Trading Standards Officer concluded that in view of the recent seizures and having regard to the previous history and management of the premises, there was no alternative other than the imposition of a red card and for the premises licence to be revoked.

Questions to Trading Standards Officer

Mr Somarakis, of Davenport Lyons, representing Mr Arura, asked whether Trading Standards had inspected the premises since the Yellow Card was issued. The Officer advised that an inspection was scheduled but on advice, this had been moved forward. Mr Somarakis also asked whether the Premises Licence Holder had complied with the previous conditions and the Officer advised he had no information regarding this. In response to a question relating to the suspected counterfeit wine, Mr Somarakis asked whether or not the wine was counterfeit. The Officer advised that the labels on the bottles had spelling errors and he was confident that the bottles were counterfeit. In response to a further question from Mr Somarakis, the Officer confirmed that on the day the goods were seized he had looked all round the premises and only 9 bottles of counterfeit wine were found.

Representations made by Thames Valley Police (TVP)

Ms Pearmain, Licensing Officer, TVP, confirmed that TVP fully supported the review application, as set out in the report, and concluded that Mr Arura had failed to show due diligence at all times. She concluded that he had already been given a number of chances and that appropriate action must be taken.

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Question to Trading Standards Officer

A Member asked which country the counterfeit goods were sourced from and was advised that they could have been smuggled- it was thought that the tobacco products could have originated in eastern Europe and India. A number of photographs of labels were circulated at the meeting. The Officer confirmed that he had not asked Mr Arura why he was selling these products as this would be done at a formal recorded interview.

Mr Somarakis asked whether there was any evidence that any under age sales had taken place since the interview and was advised that none had been reported.

Representations made by the Premises Licence Holder

Mr Somarakis advised that Mr Arura had been in business for over 5 years. He highlighted that the Sub-Committee had considered a Review Application in 2012 but no suspension had been given at that time, only a Yellow Card. Mr Arura had complied with the conditions imposed and had also implemented the Challenge 25 scheme.

Mr Somarakis contended that there was other legislation in place which would address the issue of the counterfeit tobacco sales. The Sub-Committee was reminded that the Review had been brought because a premises licence was in force and the case that could be put forward was limited. Mr Arura wished to confirm that the reason chewing tobacco was found on the premises was because he used it personally. The Licence was issued for the sale of alcohol and over 200 lines of alcohol products were sold on the premises. Mr Somarakis noted that the Trading Standards Officer had looked all around the premises but had only found 9 bottles of wine where the labels had a spelling mistake. He advised that the premises had a weekly turnover of £17k to £18K and that the 9 bottles found should be considered in context of this. Mr Arura had advised that the bottles may have been one year old.

The Sub-Committee was asked to consider the effect that a revocation would have on Mr Arura and his family as the premises was their sole source of income and employment. Other employees would also lose their job. Mr Somarakis suggested that a more appropriate measure would be to suspend the license and issue a yellow card.

Summing Up

The Licensing Officer reminded Members of the five actions the Licensing Authority could take when reviewing an application. The Trading Standards Officer requested that the Sub-Committee have regard to the recent seizures of goods and the previous history of offences.

The TVP Licensing Officer advised that it was the responsibility of the Premises License Holder and the Designated premises Supervisor to manage

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their premises and the presence of counterfeit goods was in contravention of the 3 Licensing Objectives outlined in the report.

In summing up Mr Somarakis requested that the Sub-Committee consider to what extent it needed to consider the counterfeit cigarettes as this matter would be dealt with elsewhere and a PACE interview would be required. He referred to the case of the Queen on Application of Bristol Council v Bristol Magistrates Court where conditions had been imposed that were held to be unreasonable and disproportionate. Mr Somarakis stated that in future Mr Arura would take personal responsibility for stock. He requested that the Sub-Committee issue a yellow card on this occasion with the option that a revocation of the licence be considered in future should the Premises Licence Holder fail to meet the required conditions of his licence.

Following the summing up, the parties left the meeting at 11.55 am in order for the Sub-Committee to deliberate.

Decision

The Sub-Committee re-convened at 12.15 pm and all parties were asked to re-join the meeting.

The Sub-Committee carefully considered all of the evidence submitted by the Premises Licence Holder and his representative, the Licensing Officer, the Trading Standards Officer and the Thames Valley Police Licensing Officer. In reaching its decision the Sub-Committee had regard to the following Licensing objectives:

- The Prevention of Crime and Disorder
- Public Safety
- The Protection of Children from Harm

The Sub-Committee noted the findings of Trading Standards when they inspected the premises on 10th April, 2013, and found and seized a number of potential counterfeit goods, including 9 bottles of counterfeit wine. Members were mindful that the premises was the subject of a previous Review Application in 2012 when there were breaches on the conditions of the licence which included the sale of alcohol and other goods, despite the provision of underage sales being provided in 2005, 2008 and 2009. Further, a written warning had been given to Drinks Direct in 2008 following the seizure of counterfeit vodka and condoms. The Sub-Committee also noted that Drinks Direct was convicted in November 2011 and a number of sanctions were imposed. In view of the seriousness of the incident the Sub-Committee had on that occasion decided to issue the premises with a 'Yellow Card'.

The Sub-Committee noted that in respect of the offences in November 2011, Drinks Direct was convicted, fined, and ordered to pay costs. It was also noted that earlier in 2007, counterfeit condoms and imported cigarettes were seized resulting in the issue of a written warning to the premises in 2008.

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The Sub-Committee was satisfied that the application for a review had been brought on legitimate grounds and noted the Trading Standards Service recommendation that due to the recent seizure of goods, and the previous history and management of the premises, there was no alternative sanction other than the premises being issued with a "Red Card" and the revocation of the Premises Licence.

Notwithstanding the submission made by Mr Somarakis that Mr Arura would in future take personal responsibility for stock at the premises and that the issue of a further yellow card with a suspension would be an appropriate sanction, the Sub-Committee was concerned by the continued disregard shown by the Premises Holder in complying with the conditions of his licence.

The Sub-Committee decided that in view of this there was no alternative but to issue a red card and revoke the Licence with immediate effect. The Sub Committee considered the penalty imposed to be appropriate, reasonable and proportionate in order to meet the Licensing Objectives.

Resolved- That the premises be issued with a red card and that the Licence be revoked with immediate effect.

5. 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 contain exempt information relating to individuals as defined in Paragraph 1 of Part I of Schedule 12A to the Local Government Act 1972 (as amended).

6. Private Hire Driver Conduct Hearing (Reference 01-13)

The Chair welcomed all parties to the meeting and after introductions explained the procedure for the hearing.

The Sub Committee was requested to decide whether the Appellant was a fit and proper person to continue to hold a Private Hire Driver's licence in view of his failure to have in place both a valid Certificate of Insurance and Certificate of Compliance.

Mrs Rumney, Senior Licensing Officer, advised that the Appellant currently held a Private Hire Driver's (PHD) Licence which expired in February 2014. Members were informed that the Appellant had when requested, taken a valid Certificate of Compliance and Certificate of Insurance to the Licensing Office but it transpired that there was a gap of one week between the dates on the new and old certificates. It was highlighted that it was a breach of the Private Hire Driver and Vehicle Conditions to have no valid Certificate of Insurance or Certificate of Compliance. The Sub-Committee was recommended to consider whether the licence be suspended for a period of time to be determined.

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The Appellant advised that the failure to comply with the conditions of his licence was due to an error on his part and personal family pressures. He produced evidence to show that he was travelling during the period in question.

Both parties were given an opportunity to provide a brief summary. The Licensing Officer concluded that although the Appellant had provided evidence regarding the gaps in question, he had nevertheless breached the conditions of his licence.

After careful consideration the Sub-Committee decided on this occasion to issue the Driver with a strict warning with regard to his future compliance with the conditions of his private hire driver's licence. It was highlighted that Licence holders provided a public service and that their primary responsibility was the safety of members of the public and to adhere to the law.

Any future breaches of the conditions of the licence would result in the Appellant being requested to reappear before the Sub-Committee when previous breaches of the licence would also be considered.

Resolved – That Appellant 01-13 be issued with a strict warning with regard to future compliance with the conditions of his licence.

7. Private Hire Driver Conduct Hearing (Reference 02-13)

The Chair welcomed all parties to the meeting and after introductions explained the procedure for the hearing.

The Sub Committee was requested to decide whether the Appellant was a fit and proper person to be granted a Hackney Carriage Driver's licence.

The Licensing Officer advised that the Appellant had submitted an application for a Hackney Carriage driver's licence in January 2013 and this was refused due to the disclosure of a conviction for dangerous driving and a subsequent 18 month period of disqualification. In submitting a further application in February 2013, the Appellant had failed to disclose a number of convictions for which he was sentenced in 2010 and given 12 weeks imprisonment (suspended for 2 years) The Sub-Committee noted that on that occasion a number of other penalties were imposed and the driver was disqualified for 18 months. It was also noted that the Appellant was fined at Barnet Magistrates Court in 2008 for other offences.

The Licensing Officer recommended that the Sub-Committee refuse the application.

The Appellant acknowledged that he had committed the offences referred to but felt he had been punished for these. He discussed his personal family circumstances and asked that the Sub-Committee to give him a chance and allow his application for a Licence.

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The Sub Committee considered all of the written and oral information at its disposal. In discharging its function as a licensing authority, it was the responsibility of the Council to ensure the safety of the public. Members were concerned that the Appellant had failed to disclose offences of a serious nature and was unable to provide any substantial reason as to why he did not do so.

After careful consideration, the Sub-Committee decided that the Appellant was not a fit and proper person to hold a Hackney Carriage Driver's Licence.

Resolved – That Appellant 02-13's application for a Hackney Carriage Driver's licence be refused.

8. Private Hire Driver Conduct Hearing (Reference 03-13)

The Chair welcomed all parties to the meeting and explained the procedure for the hearing.

The Sub Committee was requested to decide whether the Appellant was a fit and proper person to continue to hold a Private Hire driver's license. It was highlighted that he had been convicted for the possession of Cannabis, was fined for failing without reasonable excuse to surrender to custody at Berkshire Magistrates Court; and failed to notify the Licensing Office of a criminal conviction or caution within 5 working days. In failing to provide details of his conviction, the Appellant was in breach of his Private Hire Driver and Vehicle Conditions.

The Sub-Committee noted the Appellant's explanation that he was absent from the country for a three month period and for this reason had failed to appear before the Magistrates Court when requested. The Appellant regretted his errors and asked that the Sub-Committee give him a strict warning.

The Sub-Committee considered all of the written and oral information at its disposal. In discharging its function as a licensing authority, it was the responsibility of the Council to ensure the safety of the public. Members were concerned that the Appellant had failed to disclose offences of a serious nature.

The Sub-Committee considered the Appellant's failure to provide details of the conviction as a serious matter and decided that the Private Hire driver's licence be revoked with immediate effect under Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976, as he was no longer deemed to be a 'Fit and Proper Person' to hold a driver licence.

Resolved – That Appellant 03-13's Private Hire Driver's licence be revoked with immediate effect.

9. Private Hire Driver Conduct Hearing (Reference 04-13)

The Chairman welcomed all parties to the meeting, including the Appellant.

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Mrs Rumney, Senior Licensing Officer requested that the Sub-Committee consider whether the Appellant was a fit and proper person to continue to hold a Private Hire Driver's Licence in view of his failure to notify the Licensing Authority of penalty points, a fine, and false declarations made on his renewal application forms.

The Licensing Officer, advised the Sub-Committee that the document set out at Appendix D of the report, a 2010 Private Hire Renewal application, related to another individual. The Officer requested that an adjournment of hearing be granted as the submission of the document was critical to the proceedings. The Appellant stated that this was a small error and he was happy for the hearing to continue.

The Sub-Committee adjourned briefly to consider the matter. All parties were asked to re-join the meeting and were informed that the hearing would be adjourned to a future date in order to allow the Licensing Officer the opportunity to review the available documentation.

Resolved – That consideration of Appellant 04-13's Conduct Hearing be adjourned.

Chair

(Note: The Meeting opened at 10 am and closed at 3.05 pm)