

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB- COMMITTEE C 08 FEBRUARY 2017 |
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**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE C HELD
ON WEDNESDAY 08 FEBRUARY 2017
AT 0930 HOURS IN COMMITTEE ROOM 1,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Alex Buchanan in the Chair;

Councillors Barbara Dring and Neil Eustace

ALSO PRESENT:

David Kennedy – Licensing Section
Shaid Yasser (Moseley Wines) – Licensing Section
Joanne Swampillai – Legal Services
Tayyibah Daud – Committee Manager

NOTICE OF RECORDING

01/080217 The Chairman advised the meeting that members of the press/public may record and take photographs except where there are confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

02/080217 Apologies were submitted on behalf of Councillor Leddy. It was noted that Councillor Dring was the nominated member.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW MOSELEY WINES, 44
ST MARYS ROW, BRIMINGHAM, B13 8JG**

The following persons attended the meeting:

On behalf those making representations

Paul Ellson – Trading Standards Enforcement Officer (for and on behalf of Donna Bensley Chief Inspector of Weights and Measures)

Abdool Rohomon – West Midlands Police

Damien Baxter – West Midlands Police (Observing)

Teresa Wilding – Licensing Enforcement Officer

Kyle Stott – Public Health Officer

Nicole Pugh – Public Health (Observing)

On behalf of the Premises Licence Holder

Patrick Burke – Solicitor on behalf of Licence Holder

Akhtar Zaman – Father of Licence Holder

The following reports of the Acting Director of Regulation and Enforcement were submitted:-

(See Document No. 1)

Following introductions by the Chairman, Mr Kennedy, Licensing Section, made introductory comments relating to the report.

Officer Ellson in presenting the case for Trading Standards and in response to questions from Members, made the following points:

1. On 24th August 2016 an inspection was undertaken by West Midlands Police, Birmingham Licensing Enforcement and Trading Standards.
2. The Licence holder, Mr Zaman and the Licence Holders father were present at the premises.
3. Officer Ellson informed the Licence Holder there was reasonable ground to suspect that there was illicit/non-duty paid alcohol at the premises.
4. Illicit alcohol falls into two distinct categories: where alcohol is completely counterfeit or where the alcohol inside the bottle is correct but there are counterfeit labels on the bottle, in order to avoid paying tax.
5. The shop is very small. A thorough search was conducted on the premises.
6. During the inspection, 6 bottles of High Commissioner Whisky and 7 bottles of Glen's vodka were found; all of these bottles had poor quality labels, indicating they were illicit/non-duty products.
7. There was illicit alcohol found behind the counter and in boxes under the counter, showing a clear intention to hide the products.
8. Clearly items were being moved from under the counter to the back of the counter to be sold to the public.
9. Even though 23 bottles sound like a smaller quantity, in comparison to the size of the premises it equates to a considerable amount.

10. The illicit bottles stored at the premises have a specific code, which can date back to when the alcohol was manufactured informing the consumer of the week and year it was manufactured.
11. The dates on the bottles of alcohol (2014/2015) predate since Mr Zaman was granted the premises licence.
12. A sample of the seized items was sent to Loch Lomond Group, it was confirmed that all the High Commissioner Whisky and the Glen's Vodka has counterfeit rear labels applied, and incorporated a fake UK duty stamp but there were genuine products inside.
13. The only way these items can be supplied is through illegal methods. This is all done by cash. This is a clear issue of tax avoidance scheme, which is undertaken by organised crime gangs.
14. The traceability element is paramount as it allows consumers to know where the product has come from. If something goes wrong with a food and drink product, then the traceability element is important, as it allows us to know where the product has come. However, in this case there is no way of tracing the products back.
15. An interview was conducted with the Licence Holder by Officer Ellson after the inspection. Mr Zaman stated he found products in his shop when he took over the premises. However, no explanation was given as to how long the products had been there. As a Licence Holder, Mr Zaman had the responsibility to undertake steps to check the authenticity of the products he intended to sell.
16. Mr Zaman's actions have clearly breached the Trade Marks Act 1994, the Consumer Protection from Unfair Trading Regulations as well as Food Safety Legislation.
17. Mr Zaman is a relatively new owner of the premises; however, it is vital to note that Mr Zaman also has another premises, Woodbridge News, which after inspection also revealed to have illicit alcohol.
18. Although none of the products ceased, were injurious to health, it is important to note that the Licence Holder, had shown a complete disregard by purchasing them illegally.

Mr Kennedy informed Members the Premises Licence was granted in June 2016. The Licence Holder, Mr Zaman, has another licensed premise called Woodbridge News which was transferred to him on 21st October 2015.

19. Having a premises licence is privilege and not a right. The Licensee was made aware of the four licensing objectives and has clearly breached these in the aim of increasing sales and thus shown complete disregard to the objectives.

PC Rohomon in presenting the case for West Midlands Police and in response to questions from Members, made the following points:

1. The seriousness of the outcome of the inspection is vital as there is clear lack of evidence to demonstrate where the bottles have come from.
2. The problems organised crime groups cause with illicit alcohol and tax invasion is large.
3. Any business which operates should be able to provide receipts of the goods retailed at their premises. These premises have not produced any receipts.
4. Even if the illicit alcohol was at the premises before it was taken over, there must be some written information to prove where the goods had come from.
5. It does not matter to the quantity of the products found; it is the issue of illicit products being available at the premises to be brought by the public.
6. The degree of organisation is visible as the products have been divided between the two premises that are owned by Mr Zaman.
7. Section 182 of the guidance issued under the Licensing Act 2003 states crimes such as unlawful pornography are deemed the same level of seriousness as the sale or storage of smuggled alcohol.
8. In addition, guidance 11.28 furthers strengthens this as after a review, if it determined that the crime prevention objective is being undermined, even in the first instance, revocation should be seriously considered.
9. Only course of action is to revoke. There is no evidence of what stock was in that shop when he brought it. These were brought with full knowledge of the Licence Holder, they are popular products.

Officer Wilding in presenting the case for Licensing Enforcement and in response to questions from Members, made the following points:

1. On 18th August 2016 a routine compliance inspection in regards to the conditions of the premises was undertaken by licensing enforcement. Mr Zaman was not present the father was.
2. It became apparent that none of the conditions of the licence had been adhered to such as: no training records could be produced; no refusal logs, no CCTV systems had been installed and no age challenge policies were in place.

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3. When visiting the premises on 24th August 2016 it was still clear that still none of the conditions were being adhered to and on this occasion found illicit products.
4. It is clear that Mr Zaman has breached Section 136 of the Licensing Act 2003, by not acting in compliance with the conditions of the licence.
5. Section 144 of the Licensing Act and in particular the guidance under Section 182 specifically draws attention to storage and sale of smuggled alcohol. Clearly the Act is intended to prevent crime and disorder.
6. The sale of illicit alcohol affects society as a whole and is not a victimless crime. Public safety is at risk as traders are not aware what they are selling and this can cause a huge loss to the UK revenue.
7. Mr Zaman has actively undermined at least two of the licensing objectives: prevention of crime and disorder as well as public safety and revocation of this licence is the only best suitable outcome.

Officer Stott, in presenting the case for Public Health and in response to questions from Members, made the following points:

1. Illicit alcohol being found at the premises has severe ramifications on the licensing objectives and cannot be tolerated.
2. Selling of illicit products seriously undermines the prevention of crime and disorder objective. As the illicit trade is attracted to organised criminal groups and other criminal activities such as drug trafficking.
3. The high profit margins associated with illicit trade are used to fund other criminal activities a fact which is not widely understood by the British public.
4. The proceeds from organised crime groups can find their way into other activities such as cyber-crime, drugs and human trafficking.
5. In regards to the public safety condition, commonly used substitutes for alcohol include methanol and isopropanol. Consuming alcohol products containing these chemicals can cause kidney or liver problems and can potentially lead to death. Fortunately the content in the bottles was not fake; however, the Licence Holder was unsure of the contents and thus supplying something which could have been injurious to the public.
6. In regards to the protection of children from harm, it cannot be ignored that counterfeit alcohol is often linked to organised crime groups. The proceeds of organised crime groups can be linked to other illegal activities which include child sexual exploitation and human trafficking.
7. In Birmingham, circa 20,000 children are affected by parental alcohol problems.

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Mr Kennedy informed the Committee that the applicant volunteered the conditions himself on the subsequent application for a grant of a Premises Licence. The application was received by the Licensing Authority on 28th April 2016 and was granted on 15th June 2016.

Mr Burke, in presenting the case on behalf of the Licence Holder and in response to questions from Members, made the following points:

1. Moseley Wines had been previously owned by Ms Fatima, who is the aunt of the current Licence Holder.
2. The premises were taken over as empty, apart from the illicit products.
3. It was a genuine mistake on behalf of the Licence Holder, as he should have checked the validity of the products.
4. Ms Fatima had been the Licence Holder at the other premises, Woodbridge News, since 2011 and nothing illicit had been found in any previous police inspections.
5. The Licence Holder was unable to come to the meeting due to an injury to his foot.
6. The previous owner surrendered the licence and the premises had not been trading when they took it over. On taking it over, they found 3 boxes of wine at the premises which they threw in the bin and kept the other 2 boxes of alcohol products.
7. Members asked if a record of purchased goods was given to the Licence Holder when he took over the premises. It was stated Ms Fatima visits the cash and carry everyday as the premises are small and stock is unable to be stored in large amounts.
8. Members were concerned that the Licence Holder, who is also the DPS of the premises, does not put any importance on the conditions of the licence.
9. It was also noted that if stock is bought daily, why should there be illicit products still present at the premises 3 months later.
10. Members observed that if the shop is so small, one would expect products which are three months old to have been cleared.

In summing up, Mr Stott stated it should be disregarded as to how long the products have been at the premises or how they have been acquired. The clear fact is that the Licence Holder has engaged in illegal activity and has completely ignored the licensing objectives. Counterfeit alcohol is linked to organised crime and any action that supports organised crime cannot be tolerated. The Licence Holder was selling products that he did not know were safe to the public thus his licence should be revoked.

In summing up, Officer Wilding stated that nothing was heard to alter the view that the premises are undermining the licensing objectives and that the licence ought to be revoked.

In summing up, PC Rohomon stated that the old licence was surrendered in 2011. Meaning, the premises has been empty for over five years; this predates the dates on the illicit alcohol found (2014/2015). It was not a genuine mistake but a deliberate action by the Licence Holder to keep these items at the premises. The licence should be revoked.

In summing up, Officer Ellson the applicant for the review, stated the actions of the Licence Holder were clear, he intended to sell the products to the public and not pay duty on the items. Quoting Edmund Burke: 'Nobody made a greater mistake than he who did nothing because he could do only a little'. The Licence Holder did nothing to check the authenticity of the products he allegedly found. It is a privilege to sell alcohol and not a right. The products could have been injurious to the public; therefore the licence should be revoked, as the Licence Holder has failed to uphold the Licensing objectives.

Mr Burke, summing up on behalf of the Licence Holder, stated that he is only able to reiterate what he has been told by his client. The products were present when the Licence Holder acquired the premise and it was a genuine mistake that the products had not been disposed of.

At 1052 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

Mr Kennedy informed Members that the Mr Burke, on behalf of the Licence Holder wished to clarify a point in regards to the time period the premises was open. All parties were recalled into the meeting at 1117 hours. Mr Kennedy stated that in regards to the evidence by PC Rohomon, there was no licence in place at the Premises in 2011. This was incorrect, as there was in fact a subsequent licence in place at the premises which was surrendered on 25th February 2015.

At 1118 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1144 hours and the decision of the Sub-Committee was announced as follows:-

03/080217

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Omer Zaman in respect of Moseley Wines, 44 St Marys Row, Birmingham, B13 8JG upon the application of the Chief Inspector of Weights & Measures, this Sub-Committee hereby determines:

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- that the Licence be revoked and Mr Omer Zaman be removed as Designated Premises Supervisor, in order to promote the prevention of crime and disorder and public safety objectives in the Act

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by the officer representing the Chief Inspector of Weights and Measures, who told the Members of the Sub-Committee about the discovery of 23 bottles of illicit alcohol on the premises. The officer confirmed that due to the very small size of the premises, this was a considerable quantity. They had been kept either on display on the shop shelves, or in boxes underneath the counter, ready for sale to customers.

The sale of illicit alcohol was in direct contravention of the licensing objectives. To have had such a large quantity of illicit alcohol in a very small off-licence undermined the prevention of crime and disorder objective. The officer representing the Chief Inspector of Weights and Measures confirmed that the only possible supply route of such products involved the use of illegal methods.

In addition there were general safety concerns about the consumption of illicit products by consumers (although in this instance the bottles were tested and found to contain the genuine product). The safety element had been circumvented by the Premises Licence Holder evading UK duty, which meant the origin of the goods was untraceable. The lack of traceability of smuggled goods was an unacceptable risk to public safety.

No satisfactory receipts had been shown regarding the purchase of the illicit stock. The Premises Licence Holder's explanation, namely that he had 'found' them, did not withstand scrutiny given the small size of the premises and accordingly the stock rotation.

West Midlands Police observed that the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 includes the sale and storage of smuggled goods on the list of 'very serious offences', and accordingly, where the crime prevention objective is being undermined, it is expected that revocation should be seriously considered. West Midlands Police recommended revocation as the correct course, in view of the fact that the illicit alcohol was discovered to be on sale to the public, and there was no evidence to prove that the Premises Licence Holder had come by the illicit alcohol via any legitimate supply.

Birmingham City Council Licensing Enforcement representative addressed the Members of the Sub-Committee on the various breaches of conditions of the Premises Licence which had been discovered during the inspections. It was noted that these conditions had in fact been volunteered by the Premises Licence Holder himself when requesting the grant of the Licence less than a year previously, yet he was failing to observe them. In response to Member questions, those representing the Premises Licence Holder could offer no explanation for the breaches, and the Premises Licence Holder himself was not in attendance to address the Sub-Committee. It was therefore the recommendation of the Licensing Enforcement Officer that

revocation was the only proper course, given the undermining of both the prevention of crime and disorder and public safety objectives.

Regarding the public safety objective, the Sub-Committee then heard from a representative of Birmingham City Council Public Health, who explained that smuggled goods are often linked to organised crime, and have been known in some cases to involve huge risks to public safety - where illicit alcohol products have been injurious to public health, then found to be untraceable. Public Health recommended that taking such risks should not be tolerated by the Sub-Committee, on the grounds of public safety.

As stated above, the Premises Licence Holder did not attend the hearing - although he was represented at the hearing by a licensing agent and also a family member. When asking questions, Members of the Sub-Committee considered that the responses given by those attending to represent the Premises Licence Holder did not inspire any confidence whatsoever that the current management at the premises understood the importance of the Licensing Objectives. This therefore warranted both the revocation of the licence and the removal of the Designated Premises Supervisor.

After hearing all the evidence, Members of the Sub-Committee determined that the sale and storage of illicit alcohol was indeed so serious that it could not be tolerated. Members were also concerned that the lack of explanation from those representing the Premises Licence Holder demonstrated that the premises would not uphold the Licensing Objectives.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, or suspend the licence for a specified period of not more than 3 months, but was not satisfied given the evidence submitted that the licensing objectives would be properly promoted following any such determination.

In view therefore of the undermining of the crime and disorder objective, and also the public safety objective, Members of the Sub-Committee felt that revocation and the removal of the Designated Premises Supervisor was the only appropriate course of action.

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 application for review, the written representations received and the submissions made at the hearing by the Chief Inspector of Weights & Measures, West Midlands Police, Birmingham City Council Licensing Enforcement, Birmingham City Council Public Health, and the Premises Licence Holder's representatives.

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.

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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 – REVIEW WOODBRIDGE NEWS, 38 WOODBRIDGE ROAD, MOSELEY, BIRMINGHAM, B13 8EJ

The following reports of the Director of Regulation and Enforcement were submitted:-

(See Document No. 2)

The following persons attended the meeting:

On behalf those making representations

Paul Ellson – Trading Standards Enforcement Officer (for and on behalf of Donna Bensley Chief Inspector of Weights and Measures)

PC Abdool Rohomon – West Midlands Police

Damien Baxter – West Midlands Police (Observing)

Teresa Wilding – Licensing Enforcement Officer

Kyle Stott – Public Health Officer

Nicole Pugh – Public Health (Observing)

On behalf of the Premises Licence Holder

Patrick Burke – Solicitor on behalf of Licence Holder

Akhtar Zaman – Father of Licence Holder

Following introductions by the Chairman, Mr Kennedy, Licensing Section, made introductory comments relating to the report.

Officer Ellson in presenting the case for Trading Standards and in response to questions from Members, made the following points:

1. After inspecting the premises, Moseley Wines, Trading Standards accompanied by the police and a Licensing Enforcement officer visited the premises Woodbridge News on 24th August 2016, which is also owned by Mr Zaman.

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2. The Licence Holder was not present, an employee, Ms Fatima was informed that an inspection was taking place.
3. During the inspection, 2 bottles of High Commissioner Whisky were found on the shelf behind the counter on display.
4. Underneath the kitchen sink a box of 12 Glen's Vodka was found. Clearly showing intention to hide the products.
5. In total 14 illicit bottles of alcohol had been found, in ratio to the size of the premises this can be viewed as a considerable amount.
6. The illicit bottles stored at the premises have a specific code, which can date back to when the alcohol was manufactured informing the consumer of the week and year it was manufactured.
7. A sample of the seized items was sent to Loch Lomond Group, it was confirmed that all the High Commissioner Whisky and the Glen's Vodka has counterfeit rear labels applied, and incorporated a fake UK duty stamp but there were genuine products inside.
8. As stated, the bottles can be traced to see when they were manufactured, however, 4 bottles were dated '261/12'. Meaning the bottles had been manufactured in 2012.
9. This is seen as a particular matter of concern as; the products are still at the premises in 2016. They lack the traceability element as product of that age could have been in and out of the country as well as could have been exposed to something.
10. The only way these types of products can enter the UK is by organised gangs.
11. It is important to mention that the code number was the same as the bottles found at Moseley Wines. Clearly showing, the same bottles came from the same source/box.
12. Mr Zaman's actions have clearly breached the Trade Marks Act 1994, the Consumer Protection from Unfair Trading Regulations as well as Food Safety Legislation
13. Mr Zaman has engaged in this activity just to avoid paying UK duty tax and to make a quick profit.

As officer Stott had to leave early, he asked to present his case and sum up before PC Rohomon. This was agreed by all parties and Mr Stott presented his case.

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Officer Stott, in presenting the case for Public Health and in response to questions from Members, made the following points:

1. Regardless of how long the alcohol was on the shelf, the retailer has shown complete disregard to Public Health and the licensing objectives.
2. With reference to illicit alcohol, products like ethanol are used which can cause kidney and liver damage. It has the ability to potentially cause death.
3. Selling of counterfeit alcohol is seriously undermining the prevention of crime and disorder objective, there are broader issues linked to this act as proceeds from organised crime groups can find their way into other activities including child sexual exploitation and money laundering.
4. In regards to the protection of children from harm, this objective has specifically undermined as counterfeit alcohol is linked to organised crime groups. The proceeds of these groups can be linked to other illegal activities which include child sexual exploitation and human trafficking.
5. In Birmingham, circa 20,000 children are affected by parental alcohol problems.

In summing up, Officer Stott stated that the retailer has shown complete disregard for Public Health by putting items on sale for the general public which he did not know the provenance of and could have therefore have proven injurious to the general public. Any action that supports organised crime groups cannot be tolerated.

PC Rohomon in presenting the case for West Midlands Police and in response to questions from Members, made the following points:

1. It is accepted that the Licensing Act 2003 and Sub- Committee deals with each premises on its own merit.
2. However in this case there is a clear link between the two premises (Moseley Wines and Woodbridge News) owned by the same Licence Holder. The same incident occurred at the same time. The stock has been moved between both premises owned by Mr Zaman.
3. It is important to recognise that there is a clear family link, as the premises was first owned by the Licence Holder's aunty and then transferred to the Licence Holder. It is a clearly a family operating a business who are trading illicit alcohol at these premises.
4. The premises are slightly bigger than Moseley Wines.

5. Complete disregard shown to the licensing objectives,
6. The origin of the stock has not been declared as no invoices have been presented.
7. It is not the actions of an honest and genuine retailer to hide their stock under the kitchen sink.
8. West Midlands Police support Trading Standards and accept these are serious offences; the discovery of one illicit bottle of alcohol is more than enough to prove the Licence Holder has no regard for the licensing objectives.
9. West Midlands Police have previously received information and complaints in regards to concerns as to how the premises are run as the DPS is never present at the premises. There have also been allegations of illegal alcohol being sold at the premises.

Officer Wilding in presenting the case for Licensing Enforcement and in response to questions from Members, made the following points:

1. After carrying out an inspection on the 24th August 2016 at Moseley Wines, the Responsible Authorities were triggered to carry out an simultaneous inspection at Woodbridge News. Seen as both premises are owned by the same Licence Holder.
2. The guidance issued by the Licensing Authority is clear. Premises used for illegal activity should be dealt with strictly, and as a Licensing Authority we have a duty to promote the objectives.
3. The sale of illicit alcohol affects society as a whole and is not a victimless crime. Public safety is at risk as traders are not aware what they are selling and this can cause a huge loss to the UK revenue.
4. The Licensing Authority shouldn't be permitting anyone to trade illegally; the review application is fully supported by the Enforcement section. There is no hesitation in asking the Sub-Committee to revoke the licence.

Mr Burke, in presenting the case on behalf of the Licence Holder and in response to questions from Members, made the following points:

1. The stock found at Moseley Wines was not bought by the Licence Holder but was found.
2. Members were concerned in regards to the moving of the stock between the two premises, as the Licence Holder was not aware what was contained in the goods but was willing to move them to another outlet and put them on sale for members of the public to purchase.

3. The Licence Holders father could not provide any explanation as to why the products had been kept under the sink.
4. No accounts or evidence had been shown to illustrate where the goods were purchased from and when.
5. Mr Burke stated he is only able to tell the Committee what he has been told by his client.

In summing up, Officer Ellson reiterated that the avoidance of tax is a serious problem. The units were dispersed between two shops and it was a deliberate effort to move them to another premises. It is clear that the Licence Holder has breached the conditions of his licence. It is worrying to see products have been moved from premises and nobody knows where they have come from. The Licence Holder is not a fit and proper person to sell alcohol and the premises licence should be revoked.

Officer Stott further added that the only defence the Licence Holder has been able to come up with is the fact that he did not know where the products came from. From a Public Health perspective that is extremely concerning as he would not know what he was selling to the public.

In summing up, Mr Burke, reiterated that it was genuine mistake that the products had been kept at the premises after being found.

At 1222 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1229 hours and the decision of the Sub-Committee was announced as follows:-

04/080217 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Omer Zaman in respect of Woodbridge News, 38 Woodbridge Road, Moseley, Birmingham, B13 8EJ upon the application of the Chief Inspector of Weights & Measures, this Sub-Committee hereby determines:

- that the Licence be revoked and Mr Omer Zaman be removed as Designated Premises Supervisor, in order to promote the prevention of crime and disorder and public safety objectives in the Act

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by the Chief Inspector of Weights and Measures, who told the Members of the Sub-Committee about the discovery of 14 bottles of illicit alcohol on the premises. The Chief Inspector of Weights and Measures confirmed that

due to the small size of the premises, this was a significant quantity. Two of the bottles were found on the shelves, on sale to customers. Following a thorough search, City Council officers then found a further 12 bottles hidden underneath the kitchen sink in the premises.

The sale of illicit alcohol was in direct contravention of the licensing objectives. To have had a significant quantity of illicit alcohol in a small off-licence undermined the prevention of crime and disorder objective. The Chief Inspector of Weights and Measures confirmed that the only possible supply route of such products involved the use of illegal methods. The year of manufacture of the products had been 2012 and 2014; the illicit stock was therefore 2 years old and 4 years old.

In addition there were general safety concerns about the consumption of illicit products by consumers (although in this instance the bottles were tested and found to contain the genuine product). The safety element had been circumvented by the Premises Licence Holder evading UK duty, which meant the origin of the goods was untraceable.

The lack of traceability of smuggled goods was an unacceptable risk to public safety. The Chief Inspector of Weights and Measures also observed that there was no way of knowing where some of the stock had been since 2012 – a significant period of time for a food/ drink product.

Members of the Sub-Committee were particularly perturbed to hear that two bottles of the illicit whisky had the same code numbers as illicit stock found in the Premises Licence Holder's other shop nearby. This confirmed that stock was being moved back and forth between the two premises.

No satisfactory receipts had been shown regarding the purchase of the illicit stock. The Premises Licence Holder's explanation, namely that he had 'found them in a box', did not withstand scrutiny given the small size of the premises and accordingly the stock rotation.

West Midlands Police observed that the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003 includes the sale and storage of smuggled goods on the list of 'very serious offences', and accordingly, where the crime prevention objective is being undermined, it is expected that revocation should be seriously considered. The Premises Licence Holder's aunt had owned the premises since 2011; therefore it had been a family-run business for years, which was important in terms of the age of the products. West Midlands Police recommended revocation as the correct course, in view of the fact that the illicit alcohol was discovered to be on sale to the public, and there was no evidence to prove that the Premises Licence Holder had come by the illicit alcohol via any legitimate supply as there were no receipts.

Birmingham City Council Licensing Enforcement addressed the Members of the Sub-Committee and confirmed that the recommendation of Licensing Enforcement was that revocation was the only proper course, given the undermining of both the crime and disorder objective and the public safety objective, and that such a determination would follow 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.

Regarding the public safety objective, the Sub-Committee heard from Birmingham City Council Public Health, who explained that smuggled goods are often linked to organised crime, and have been known in some cases to involve significant risks to public safety - where illicit alcohol products have been injurious to public health, then found to be untraceable. It was an issue of particular concern that the Premises Licence Holder's explanation had been that he had 'found' the illicit stock, as this was confirmation that he had no idea from where it had come, or indeed if it was safe to consume. The Members of the Sub-Committee were told that large numbers of children in Birmingham are affected by parental alcohol problems, and the sale of cheap alcohol directly affected this. Public Health recommended that taking such risks should not be tolerated by the Sub-Committee, on the grounds of public safety.

The Premises Licence Holder did not attend the hearing - although he was represented at the hearing, and also sent a family member to represent him.

Officers confirmed that the Premises Licence Holder had not shown them any receipts to explain how he had acquired the stock of illicit alcohol. Equally, when questioned by Members of the Sub-Committee, the Premises Licence Holder's representative confirmed that the Premises Licence Holder had not provided him with any receipts either.

The Premises Licence Holder's representative stated that the explanation he had been instructed to put forward was that the Premises Licence Holder had found the illicit alcohol at his other off-licence premises in Moseley, and he had therefore not in fact bought it; he had then simply moved some of the bottles to his Woodbridge News premises. No explanation was forthcoming from the Premises Licence Holder's representative as to why such stock should then come to be found hidden under the kitchen sink.

Members of the Sub-Committee remarked that these types of irresponsible practices, by someone who held Premises Licences for two separate off-licence shops, and who had admitted moving stocks of illicit alcohol of untraceable origin between the two shop premises, caused them great concern. They also considered that the responses to questions, from those attending to represent the Premises Licence Holder, did not inspire any confidence whatsoever that the current management at the premises understood the licensing objectives. This warranted the removal of the Designated Premises Supervisor.

After hearing all the evidence, Members of the Sub-Committee determined that the sale and storage of illicit alcohol was indeed so serious that it could not be tolerated. They were also concerned that the lack of explanation from those representing the Premises Licence Holder demonstrated that the premises would not uphold the licensing objectives.

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence, or suspend the licence for a specified period of not more than 3 months, 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.

In view therefore of the undermining of the crime and disorder objective, and also the public safety objective, Members of the Sub-Committee felt that revocation and the removal of the Designated Premises Supervisor was the only appropriate course of action.

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 application for review, the written representations received and the submissions made at the hearing by the Chief Inspector of Weights & Measures, West Midlands Police, Birmingham City Council Licensing Enforcement, Birmingham City Council Public Health, and the Premises Licence Holder's representatives.

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.

OTHER URGENT BUSINESS

The Chair was of the opinion that the following item be considered a matter of urgency in order to expedite consideration thereof and instruct officers to act if necessary.

05/080217 **SECOND CITY SUITE, 100 SHERLOCK STREET, BIRMINGHAM, B5 6LT – LICENSING ACT 2003 AS AMMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 – APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERMIN STEPS**

The following documents of the Acting Director of Regulation and Enforcement were submitted:-

(See Document No. 3)

Following introductions from the Chairman, David Kennedy, Licensing Section, highlighted the information with regard to this expedited review, the interim steps that must be considered at the hearing are:

1. Modification of the conditions of the premises licence;
2. Exclusion of the sale of alcohol by retail from the scope of the licence;
3. Removal of the Designated Premises Supervisor from the licence;
4. Suspension of the licence

On behalf of the West Midlands Police:

PC Ben Reader – West Midlands Police
PC Abdool Rohomon – West Midlands Police

On behalf of the Licence Holder:

Andrew Potts – Solicitor
Harvinash Kumar Duggal - Director and DPS

PC Reader requested that in view of the fact that the events to be heard were part of a current ongoing police investigation that the meeting be conducted in private. This was accepted by Mr Potts on behalf of the respondent who accepted that this was a prima facie case of crime and disorder.

EXCLUSION OF THE PUBLIC

06/080217 **RESOLVED:-**

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

At this point the evidence for the meeting was heard in private.

The meeting resumed in public.

At 1352 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1409 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

07/080217 **RESOLVED:-**

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Dayfor Limited in respect of Second City Suite, 100 Sherlock Street, Birmingham, B5 6LT this Sub-Committee determines:

- that the licence be suspended
- AND

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- that Mr Harivanish Kumar Duggal be removed as the Designated Premises Supervisor

pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

The Sub-Committee's reasons for imposing these interim steps are due to concerns raised by West Midlands Police in relation to matters which came to light at the premises on 4th February 2017, as outlined in the Chief Officer of Police's certificate and application.

The Sub Committee determined that the causes of the serious crime and or serious disorder appeared to originate from

- patrons of the premises;
- wholly deficient security measures;
- inadequate internal management procedures at the premises

Members heard the submissions of West Midlands Police, and were concerned about the ongoing risk of crime and disorder given that the premises had failed to notify the Police of the event held on 4th February 2017. Such failure to notify was a specific breach of a Condition of the Licence.

There had been inadequate security arrangements at the premises on the night in question; indeed neither the Police nor the DPS were entirely certain what security personnel had in fact been on duty on the night.

Moreover the premises did not immediately contact the Police as soon as the serious disorder broke out, as required by a Condition on the Licence. Police were notified by numerous 999 telephone calls from other persons, and then a call from a staff member at the premises.

A further Condition of the Licence, namely to email a detailed report to Police within 12 hours of the incident, had also been breached. The brief details that had been given this morning (several days after the incident, and following some direct requests from Police) were entirely inadequate, in that they did not give an overview of what had happened, or explain what had happened in the aftermath.

The premises' legal representative confirmed that the door staff arrangements on the night had been 'lacking', and stated that it was expected that the premises would be engaging a security company in the near future. In addition, 'other candidates' were being considered to take over the role of DPS.

The Sub-Committee was also informed by the Premises Licence Holder's legal representative that a meeting had been held with Police, and suspension (as an interim step pending the full Review of the Licence) had been discussed. The premises had consented to the imposition of the interim step of suspension, were intending to take immediate steps to get all matters in order, and were expecting 'a severe financial loss' in terms of various forthcoming booked events which would not be able to go ahead.

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Having heard the premises' account, the Sub-Committee determined that it was both necessary and reasonable to impose these steps to address the immediate problems with the premises, in particular the likelihood of serious crime and or serious disorder, and to promote the prevention of crime and disorder objective in the Act.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, or exclusion of the sale of alcohol or other licensable activities. The Sub-Committee did not believe however that any of these would address the totality of issues brought to their attention by the police. The risks could only be addressed by the suspension of the Licence and removal of the DPS, pending the full Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home

Office in relation to expedited and summary licence reviews, and the submissions made by the Police at the hearing.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.
