

Licensing Sub-Committee – Meeting held on Wednesday, 15th October, 2014

Present:- Councillors Malik (Chair), Coad and Munawar

Officers Present:- Teresa Clark, Senior Democratic Services Officer
Dean Cooke, Senior Trading Standards Officer
Neil Fraser, Trainee Democratic Services Officer
Rachael Rumney, Senior Licensing Officer
Mick Sims, Licensing Manager, Slough BC
Niall Toru, Legal Advisor to the Sub-Committee

PART 1

48. Declarations of Interest

Councillor Coad declared an interest, in that she was the Ward Councillor for Langley St. Mary's, where the premises of Drinks Direct was located.

49. Guidance on Predetermination/ Predisposition - To Note

Members confirmed that they had read and understood the guidance on predetermination and predisposition.

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

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

Introduction by Rachael Rumney, Licensing Officer, Slough BC

Ms Rumney, Licensing Officer, introduced the report and advised that the premises licence review for Drinks Direct, 256 High Street, Langley, SL3 8HA, was brought by the Licensing Manager on behalf of the Authority. During her introduction, the Officer divulged information relating to the premises and Mr Toru, Legal Advisor to the Sub-Committee advised Members to disregard this comment when making their decision as it was not relevant to the application. Mr Somarakis representing Mr Singh requested an adjournment in order to take instructions from his client. The meeting adjourned at 10.12 am and reconvened at 10.18 am. Mr Somarakis advised that he was in agreement that the meeting continue subject to Members disregarding the comment that was made. The Sub-Committee indicated its agreement.

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

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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.

Mick Sims, Licensing Manager, Slough BC

Mr Sims, Licensing Manager, outlined a report which related to an application for a Review of the Premises Licence for Drinks Direct, 256 High Street, Langley, SL3 8HA. Mr Sims confirmed that he was the Applicant, on behalf of the Licensing Authority and he maintained that the Review was necessary due to concerns relating to:

1. the regulatory history of the business and those connected with it;
2. A sale of fireworks from the premises to an underage volunteer;
3. Potential trading standards offenses.

The Officer confirmed that the Premises Licence holder and Designated Premises Supervisor was Mr Balbir Singh, 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. On 4th November 2013, Trading Standards officers conducted an underage test purchase exercise for fireworks at Drinks Direct when an underage volunteer was able to purchase fireworks in contravention of the Pyrotechnic Articles (Safety) Regulations 2010. The sale was made by an employee, a Mr Manan Hamed, who had since been deported. On 6th March 2014, Mr Balbir Singh, the Premises Licence holder, was issued with a written warning for the above offence. On 5th December 2013, the Police acting on information received, attended the premises and seized a large quantity of goods which included cigarettes, rolling tobacco and chewing tobacco which were subsequently handed to Slough BC Trading Standards Officers. The Police also arrested two men working at the premises who were 'overstayers' with expired visas and no right to work.

Of the tobacco products seized;
366 x packets bore non-English health warnings,
19 x 50g pouches bore no health warnings at all and were potentially counterfeit,
20 x packets bore non-statutory health warnings in English,
405 x packets bore no pictorial warnings,

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Of the hand rolling tobacco seized, all 36 of the 50g pouches bore non-English health warnings and pictorial warnings.
Of the 548 x pouches of chewing/smokeless tobacco seized, 508 x pouches bore non-statutory health warnings.

It was confirmed that Mr Balbir Singh would be subject to legal proceedings by Trading Standards for the possession of the above.

The Sub-Committee was informed that the premises was originally called Drinks Direct Supermarket Limited, with the Premises License holder being Mr. Charanjit Singh Arura who was still currently employed at the new premises.

The premises was the subject of two Review applications in 2012 and 2013 both made by Slough Trading Standards following seizures of illicit tobacco products and counterfeit alcohol, as well as underage sales of age restricted products. At the second Review hearing in June 2013 the Licensing Sub Committee revoked the Premises License. Mr Charanjit Singh Arura appealed against the revocation to the Magistrates Court. It was highlighted that whilst the appeal was pending Mr Balbir Singh submitted an application for a new Premises Licence which was granted on 20th September 2013.

Mr Sims advised that he visited the premises in May 2014 and spoke to Mr Singh who did not understand what Mr Sims was saying. Mr Singh phoned a colleague for assistance and Mr Arura appeared within seconds suggesting that he worked closely with Mr Singh. The Applicant confirmed that he and Trading Standards had major concerns regarding the continued involvement of Mr Arura, his association with Mr Singh in the operation of the business, and importantly the concern that illegal activities would continue to take place whilst the business was in operation.

Mr Sims confirmed that Mr Balbir Singh was issued with a Trader Pack which explained the responsibilities of a DPS and License Holder when owning and running a business.

The Applicant advised that he had reviewed the current conditions on the Premises Licence and in his opinion there were no other conditions or actions that could be imposed on the Licence which could effectively combat the illegal activities or non-compliance. Of particular concern was Mr Singh's apparent disregard for the law and for public health and safety, as illegal cigarettes could pose a serious health hazard to any member of the public who purchased them.

In view of this the Applicant submitted that the premises should be issued with a Red Card and that the licence be revoked.

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

Mr Cooke confirmed the detail of the seizure of the illicit tobacco products by the Police, as referred to by the Applicant and advised that the products bore no non-statutory health warnings and/or lacked statutory pictorial health warnings, and that some were counterfeit. Mr Cooke confirmed that his team had instigated separate criminal proceedings in relation to these products.

Mr Cooke went on to confirm that when questioned during the PACE interview, Mr Balbir Singh had asserted that the items belonged to Mr Arura. However, the Officer confirmed that there was no evidence to support this assertion barring Mr Singh's own testimony, and that as the Premises Licence holder and DPS, Mr Singh was responsible for all goods found on the premises.

The Officer confirmed the opinion of Trading Standards that it was likely that the items in question were being held on the premises for sale to members of the public. The items were found in a storage building within the curtilage of the shop premises. Mr Cooke questioned why Mr Arura had not stored the goods in his home. 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 Singh 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, along with the considered likelihood that further illicit activity would continue whilst the business remained in operation.

Representations by Ms Pearmain, Thames Valley Police (TVP)

Mr Sims advised that Ms Pearmain was unable to attend the meeting due to an urgent police matter and Members were directed to her written report which was circulated prior to the meeting in the agenda papers.

Questions to Officers

Mr Somarakis asked Mr Cooke whether the CCTV footage from the store had been reviewed to establish whether any employees of Drinks Direct were seen removing illicit tobacco items from the outbuilding for the purpose of selling? *Mr Cooke confirmed that the Police had conducted the seizure of the goods, and had not provided Trading Standards with any CCTV footage.*

Mr Somarakis asked Mr Sims whether he felt the underage sale of fireworks was sufficient to revoke Mr Singh's licence? *Mr Sims confirmed that he was of the opinion that such an action did constitute sufficient grounds for revocation of a licence though conceded that such a determination did not appear in the relevant guidance.*

Members asked whether any action had been taken against Mr Arura for possession of the illicit items? *Mr Cooke confirmed that there was no*

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evidence to support the claim that the items belonged to Mr Arura, and therefore no action against him had been taken.

Members requested clarification regarding the trader pack issued to Mr Singh. What language were these issued in? *Mr Sims confirmed that packs were predominantly in English but contained directives on how to source translation.*

Representations made by Drinks Direct

Mr Somarakis, of Gordon Dadds Solicitors, representing Mr Singh, addressed the Sub-Committee. He submitted that the track history of the premises before Mr Singh assumed ownership was irrelevant, and the Sub-Committee was directed to review only the history of the premises since Mr Singh had become the Licence Holder and DPS. Since then, there had been one instance of an underage sale of fireworks, though this matter was now concluded. Mr Somarakis reminded the Sub-Committee that this sale was made by an employee who had since been deported. He also reminded Members that this offence was not one listed in the Secretary of State's guidance (paragraph 11.27) as being so serious as to by itself justify revocation of a licence. Mr Somarakis asserted that discounting this incident, there was no evidence of further wrongdoing at the premises.

Mr Somarakis tabled a plan of the premises and confirmed that the illicit goods had been found in an outbuilding located at the rear of the premises. This outbuilding was not listed on the plan as being part of the premises itself. As such, Mr Somarakis asserted that the goods were not on the licensed premises, and therefore the Licence conditions had not been breached.

Regarding the assertion that the seized items were in the possession of Mr Balbir Singh, Mr Somarakis reiterated Mr Singh's evidence that the items were not his but that they belonged to Mr Arura. Mr Somarakis confirmed that upon assuming his responsibility as Premises License holder and DPS, Mr Singh was made aware by Mr Arura that the items in question were on the premises and that they were illicit. Upon receipt of this information, Mr Singh requested Mr Arura remove the items from the premises, and they were moved to the outbuilding for storage. Mr Somarakis clarified that as of May 2014 Mr Arura was no longer employed to work at the premises, though he did sometimes help out.

With regard to the Applicant's assertion that Mr Balbir Singh was in possession of the illicit tobacco products, (with intent to supply), Mr Somarakis made reference to two cases.

Firstly, he referred to the case of R. v. Kousar (2009) EWCA Crim 139, which related to a wife who appealed against being charged with possession of illicit substances found in her home, which she claimed belonged to her husband (the business owner). The Court of Appeal had considered the meaning of 'possession' in the context of trademark offences and also whether in a domestic situation a husband or wife could be regarded as in joint possession of items in their house which were in fact the property of the other spouse.

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Mr Somarakis drew a parallel from this case to the matter of Mr Balbir Singh and the illicit products found in the outbuilding. He concluded that although Mr Singh had permitted the items to be stored in the outbuilding, he could not be said to have been in 'possession' of these items, and at worst had made a "naïve mistake" in allowing Mr Arura to store the items in the outbuilding.

Mr Somarakis also referred the Sub-Committee to the case of R v Price (1996) C.L.Y. 1429 where the defendant was found in possession of seventeen illicit tablets at a nightclub. The defendant claimed that the items did not belong to him, but that he was present at the nightclub with a large group of friends and was merely holding the tablets for them. The defendant had been charged with possession with intent to supply a controlled substance. The Court of Appeal allowed the appeal on an unrelated ground, but did briefly consider the meaning of 'possession for supply' and found that there was no evidence to contradict the defendant's claim that he had no intent to supply to others and that he was merely holding the tablets for his friends, and that the intent to supply was based on assumption only. Again, Mr Somarakis drew a parallel to the matter of Mr Balbir Singh and the illicit tobacco products found in his outbuilding. Mr Somarakis claimed that even if Mr Singh could be said to have been 'in possession' of the goods, the relevant authorities had not supplied any evidence that he possessed them 'for supply'.

Mr Somarakis suggested that the Sub-Committee could impose several conditions on Mr Balbir Singh and the Premises Licence i.e. that should Members of the Sub-Committee be concerned at the association between Mr Balbir Singh and Mr Charanjit Singh Arura, a condition could be imposed on the licence that barred Mr Arura from working at the premises or being involved in the management of the premises. Further, a condition could be imposed to stipulate that Mr Balbir Singh was not permitted to store any items on the premises that did not belong to him.

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 Singh. 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 Singh was a client, and that Mr Singh also instructed all staff to attend Mr Panchal's training as standard.

Response to Drinks Direct

Mr Cooke responded to the claim made by Mr Somarakis that the outbuilding was not part of the licensed premises. He confirmed that both the Police and Trading Standards had the power to search any areas pertaining to the business, including any buildings within the curtilage of the premises. He was satisfied in this case that the outbuilding was within the curtilage of the premises. Any items found within these areas were deemed to be on the

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licensed premises and therefore any illicit goods found were deemed sufficient to constitute a breach of the licence conditions. Mr Cooke questioned Mr Singh's claims that the illicit items did not belong to him, confirming that the only evidence to support this claim was Mr Singh's own testimony. Mr Cooke confirmed that in the opinion of Trading Standards, the items were found on Mr Singh's premises, and Mr Singh was therefore responsible for them.

The Officer also emphasised that, as detailed in the Police report, the illicit items were found in the outbuilding alongside other legal products for sale in the store. The outbuilding was therefore being used as storage space for the store, which would contradict Mr Singh's testimony to the contrary. It could be concluded that the illicit items were being stored in the outbuilding for the purpose of sale via the shop premises, either through the front of store or directly through the outbuilding itself.

Mr Cooke distinguished the facts of *Kousar* to those in the review application and argued that the *Kousar* case was set in a domestic rather than a business environment. The Court in *Kousar* asked whether the wife of a market trader 'possessed' her husband's illicit goods merely because she allowed him to store them in the matrimonial home. Mr Cooke contrasted this with Mr Singh's purported arrangement with Mr Arura, under which it was stated that Mr Singh had allowed a current business associate to store illicit goods within the curtilage of the business premises.

Mr Cooke also argued that Mr Singh could not be described as 'naive' as he was closely involved in the business when Mr Arura's licence was reviewed in 2012 and 2013 and in November 2013, when Mr Arura was convicted for possessing illicit goods. It was pointed out that there was no evidence to suggest that upon assuming control of the business or at any time after, Mr Singh had carried out a stock take or put in place appropriate measures to prevent the recurrence of such licensing breaches. Mr Singh had admitted that he was aware the items in question were illicit, and he had allowed them to be stored for at least two months before they were seized.

Mr Cooke submitted that there was no requirement to prove that the goods were actually sold to constitute a trading standards offence. It was a fact that they were in Mr Singh's possession for supply and in the circumstances Mr Singh was therefore in possession of the goods for supply.

Questions to Drinks Direct

Members sought clarity from Mr Singh on whether the outbuilding was used as a storeroom for the business or not? *Mr Singh confirmed that it was currently being used as a storeroom, but that this was not the case when the illicit products were placed there for storage.*

Niall Toru, Legal Advisor to the Committee sought clarification from Mr Somarakis, asking whether it was his view that the Committee was bound by the case law presented? *Mr Somarakis responded that the matter in*

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question was whether Mr Singh had committed an offence. According to the rulings of the Court of Appeal set out in the cases presented, Mr Singh had not committed an offence. Mr Somarakis reiterated that in the eyes of the law, Mr Singh was not legally in possession of the items, the items were not found on the licence premises, and that there was no criminal activity in regards to selling the items.

Mr Cooke maintained that Mr Singh would clearly have understood that if goods were stored in an outbuilding within the cartilage of the premises then they would be subject to possible inspection by the Police and Trading Standards. He asked Mr Somarakis to confirm that this was the case? *Mr Somarakis advised that Mr Singh did not realise that it was not acceptable to store goods in the outbuilding and stated that he had been naive.*

Summing Up- Mick Sims, Licensing Manager

Mr Sims was satisfied that the evidence clearly demonstrated that Mr Singh 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 reiterated that Mr Singh was the Licence Holder and Designated Premises Supervisor. It was therefore his responsibility to comply with the conditions of his Licence, and he was responsible for all goods found on the premises.

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 recommended that the Sub-Committee should issue a red card and revoke the Licence. He considered this penalty to be proportionate in this case.

Summing Up – Dean Cooke, Trading Standards Officer

Mr Cooke confirmed that he supported a revocation of the Licence in view of the history and track record of the premises, along with the considered likelihood that further illicit activity would continue whilst the business remained in operation.

Summing Up- Drinks Direct

Mr Somarakis reminded the Sub-Committee that Mr Singh had applied for and was granted a licence by the Authority. He acknowledged that Mr Singh had made a mistake with the under age sale of fireworks but emphasised that the history of the premises prior to Mr Singh's ownership was not relevant. He confirmed that Mr Singh's only prior misdemeanour, the underage sale of fireworks, took place in 2013, and that following Mr Singh's reprimand for this, there had been no further illegal activity at the premises.

Mr Somarakis asserted that Mr Singh was not legally in possession of the items seized, that the items were not found on the licenced premises, and that there was no activity of criminal activity in regards to selling the items. He

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reiterated the suggested conditions that the Sub-Committee could impose upon Mr Singh's premises license, as set out previously, and concluded that a Red Card and revocation of the premises license would not be proportionate in this case.

The meeting adjourned at 12.40 pm to allow parties the opportunity to read the detail of the two cases referred to by Mr Somarakis. The meeting adjourned at 1.20 pm when the relevance of the cases was debated.

The meeting adjourned at 2.00 pm when the parties left the meeting whilst the Sub-Committee reached its decision. (Mr Toru, the Legal Advisor to the Sub-Committee and the Clerk remained with the Sub-Committee).

(Councillor Munawar left the meeting at 2.45 pm after the decision was reached).

The meeting reconvened at 3.00 pm when the decision was announced.

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.

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. The poor track record of the business. Whilst the business name and license holder changed in 2013, the Sub-Committee found on balance that the underlying business and those running it had not changed. The evidence suggested a close and continuing connection between Mr Balbir Singh and Mr Charanjit Arura in relation to the business, since at least 2009. In light of this history the Sub-Committee was not confident that licensing breaches would not reoccur at the premises.
2. The Sub-Committee was concerned that fireworks were sold from Drinks Direct to an underage volunteer in December 2013, just months after Mr Singh was granted the licence. Given that Mr Singh was employed by Drinks Direct during previous regulatory breaches that involved underage sales, the Sub-Committee would have expected sufficient measures to have been in place to prevent such breaches recurring.

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3. The Sub-Committee found that on balance, Mr Singh did have in his possession, for supply, a large quantity of illicit tobacco products when they were seized in December 2013. Given the nature of the goods, the fact that Mr Singh appeared to appreciate at the time that they were illicit, their close proximity to the premises, the length of time they were stored, the lack of legitimate explanation for their storage, Mr Singh's connection to the business when previous similar breaches occurred, and Mr Arura's continuing association with the business after his licence was revoked, the Sub-Committee found on balance that Mr Singh did exercise control over the goods and should be held responsible for them so far as his responsibilities as a premises Licence Holder was concerned.

It was confirmed that this was not a finding for criminal liability, which was a matter for the criminal courts. On this, the Sub-Committee had regard to paragraph 11.24 and 11.25 of the Secretary of State's guidance, which made clear that a Sub-Committee's role was not to establish guilt or innocence of an individual, but to ensure the promotion of the crime prevention objective.

Given the poor regulatory history of the business, the Sub-Committee did not feel its concerns could be appropriately addressed by the imposition of conditions to the licence. In the circumstances, the Sub-Committee concluded that it was proportionate and in the public interest to revoke the premises licence for the reasons set out above.

Resolved - That the Premises Licence be revoked.

Chair

(Note: The Meeting opened at 10.00 am and closed at 3.00 pm)