

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 12 JANUARY 2022</b>
--

## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 12 JANUARY 2022 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Nicky Brennan in the Chair;

Councillors Mary Locke and Mike Ward.

### **ALSO PRESENT**

David Kennedy – Licensing Section  
Joanne Swampillai – Legal Services  
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

\*\*\*\*\*

### 1/120122 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site ([www.civico.net/birmingham](http://www.civico.net/birmingham)) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

---

### 2/120122 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

---

### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/120122 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – SUPER CHOICE NEWS, 939 WALSALL ROAD, GREAT BARR, BIRMINGHAM, B42 1TN.**

**On Behalf of the Applicant**

Naseem Shamas – Trading Standards

**On behalf of West Midlands Police**

Chris Jones – WMP

The PLH (Premises Licence Holder) did not attend the meeting but did provide a written representation which was included in the Report.

\* \* \*

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider. None of the parties had any preliminary points to make.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy, to outline the report.

Naseem Shamas was invited to make submissions on behalf of the applicant and made the following statements: -

- a) On 24<sup>th</sup> May 2021 Paul Ellson, on behalf of Trading Standards, visited the premises due to an anonymous complaint. Two 15yo girls had purchased alcohol from the premises. The PLH (Premises Licence Holder) was not present and the person behind the till did not appear to understand English.
- b) Whilst carrying out the visit TS spoke to the PLH over the phone and told him about the complaint and his obligations in terms of the law.
- c) He was given an advisory pack and a Trader Notice was issued.
- d) On 16 October 2021 TS carried out a test purchase operation, the volunteer was a 15yo female. The TS officer carried out a risk assessment at the premises and observed the woman behind the till on her mobile phone, she was still on the phone when the TS officer left the premises.
- e) At 1124 hours Naseem Shamas went into the store with the female volunteer, the lady behind the till was still on her phone. The lady sold the volunteer WKD alcohol for £3.00 and the volunteer left the shop followed by officer Naseem Shamas. The lady was still on the phone.
- f) The volunteer handed the WKD bottle to the other TS officer and it was placed in the evidence bag.

- g) At 1140 hours Naseem Shamas went back into the shop and spoke to the woman behind the till informing her that she has sold alcohol to person under 18 and it was an offence under LA2003.
- h) They requested the refusals register, but she did not know what it was. She stated that her husband dealt with the paperwork – she struggled to speak English.
- i) She phoned the PLH and the officer spoke told him that alcohol was sold to a minor and noticed was given to him. Further, he was also informed that the CCTV footage would need to be provided.
- j) The female employee was given a Trader Notice which she signed and a copy was left with her to give to the PLH. The officers left the premises at 1200hours.

The Chair invited questions from Members and Naseem Shamas gave the following responses: -

- a) The female volunteer did have a face mask on. It was paper medical mask.
- b) Retailers should ask the face mask to be pulled down, or removed for ID.

The Chair then invited those making representations to make their case and Chris Jones on behalf of WMP made the following statements: -

- a) The child was a volunteer for TS who used people who looked their age. They didn't have 15yos that were done up to look 18. She would have looked 15, with or without a mask.
- b) The volunteer was able to purchase WKD without question from the staff behind the till.
- c) The staff member was so uninterested she remained on her phone throughout.
- d) When TS spoke to the staff member behind the till she didn't know where the refusals log was and said her husband dealt with the paperwork.
- e) She did phone the PLH and TS spoke to him on the phone.
- f) TS had a complaint that two other 15yo girls were sold alcohol from the premises. TS visited the premises following the complaint and again the PLH was not present and only one member of staff was left in charge. He was given advice and reminded about refusals registers. Then 5 months later they carried out a test purchase at the premises and again the PLH was no present. The refusals register was not left with the staff in charge. They had breached the licence conditions such as the challenge 21 policy and staff training had either not been done or was not effective.

- g) The staff member didn't know where the refusals book was and didn't seem to know what it was.
- h) The NHS online provided details of the effects of alcohol on children and it was linked to health and social problems. It could also impact normal development of the brain, liver, bones and hormones.
- i) Under age drinking was also associated with violence, pregnancy, drink driving and injuries. Young people using alcohol also increased the risk of missing school.
- j) The sale of alcohol to children could only be financially led and the consequences were of no concern to the PLH.
- k) The staff member who sold the alcohol to the young girl didn't even bother to come off the phone to challenge the girl. WKD was a favourite drink amongst young people.

The Chairman invited questions from Members and Chris Jones, on behalf of WMP made the following points: -

- a) That he wasn't there at the time of the visit so didn't know about staff training records. (Naseem Shamas responded as he was present at the time of the visit and told the Committee that he didn't ask for training records as the PLH wasn't present).
- b) The intel TS received indicated that alcohol was sold to two 15yos and then they failed the test purchase.

In summing up Chris Jones, WMP made the following points: -

- That the PLH had no regard for the licensing objectives. Advice had been given before the test purchase, which suggested it was an ongoing issue.
- WMP had no confidence in the management or their desire to promote the licensing objectives.
- Management put profit above their legal, moral or social responsibilities.
- He agreed with TS that the licence should be revoked.

Naseem Shamas on behalf of TS made the following closing statements: -

- The failed test purchase took place on 16 October 2021 after advice had already been given on 24 May 2021.
- The PLH was already aware of the problems and no refusals register was shown when requested.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

4/120122

**RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Muhammad Sajjad, in respect of Super Choice News, 939 Walsall Road, Great Barr, Birmingham B42 1TN, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines

- that the Licence be revoked, and
- that Mr Muhammad Sajjad be removed as Designated Premises Supervisor

in order to promote the licensing objectives in the Act, namely the prevention of crime and disorder, public safety, and the protection of children from harm.

The Sub-Committee's reasons for revoking the licence and removing the named designated premises supervisor are due to concerns expressed on behalf of the Chief Inspector of Weights and Measures, as outlined fully in the Report. Mr Sajjad was both the licence holder and the designated premises supervisor for the Super Choice News premises. Mr Sajjad was invited to the meeting but did not attend; nor was he represented. Instead, he submitted written representations, which were included in the Report.

The Report summarised the previous history of the shop. An officer of the Trading Standards department of the City Council attended the meeting and told the Sub-Committee that a complaint from a member of the public had been received in May 2021, alleging that the shop had been permitting underage sales of alcohol. Trading Standards went to the premises to give advice, and to warn about the implications of selling alcohol to persons under the age of 18. The person behind the counter appeared to not understand English, and so officers spoke to Mr Sajjad on the telephone. A Trader's Notice and advisory pack was issued.

A test purchase exercise was then carried out in October 2021, the details of which were in the Report. A Trading Standards officer had stood in the shop and observed as a 15 year old volunteer had been allowed to purchase alcohol without challenge. The young volunteer had been wearing a face mask due to the ongoing Covid-19 pandemic; Trading Standards confirmed that they would have expected a responsible retailer to ask the volunteer to remove her mask and to show age-related identification. Neither of these things had happened, despite a "Challenge 21" requirement being a condition of the licence.

The person behind the counter who had made the sale to the 15 year old volunteer was Mr Sajjad's wife. Officers noted that she was unable to produce a Refusals Register (and indeed seemed unsure as to what a Refusals Register even was). She stated that her husband dealt with the paperwork for the shop. Officers noted that she could not speak English fluently.

They therefore left a Trader's Notice for Mr Sajjad with a requirement to produce the CCTV recording of the incident. Conditions relating to CCTV were part of the licence – including a requirement that “the premises licence holder will ensure that CCTV is recording at all times the premises is open for licensable activities and all CCTV images are to be made immediately available and downloadable on request by any responsible authority”.

The shop had therefore failed to uphold three of the four licensing objectives in selling alcohol to an underage volunteer without challenge. This was both illegal and a breach of the “Challenge 21” condition on the licence, and was particularly poor given that an advice visit had been carried out by Trading Standards only five months previously. The Sub-Committee agreed that this was completely unsatisfactory.

Trading Standards were unimpressed that the licence holder had left a person in charge who clearly did not understand the level of responsibility which came with selling alcohol. The officer remarked that this “did not demonstrate a well-run business”; the Sub-Committee agreed. It was the recommendation of Trading Standards that the licence should be revoked, as they had no trust in the management of the shop, and had no confidence that the licence holder had any desire to trade in accordance with either the law or the conditions of his licence.

The application for review was supported by West Midlands Police, who attended to address the Sub-Committee. The Police documents in the Report reiterated the points made by Trading Standards. The Police noted the “striking similarities” between the complaint which had been received, the advisory visit and the failed test purchase – namely that the ages of the children that were allowed to purchase alcohol had been 15 years, the licence holder (who was also the designated premises supervisor) had not been on site, and a sole member of staff had been left in charge, yet this person had been unable to produce a Refusals Register and indeed had no knowledge of it.

The Police statement in the Report observed that the conditions on the licence regarding staff training and “Challenge 21” had been imposed to ensure the upholding of the licensing objectives, and specifically to protect children. The Police statement in the Report commented on the harmful effects of alcohol on children, and remarked that permitting underage sales was likely to be financially motivated. The “Challenge 21” requirement had not been followed, in terms of either asking the child her age, or demanding that she produce some identification. Moreover, the Police noted in particular the fact that the licence holder's wife had been speaking on her phone to somebody throughout the entire test purchase transaction.

West Midlands Police supported the Trading Standards recommendation to revoke, stating that they had no confidence in the management of Super Choice News. The Police considered that the licence holder had no intention of upholding the licensing objectives, especially the protection of children from harm, the prevention of crime and disorder, and public safety. The advisory visit had been made only five months previously, and had been carried out specifically to advise about underage sales; the Police felt that the sale of alcohol to children was therefore an ongoing issue, and that the licence holder had placed profit above his

responsibilities. The Police therefore saw the only solution to be revocation of the premises licence.

At the start of his written representations, which were at Appendix 3 of the Report, Mr Sajjad confirmed, “I do not wish to participate nor be represented at the hearing. This is because I feel it is not necessary, as I will list reasons below in my defence”. The Sub-Committee therefore considered Mr Sajjad’s written representations very carefully.

Mr Sajjad stated that he had been called to Pakistan to deal with family problems, but he felt that he had left suitable staff to run the store, and had given them what he described as “adequate training and warnings”. The Members found that this could not possibly be the case; they noted that even Mr Sajjad himself remarked that whatever training or advice had been given to the staff, “these unfortunately were not followed through”.

Mr Sajjad explained that his wife had been speaking on the phone because a relative had passed away, and she was in a very distressed state. Given that Mr Sajjad had said that he had left the shop in the hands of his wife and another member of staff, the Members were unsure why this other person had not been called to take over responsibility for alcohol sales if the person behind the counter should have become distressed for any reason. Such an arrangement was surely an elementary part of responsible trading. Instead, the licence holder’s wife had remained on duty behind the counter whilst dealing with family business via the telephone.

Mr Sajjad went on to observe that the 15 year old volunteer had been masked. However, the Sub-Committee did not see that as relevant. It had become common practice during the Covid-19 pandemic for all retailers and businesses to ask customers to move their mask aside temporarily, so that the face could be seen and/or checked with identification. That had not been requested of the volunteer during the test purchase.

When deliberating, the Sub-Committee took into account Mr Sajjad’s argument relating to hardship from the loss of his livelihood, but agreed with the responsible authorities that any underage sales put the licensing objectives at grave risk. It was also a drain on the public purse, as both West Midlands Police and the Trading Standards department of the City Council had to allocate resources to investigate and deal with a criminal activity which had been undertaken, for profit, by a person who should have been more than aware of the standards expected of all licence holders in Birmingham (especially given the advisory visit earlier in the year). As such, the Sub-Committee took a very dim view of Super Choice News and the licence holder.

The Sub-Committee looked at all options when making their decision, and placed particular emphasis on the need to ensure that there was confidence that the management of the shop would not engage in, and encourage, criminal activity. The Members gave consideration as to whether they could modify the conditions of the licence, or suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, for the reasons set out above.

The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Sajjad as the licence holder, and he had demonstrated that he was incapable of upholding the licensing objectives. Both of the responsible authorities had already confirmed that they had no trust whatsoever in Mr Sajjad to uphold the licensing objectives.

After hearing all the evidence, the Sub-Committee determined that underage sale of alcohol was indeed so serious that it could not be tolerated. The Sub-Committee therefore resolved to revoke the licence and to remove Mr Sajjad as designated premises supervisor. The determination to revoke followed the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Secretary of State, the application for review, all of the written representations received (especially that of Mr Sajjad), and the submissions made at the hearing by those representing the Chief Inspector of Weights & Measures and West Midlands Police.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the determination of the appeal.

The meeting ended at 1030 hours.