

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 5 APRIL 2022

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 5 APRIL 2022 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mike Sharpe and Adam Higgs.

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)

1/050422 **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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/050422 **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

3/050422 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – AK SUPERMARKET,
868 WASHWOOD HEATH ROAD, BIRMINGHAM, B8 2NG**

On Behalf of the Applicant

Christine McCulloch – Licensing Enforcement Officer, BCC

Those Making Representations

Mark Swallow – WMP (West Midlands Police)

Paul Ellson – TS (Trading Standards)

Premises Licence Holder

Rob Edge – Agent, on behalf of the Premises Licence Holder (PLH)

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

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

The Chair invited the applicant to make their submission and Christine McCulloch, on behalf of LE (Licensing Enforcement) made the following statements: -

- a) On 19th January 2022 LE received information that alcohol was being supplied at the premises whilst no DPS (Designated Premises Supervisor) was attached to the licence. Upon checking the records, it was indeed the case that there was no DPS attached to the licence.
- b) As a result, on 2nd February 2022 a test purchase was carried out at the premises. A large amount of alcohol was on display, priced up for sale.
- c) A bottle of wine was sold during the test purchase.
- d) On 17th February 2022 Christine McCulloch again visited the premises and there was still no notification of DPS. She spoke with the person at the premises at the time and he contacted the licence holder who arrived at the premises within 15 minutes.
- e) When he arrived, she explained (along with WMP) what had happened and went through the conditions of licence to establish the level of compliance in the shop.

- f) Alcohol should not have been on display or for sale.
- g) The PLH had completed the personal licence course.
- h) When going through the conditions the PLH seemed to have little understanding and was not complying with any of those conditions.
- i) She even had to explained what a DPS was.
- j) The PLH was very cooperative and removed all the alcohol immediately. However, it didn't change the fact that the premises was selling alcohol without a DPS on the licence which was not in accordance with the Act.
- k) There were basic things which had not been followed such as: Challenge 25 policy, refusals log, and staff training.
- l) The gentleman behind the counter did not understand the requirements either.
- m) The PLH did get his personal licence and subsequently applied to become DPS.
- n) He had little understanding of his responsibilities.
- o) He was at the premises day to day and knew alcohol was on display.
- p) How would they be satisfied that the premises would be compliant in the future.
- q) She had no confidence that they could uphold the licensing objectives.

The Chairman then invited those making representations to make their submissions and Mark Swallow, WMP made the following points: -

- a) That they supported the representation from Licensing Enforcement.
- b) The representation came under all four Licensing Objectives.
- c) Evidence showed the premises had provided alcohol without a DPS in place.
- d) There were also breaches of 4 operating schedule conditions which were attached to the licence.
- e) 9th January 2022 MWP were made aware of a complaint that the premises were selling alcohol and single cigarettes to minors. When enquiries were made there was no DPS on the licence, this was also confirmed by the Councils Licensing Authority.
- f) A test purchase was carried out and wine was sold.

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- g) As a result, on 10th February 2022 WMP and LE visited the premises and alcohol was on sale.
- h) The PLH was contacted and attended the premises shortly after.
- i) He couldn't produce staff training records.
- j) The CCTV was only recording for 7 days, not the 31 days specified in the operating schedule.
- k) The premises licence was not on display, there was no notice asking customers to respect the neighbours/residents.
- l) The issues were pointed out to the PLH, and he removed the alcohol and covered what could not be removed. He also shut the shop for the evening.
- m) Aside from the fact there was no DPS on the licence, there was also an allegation that alcohol was being sold to children.
- n) WMP had no confidence that the PLH could promote the Licensing Objectives.
- o) He was incapable and unwilling to follow the rules and they believed he would continue to operate in this way.
- p) The licence had been surrendered and they did apply for a DPS variation, WMP objected to that application which was refused.
- q) He requested that the licence be revoked.

Paul Ellson, TS was then invited to make his submissions and made the following points: -

- a) That he supported his colleagues' submissions and had serious concerns over the licence.
- b) TS received information on 17 January 2022 that a member of the public had raised a concern about this premises. The allegation suggested that the premises were supplying alcohol and tobacco to minors. It was a common complaint they received.
- c) The complainant stated that they witnessed the same of three single cigarettes to three schoolboys and a bottle of vodka.
- d) Usually, complaints of this nature were involving cans of beer or alcopops, very rarely was it bottles of vodka.
- e) The sale of single cigarettes was illegal.
- f) It was also detrimental to the health of young people.

- g) That he was concerned that young people roaming the streets drinking vodka had public and private dangers. The area was pedestrian and next to a busy road.
- h) When officers went back to the premises on 17th February 2022 none of the conditions were being complied with (CCTV, refusals log, challenge 25).
- i) The PLH didn't appear to have any idea what was on the licence.
- j) He questioned whether they should even have a licence.
- k) The supply of alcohol and tobacco to underage persons was a fundamental exploitation to their innocence.

The Chairman invited Rob Edge on behalf of the PLH to make his case and he made the following statements: -

- a) That the PLH had given full regard for the representations made.
- b) The PLH's business was struggling during covid so he added alcohol sales to save the business. He understood it was an error in judgement.
- c) He wanted to put things right and apologised.
- d) He did want to point out that Mark Swallow said the incident regarding minors was 'alleged' and Paul Ellson said that the complainant witnessed the sale of single cigarettes and alcohol to schoolboys. The Guidance issued by the Home Office Section 192 suggested that any responsible authority could make representations with regard to any of the Licensing Objectives if they had evidence to support such representations. He suggested that it was possible that the complaint was from a rival business who had made a fictitious claim. There was no evidence to suggest the sales were made.
- e) The test purchase was involving an adult.
- f) Further, it was expected in line with the guidance that any concerns are raised with the PLH early to allow them to address it. That was not the case and Mr Hussain demonstrated full cooperation with the responsible authorities.
- g) He would have engaged more if they had given him chance.

The Chair then invited closing submissions and Paul Ellson made the following closing statements: -

- That he took on board the criticism from Mr Edge and no enforcement visit was done as colleagues in Licensing acted so quickly, they didn't visit.
- Underage sales were extremely complex and due to Covid it would have taken at least 6 weeks to organise a test purchase involving a minor.

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- He was still concerned that most complaints didn't mention Vodka, they usually involved alcopops.
- That a licence was a privilege not a right.
- It shouldn't be down to enforcement to tell retailers what they should be doing and what was on their licence.
- He recommended revocation of the licence.

Mark Swallow, WMP made the following closing statements: -

- That in relation to the allegations, it should be viewed with scepticism. There was no direct evidence.
- However, the Licensing Objectives and conditions were not being followed or supported.
- That advice was inappropriate because the situation was so bad when they visited the premises. Every operating condition was in breach when the visit took place, that went beyond advice so enforcement was the only option.
- Mr Hussain was completely unsuitable to hold a licence.
- He had a personal licence and couldn't follow the conditions.
- Even though the licence had been surrendered, they could transfer it within a 28-day period and therefore it was important it was revoked.

Christine McCulloch, LE made the following closing statements: -

- That the Section 182 guidance was followed and taken in to regard every day, however it was only guidance.
- They had to assess everything on its own merit, she made the decision that it would be better if a test purchase was made by an adult to avoid any delays.
- She hadn't taken any action on the allegation of underage sales because there was no evidence.
- When they visited the premises there was a total disregard for the Licensing Act and it was clear the PLH lacked any understanding of the requirements expected of him and his responsibilities.
- He was a newly qualified personal licence holder and therefore he should have known what was required of him.
- No conditions were complied with on the licence and there was no DPS.

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- When she met the PLH she had no confidence that he would uphold the Licensing Objectives.
- The only option was to revoke the licence.

Rob Edge on behalf of the PLH made the following closing statements: -

- The PLH regretted what had happened and apologised.
- None of the action was carried out with any malice.
- That he appreciated Christine McCulloch not mentioning the underage sales, therefore that should be disregarded as there was no evidence to support it.
- The licence had been surrendered as he understood he was not the right person to run the premises. However, he needed to sell the business and he would get a better business deal if the premises had a licence.
- It would be accepted that a condition be attached to the licence that he is not to have any part in the business.
- He thought that was the best way forward.

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;

4/050422

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Jahangir Hussain, in respect of AK SUPERMARKET, 868 WASHWOOD HEATH ROAD, BIRMINGHAM B8 2NG, upon the application of Licensing Enforcement of Birmingham City Council, this Sub-Committee hereby determines that the Licence be revoked, in order to promote the licensing objectives in the Act - principally the prevention of crime and disorder.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by Licensing Enforcement, as outlined fully in the Report. The Sub-Committee noted that there was no designated premises supervisor on the licence; a recent application in February 2022 by Mr Jahangir Hussain to vary the premises licence under s37 of the Licensing Act 2003, namely to specify himself as the designated premises supervisor, had been refused on the 28th March 2022 on the grounds that to grant the application would undermine the crime prevention objective in the Act.

The Sub-Committee was also aware that the licence holder Mr Hussain had recently surrendered the licence. Under the Licensing Act 2003 however, any

surrender of the licence would not take immediate effect; it would in fact take 28 days, during which time the licence could be reinstated, for example via a transfer.

Mr Hussain was represented by his agent in the meeting. The Report summarised the background to the incident. An officer of the Licensing Enforcement team (part of the Licensing department of the City Council) attended the meeting and told the Sub-Committee that the licence had originally been granted in November 2021.

At the time of the grant of the premises licence, Mr Hussain had told the Licensing department that he did not yet have a personal licence, but that he would apply for one and then apply for the licence to be varied, such that he would be named as the designated premises supervisor on the licence. In the meantime, the licence was issued with the mandatory condition that “no supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended”.

Following receipt of information about the shop, Licensing Enforcement looked at the licence and noted that there was no designated premises supervisor named on the licence. Licensing Enforcement therefore carried out a test purchase in February 2022 – an officer went to the shop and noted that alcohol was on display for customers to purchase. (This should not have been the case, as there was no designated premises supervisor on the licence). The officer went to the counter and bought a bottle of wine. The premises was therefore in breach of the mandatory condition requiring a designated premises supervisor in respect of the licence. Mr Hussain stated to officers that he had completed the relevant course, but had not yet been granted a personal licence.

An inspection was carried out eight days later in which the premises was found to be in breach of all other conditions on the licence, as per the details in the Report. Licensing Enforcement told the Sub-Committee that on speaking to Mr Jahangir Hussain officers had noted that he appeared to have very little understanding of the licence conditions; officers had had to explain to him what a designated premises supervisor was, and the responsibilities for that role. This was alarming given that Mr Hussain had only just completed the personal licence course. The Licensing Enforcement officer was also concerned about the breaches of other conditions, as they all related to basic aspects of safe operation – for example, a CCTV requirement.

Licensing Enforcement noted that it was Mr Hussain who had bought the alcohol stock and displayed it in the shop. He had undertaken a course and now held a personal licence, yet he “did not come across as conscientious” in the opinion of the officer; the officer remarked that she did not consider that Licensing Enforcement could work with him, as problems of this nature at the beginning of a licence holder’s operation did not inspire confidence that he would be capable of upholding the licensing objectives in future. Licensing Enforcement recommended that the correct course was revocation of the licence.

The application for review was fully endorsed by West Midlands Police. The Police made representations advising that the licence should be revoked as the

premises had demonstrated that it was not capable of upholding the licensing objectives. These views were endorsed by Trading Standards, who also attended the meeting and observed that all the conditions on the licence dealt with “basic things” which were not onerous; Trading Standards questioned whether there had been “any point in giving them a licence if they cannot meet the conditions”. Trading Standards also recommended revocation of the licence.

Mr Hussain’s agent then addressed the Sub-Committee and stated that Mr Hussain fully understood his error in failing to show due diligence, and apologised for it, and wanted to put it right. The agent observed that under paragraph 11.10 of the Guidance issued by the Home Office under s182 of the Act, it was recommended that good practice would be to give the licence holder early warning, and to advise him of the action needed to address the issues; in the event that the licence holder did not respond, the next step was to bring an application for review. The agent noted that Mr Hussain had admitted his failings, had shown full cooperation, and would have followed advice.

However, in response to this point, Trading Standards observed that it was not up to the responsible authorities to tell traders the terms of their licences. The Police agreed, remarking that the standard of operation was so poor in the case of AK Supermarket that to simply give some advice would not in fact have been the correct course. The Police considered that Mr Hussain was “completely unsuitable”, as all the conditions of the licence had been breached; he had finished the personal licence course, and should therefore have understood the licensing objectives, so it was not altogether clear how these failings had arisen. It was unacceptable to the Police that Mr Hussain very clearly did not understand the licensing objectives.

The Sub-Committee had grave concerns about the manner in which this premises had been operating, and agreed with the responsible authorities that the operation had been managed in a way that was not merely irresponsible, but also illegal. A breach of mandatory condition was very serious. The Police advised that it was a matter of trust, asking the Members whether the licensing objectives could be promoted by Mr Hussain, given that he had already abused the trust placed in him by breaching all the conditions of his licence.

The Police and Licensing Enforcement both observed that there was a second reason why revocation of the licence was the correct course – the risk that the licence could be reinstated during the 28-day window. However, Mr Hussain’s agent offered an alternative view, stating that Mr Hussain accepted that he was not the correct person to take responsibility for alcohol sales, and proposed to sell the premises, but was keen that the licence should stay in place so that it could be transferred to the new owner. The agent suggested that this proposal could be handled by the adoption of a condition requiring Mr Hussain to not play any part in alcohol sales, in order that he could transfer the licence to the new owner.

After hearing all the evidence, the Sub-Committee determined that to permit an alcohol sale in breach of the mandatory condition (requiring a designated premises supervisor in respect of the licence) was indeed so serious that it could not be tolerated, and therefore resolved to revoke the licence as recommended by

the responsible authorities. Mr Hussain's actions did not inspire any confidence whatsoever that he understood the licensing objectives.

The Sub-Committee agreed in particular with the comments made by Licensing Enforcement and Trading Standards - that the conditions on the licence covered basic aspects of safe operation, and were not in any way onerous or out of the ordinary. Accordingly, it was impossible to have any confidence that Mr Hussain was capable of upholding the licensing objectives. The Police had endorsed all the submissions made by Licensing Enforcement and Trading Standards.

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, 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 licence had only been granted in November 2021, and Mr Hussain had only very recently completed the personal licence course, yet within a short time he had come to the attention of the responsible authorities for serious breaches of his licence conditions.

The suggestion from Mr Hussain's agent, namely that the licence should stay in place in order for Mr Hussain to be able to sell the business with an extant licence in place, seemed to the Members to be inherently risky. The Sub-Committee was not prepared to take such a risk, given that all three of the responsible authorities had looked askance at Mr Hussain's management style.

A determination to revoke would follow the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation) ran the risk of sending a message that a breach of mandatory condition was not a serious matter, or that there would be no consequences for such a failure, which the Sub-Committee was not prepared to do.

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, the written representations received and the submissions made at the hearing by those representing the licence holder, Licensing Enforcement, West Midlands Police, and Trading Standards.

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 1254 hours.

