

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB COMMITTEE B 22 JANUARY 2019 |
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**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 22 JANUARY 2019
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair

Councillors Mike Sharpe and Adam Higgs

ALSO PRESENT

Bhapinder Nandra, Licensing Section
Parminder Bhomra, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

1/220119 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/220119 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 to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/220119 There were no Nominee members.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – DRINKS R US, 3
LITTLE BROMWICH ROAD, BORDESLEY GREEN, BIRMINGHAM, B9 5JU**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting.

The Applicant

Paul Ellson – Trading Standards

On behalf of the Premises

Gurdev Khakh – Premises Licence Holder

Andrew Potts – Representative

Those making representations

PC Abdool Rohomon – West Midlands Police

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Following introductions by the Chairman, Mr Potts advised he was hard of hearing and requested a repeat of the procedural rules from the Chairman. The Chairman repeated her introductions; including the procedural rules.

Bhapinder Nandra, Licensing Section, made introductory comments relating to the report.

Mr Paul Ellson on behalf of Trading Standards, made the following points:-

- a) That in June 2017 Birmingham Trading Standards had information submitted that the premises was selling cigarettes in packs of ten. The Legislation changed in May 2017 of that year and that meant it was a cause for concern.
- b) He attended the premises and asked for the licensee upon arrival. He explained the complaint they had received and began to carry out their inspection. They found 9 packs of Silk Cut cigarettes in packs of ten, including other odd packs elsewhere.
- c) That he also found a bottle of High Commissioner, and suspected it may be illicit. He explained to the premises that they would be carrying out a full inspection and submitted all the relevant documentation.
- d) That the alcohol shelving extended to nearly two thirds of the shop.
- e) That he found multiple products that had the duty stamp removed, or had

been interfered with; some of the labels had been over stamped. The items were never intended for UK supply.

- f) They also found another 19 packets of cigarettes, a 35cl bottle of vodka with plastic cups. Indicating that someone was either drinking on the premises or they had been supplying it.
- g) That he had to call a colleague as he couldn't cope with the amount of illicit alcohol they had found; over 100 bottles.
- h) Then in 2018 they did a further visit with himself and Martin Williams. They found 54 bottles of illicit alcohol; non duty paid alcohol, most of it Glens vodka. That it was a quick profit for the premises and was avoiding legislation in the UK.
- i) That the stock came from Mr Mahmood the previous owner of the shop next door.
- j) That there were clear gold stickers over the duty stamps, indicating that they were not duty paid.
- k) That there was no provenance on the alcohol.
- l) That there was something serious wrong in the shop, they were trying to turn a quick profit and full stock takes have never been carried out. Stock takes were part of his duty as a licensee to ensure all items were fit for sale.
- m) That the original complaint was regarding the sale of ten packs of cigarettes.
- n) That the premises provided no receipts for the items, so he assumed they had none.
- o) That he suspected there would be no receipts as they were non duty paid.
- p) That they tested the alcohol and there were no issues with contamination, so not a counterfeit copy. The issue was the illicit alcohol and it being non duty paid.
- q) That he had not done examinations to check the labels, but it was clear they had been tampered with, labels had been removed, and some didn't even have a duty stamp on.

PC Abdool Rohomon, of West Midlands Police (WMP), made the following points:-

- a) That they fully supported the Trading Standards submissions.
- b) That it was not just one visit. The first visit on 1st August 2017 a substantial amount of illicit alcohol and cigarettes were found. Then again later that

year more illicit alcohol was found. There were enough problems to hold a review the first time Trading Standards visited the premises.

- c) That the premises didn't even check and take stock for the second visit.
- d) That the owner himself admitted he needed to earn £2000 a month to pay his mortgage, indicating that the shop was a high turnover premises.
- e) That non-duty paid items were a serious problem. It's a smuggling operation, usually by organised criminal groups who orchestrate the crime for the sheer volume of money they make from it.
- f) That reports from HMRC in 2016 estimated that illegal trade cost the treasury 2.7 billion every year, which was a substantial amount of money.
- g) That was the sort of money organised crime groups were trying to tap into.
- h) That it was blight on other convenience stores trade. It was an extortionate volume of alcohol – 193 bottles.
- i) That they had not learnt any lessons from the first visit.
- j) That Mr Khakh's statement on page 25 of the evidence bundle refers to the purchase of the goods from a previous owner for £2500 cash. There were no receipts or anything, which meant little weight, could be put on it. He had put the blame on Mr Mahmood, the previous owner.
- k) That paying in cash £2500 with no receipts was the same as buying from the back of a van.
- l) That it was a "mere smoke screen" after he had been caught twice in over a year with substantial amounts of alcohol.
- m) That the amount of alcohol seized at the first inspection could have resulted in a review easily.
- n) That the section 182 guidance was clear in paragraph 11.27 that serious offences that can be committed by licensed premises included, gangs, guns, paedophiles, and also illicit supply of counterfeit goods; tobacco and alcohol. That how serious it was.
- o) The guidance stated that even on the first offence they should consider revocation.
- p) That the explanation of illicit alcohol was unsatisfactory.
- q) That they were asking for revocation as a strong and robust action against the licensed premises.

Mr Potts, on behalf of the premises license holder (PLH), made the following points:

- a) That they had submitted a statement prior to the hearing outlining their case. They had no receipts and there was no way round that.
- b) That it was a genuine transaction that they bitterly regretted entering into, but felt they were simply helping a neighbour out.
- c) That there was a mistake in the statement on page 1, he said the date of the first visit was 2012, but actually it was 2016.
- d) That there were three visits and illicit stock was there. A large percentage of it had labels on it that were questionable, and they were not questioning that.
- e) That his client had removed stock on one occasion but must have left some.
- f) That Mr Khakh had been the trader and licence holder for a number of years and had never adversely come to the notice of anyone.
- g) That trading standards had explained it was a large shop with CCTV in place.
- h) Mr Khakh had assisted the police on a number of occasions.
- i) That he had traded to satisfaction, but had let it slip on one occasion.
- j) That WMP were asking for revocation but that was catastrophic, he was not being drip fed by men in white vans it was simply one transaction.
- k) That the second lot of stock that was found was the stock left from the first visit that he purchased from Mr Mahmood.
- l) That he merely paid cash and did not get a receipt.
- m) That they were making about 75% alcohol and cigarette sales. Aldi opposite was taking most of the grocery market.
- n) That his client had put his whole life savings into the business and could not even go on holiday with his children.
- o) That there was lots of drug dealing around the shop, which Mr Khakh reported.
- p) That the small bottle of vodka was seen outside the premises, he collected it and stored it behind the counter in order to discard of it.
- q) That his client never allowed drinking outside the premises and would tell people to move on if they were found to be drinking outside.

In response to Members questions, Mr Khaki made the following points:

- a) That he had no receipts and that all the stock he purchased was UK Duty stamped from what he could see.
- b) That he never purchased anymore after the first time, instead he used the cash and carry.
- c) That the gin was more than ten years old and was a bad seller, less than 30% so no duty stamp was needed.
- d) That the cigarettes were just left over and he didn't sell many.
- e) They gave him new cigarettes and told him to change over "slowly".
- f) That he had paid for all the stock.
- g) That the Brandy was old stock so had no stamp.
- h) That he checked the stock every day.
- i) That the stock was checked with a light and all stock was glowing.
- j) He checked the UK Duty free stamps and it all looked fine.
- k) Those Muslim customers always bought cups with their drinks as they didn't like to take the alcohol home to drink.

At this stage PC Rohomon requested to ask a few questions through the Chairman. Namely;

- 1. When did Mr Mahmood close the shop and sell the alcohol to Mr Khakh?
- 2. The date and the year?
- 3. Why the vodka found outside the premises was not just put straight into the bin?

Mr Khakh responded;

- 1. That it was some time in 2016.
- 2. He had left it behind the counter in order to put it in the bin the next day.

At this stage both parties were invited to make closing submissions. Mr Potts on behalf of the premises made the following points:-

- That although they were questionable, no detailed examination of the bottles took place.
- That they would ask Members to accept that on cash transaction took place that was foolish.
- That it would be blight on his business.

- That there was no issue of the products being illicitly manufactured.
- That his client accepted the fact the products should not have been there.
- That according to the section 182 guidance the Members should take into consideration any financial impact that could take place from the decision.
- That suspension for a weekend would be more proportionate and would deter him from doing it again.
- That if Members were minded to go beyond “taking no action”, any suspension be short and sharp, if they felt that was needed.
- That he would invite the Committee to take no action at all.
- That his client had CCTV in place and had no other issues of running the shop, apart from the one incident.
- That there was no reason to remove him as DPS.
- That the Committee should take on his client’s demeanour and character.

At this stage, PC Abdool Rohomon summarised:-

- That it was a huge quantity of alcohol and cigarettes that was seized.
- That PC Rohomon was an expert in his field and so was the Trading Standards Officer. Therefore, they would know that the products were not duty paid.
- That the shop was making a lot of money some 10-12k and lots of the products seized were popular brands such as; Glen’s Vodka. No receipts to show volume of sales.
- The second visit again more products seized and no receipts, yet the premises were saying it was the same products.
- That Mr Potts was right, there was no point removing Mr Khakh as DPS as he was already the PLH and therefore it would make no difference.
- That WMP would not recommend taking no action.
- That a weekend suspension would not act as a deterrent.
- That in summary, WMP were saying revocation should be seriously considered.

In summing up, Mr Elson, of Trading Standards made the following points:-

- That he had a few points in relation to the balance of stock left in the

premises. Firstly, that they spent nearly 2.5 hours at the premises on the first visit and could not fit anymore alcohol in the vehicle. However, there was nothing left on the shelves. They did the best they could, but alcohol could have been hidden elsewhere such as; upstairs.

- That the alcohol was extremely easy to recognise as non-duty paid, and this was explained to Mr Khakh on the first visit.
- That should you have no receipts for products, PLH's should begin a process of establishing where the products came from. It was a big problem.
- That his "housekeeping regime was shockingly bad"
- That revocation was up to the Members, but if they were minded to suspend it would need to be longer than a weekend. All the alcohol would need to be checked against all invoices and that would take longer than a weekend.
- That he understood the financial impact upon the licensee, and he was not here to destroy the PLH's income.
- That he had no information from Inland Revenue to say the products were exempt due to their age.

At 1054, the meeting was adjourned. All parties with the exception of Members, the Committee Lawyer and Committee Manager left the meeting.

At 1120 the meeting was reconvened and all parties were invited back into the meeting room. The decision of the Licensing Sub Committee was announced as follows:-

4/220119

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Guryev Khaki in respect of **Drinks R Us, 3 Little Bromwich Road, Beardsley Green, Birmingham, B9 5JU** upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that the licence be revoked, in order to promote the prevention of crime and disorder objective in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns by Trading Standards and West Midlands Police in relation to the sale or storage of smuggled tobacco and alcohol found on the premises on two separate occasions.

Members were concerned to note the licensee did not learn his lesson from the Trading Standard's first visit to the premises in respect of the illicit alcohol found, and were secondly, sceptical of the licensee's account of how he purchased the illicit alcohol in question.

The number of issues identified by both Responsible Authorities regarding the lack of 'housekeeping' by the licensee in respect of invoices and or receipts to prove the age and origin of the illicit alcohol stock, carrying out due diligence checks, or even considering removing the balance of illicit alcohol left behind from the Trading Standards first inspection was disconcerting.

Further, the explanation offered by the licensee for the undocumented transaction in connection with the illicit alcohol found, including small bottles of vodka with plastic cups located behind the counter was doubtful.

The Sub Committee opined the undocumented transaction undertaken by the Licensee seriously undermined the prevention of crime licensing objective, particularly given the quantity and quality of non-duty paid alcohol found on the off-chance of a Trading Standards Officer receiving intelligence about the licensed premises selling illegal cigarettes.

Members considered whether a suspension would be more appropriate on the basis the licensee is of a long standing, blemish free career as asserted by the legal representative but found the licensee to be wanting.

The Sub- Committee therefore gave weight to the secretary of states, section 182 Guidance at paragraphs 11.27 and 11.28 on reviews arising in connection with crime and determined revocation would be appropriate to deter such criminal activity from occurring again.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, or remove the Designated Premises Supervisor, but was not satisfied given the evidence submitted that the licensing objectives would be properly promoted following any such determination.

The Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the application for review, the written representations received and the submissions made at the hearing by the applicant and the premises licence holder and their legal adviser 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 appeal is disposed of.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – YUM YUM PIZZA,
2266 COVENTRY ROAD, SHELDON, BIRMINGHAM, B26 3JR**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting.

On behalf of the Premises

Mahrukh Ali – Applicant

Those making representations

Martin Key – Environmental Health

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Following introductions by the Chairman, Bhapinder Nandhra, Licensing Section, made introductory comments relating to the report.

Mr Ali made his case before the Licensing Sub Committee with the following points:-

- a) That he had been in discussions with Environmental Health and the issue was the hours until 5am.
- b) That he had seen the representations and the conditions from the Environmental health officer.
- c) That the premises were facing a busy highway with a parking bay in front that was already a noisy area.
- d) That the parking bay was already used by the public until 5am.
- e) That he wanted to work with Martin Key.
- f) That in addressing the condition at C3 he would carry out inspections of all the outside area regularly to ensure no one gathers outside causing nuisance.
- g) That conditions C2-4 were in relation to the extraction system which was mainly for fish and chips, the other equipment removed hot air from the premises. He had discussed it with Martin and had already stopped using the system close to the flats.
- h) The second extraction was away from the flat, but he would replace it with another one.

- i) That no one would be allowed to eat inside the premises from 11pm every night.
- j) That the parking bay out the front would be for customers and they would instruct a taxi company from Solihull, and for the drivers to be quiet when entering and leaving the area, and switch the engine off whilst waiting for customers.
- k) That there was a market for food in the early hours of the morning with the airport nearby and with it being close to the new HS2 area.
- l) That there was a KFC on the premises before who had a 1am licence.
- m) That they were busiest between 8pm-10pm currently.
- n) That they had a small area for customers to wait.
- o) They sold pizza, burgers and baps.
- p) Those deliveries would stop at 11pm.
- q) That there was a Subway a few doors down.
- r) There was a pet shop next door to them.
- s) That he owned the flat upstairs.
- t) That the fridge and extractors should not cause a problem for local residents.
- u) That they would have a notice put up asking people to leave quietly and respect local residents.
- v) That they already had CCTV installed.
- w) That they had not given staff training yet, but it would be happened.
- x) That the parking bay would be suitable for 2 parked cars.
- y) That the council bin was emptied weekly with no issues.
- z) The customer bins would be emptied daily.

Mr Martin Key, on behalf of Environmental Health, made the following points:-

- a) That the 5am terminal hours were the biggest concern. The rear access backed onto more residential areas.
- b) That although the premises were situated on a main road most licensed premises terminal hour was 12:00pm/1:00am. Nothing went beyond 1am so 5am was not in keeping with the local area.

- c) That due to there being no other late night refreshment in the local area, they were concerned that this premises being granted would create activity between midnight and 5am.
- d) That the premises said they would not continue with deliveries beyond 11pm, however, what's to stop them using an "app"?
- e) That the premises had no noise insulation to stop the degree of noise between the premises and the residents.
- f) The extraction ventilation was a big concern. None of them were compliant and faced residential properties. The condensers cut in and out throughout the night.
- g) That there were no complaints currently.
- h) That in relation to the extraction ventilation, should the application be granted they would seek a full design specification of noise and odour, as the existing ones would not be acceptable.
- i) That he had submitted some conditions if the Committee were minded to grant, however, principally he did not think his concerns could be met, and therefore was seeking a refusal.
- j) That using a delivery "app" would be a significant business opportunity for a premises open until 5am.
- k) That systems would not be accepted for any application, the ventilation systems were poor, and badly designed, not attached properly and some attached horizontally. That if they were replaced that would mitigate some concerns, but there would still be issues with noise.

Mr Ali commented that he had proposed to apply for a 5am licence, but it seems that Mr Keys would not accept anything beyond 1am.

Mr Keys responded that the 5am licence was not in keeping with the area and therefore, would not be suitable to go beyond 1am.

Mr Ali advised that he would reconsider the time, but 1am was unreasonable, he would consider 3am instead. He stated that Indian Kitchen was open until 3am, and was a very popular establishment, so in comparison he felt 3am should be granted.

The Committee Lawyer advised that the information submitted by Mr Ali was new information and the Committee would need to seek submissions from Mr Keys.

Mr Keys advised that he was not aware of the premises and they were not on the map, so therefore not in the local vicinity.

At 1158, the meeting was adjourned. All parties with the exception of Members, the Committee Lawyer and Committee Manager left the meeting.

At 1219 the meeting was reconvened and all parties were invited back into the meeting room. The decision of the Licensing Sub Committee was announced as follows:-

5/220119 **RESOLVED:-**

That the application by Yum Yum Pizza, 2266 Coventry Road, Sheldon, Birmingham, B26 3JR **BE GRANTED SUBJECT TO THE CONDITIONS SUBMITTED BY THE ENVIRONMENTAL HEALTH OFFICER** to promote the prevention of public nuisance objective in the Act including the:

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| a. | Modification of hours – Late night refreshment | The hours for the provision of late night refreshment shall apply as follows: Monday to Sunday: 11pm – 1am |
| b. | Opening Hours | The premises to remain open to the public as follows: Monday to Sunday: 11am – 1am |

The Sub-Committee's reasons for imposing these agreed conditions are due to the submissions made by Environmental Health, and the applicant regarding the history and location of the proposed operation and likelihood of noise nuisance occurring at the premises.

Members noted the applicant was currently trading without complaint, and wished to extend the hours for the supply of late night refreshment until 5am due to the busy nature of the A45 road which is en route to the NEC, Birmingham airport and the proposed HS2 line. The applicant had no intention of operating until 5am for now but in the near future.

The applicant advised he lived in a flat above the shop and that the other flats all faced away from his shop frontage. Further, there was a long customer parking bay for cars whereby 2 vehicles could be parked outside his premises. In view of his business model and that of his neighbouring businesses closing times, the applicant did not think his premises would cause local residents any disturbance particularly with the planned replacement of the extraction fans on his shop premises.

The applicant also addressed the conditions put forward in the responsible authority's written submission, and how he would comply with them and monitor regularly, customers eating outside or refusing to leave the premises as well as placing another waste bin outside his premises to be emptied every day.

The sub committee noted Environmental Health's concerns centred on the closing time of 5am and how the premises would become an attraction point for nuisance and disturbance for local residents. In the opinion of the Environmental Health officer, there was a big difference between the closing times of 1am and 5am in that the closure time of 5am is not appropriate in a residential area. There were other licensed premises, nearby that were operating until between the hours of 11pm and 1pm. The responsible authority envisaged some issues could be mitigated by way of conditions in addition to the premises not opening beyond 1am.

The Sub-Committee carefully considered the agreed conditions and the likely impact of the application and determined there would be no significant public nuisance arising from the proposed operation of the premises.

The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the information in the application, the written representations received and the submissions made at the hearing by the applicant and the responsible authority.

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.

OTHER URGENT BUSINESS

6/220119

There was no urgent business.
