

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 4 AUGUST 2021
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 4 AUGUST 2021 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds and Mike Sharpe.

ALSO PRESENT

Bhapinder Nandhra – 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)

1/040821 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will 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.

2/040821 **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

3/040821 Apologies were submitted on behalf of Councillors Nicky Brennan, Mary Locke and Neil Eustace and the nominated substitute Members were Councillors Mike Leddy, Martin Straker-Welds and Mike Sharpe.

LICENSING ACT 2003 – REVIEW – DC MINIMARKET, 138 CHURCH ROAD, YARDLEY, BIRMINGHAM, B25 8UT.

On Behalf of the Applicant

Paul Ellson – TS (Trading Standards)
Dawn Bunsie – TS (Trading Standards)

Those Making Representations

Chris Jones – WMP (West Midlands Police)
Sharon Watts – LE (Licensing Enforcement)
Ian Howell – Gallagher JTI

Premises Licence Holder

Mohammed Sheikehpour – PLH (Premises Licence Holder).
Victoria Cartmell - Representative

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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 continued to explain the hearing procedure prior to inviting the Licensing Officer, Bhupinder Nandhra, to outline the report.

The Chair invited the applicant to make their submissions, at which stage the representative of TS, Dawn Bunsie made the following points: -

- a) On 12 March TS conducted an intelligence led operation visiting businesses suspected of selling illicit products. Officers attended the premises at 1250 hours and spoke to the shop assistant, another male in the premises at the time said he was the licence holder – it was Mr Sheikehpour.
- b) Th sniffer dogs found tobacco concealed on the bottom shelf of the central island which had to be dismantled to gain access. The tobacco was illicit and a total of 107 packets were found – all non-duty paid.
- c) The products had non standard packaging and were suspected of being counterfeit. Samples were sent off to brand representatives and confirmed to be counterfeit.
- d) Enquiries were still on-going.

Licensing Sub-Committee C – 4 August 2021

In answer to Members questions Dawn Bunsie and Paul Ellson made the following points: -

Dawn Bunsie:-

- a) That she was unable to confirm the exact number of illicit cigarettes that were brand names of JTI. However, she would find out.

Paul Ellson:-

- a) That he was present on the day of the visit and the tobacco was extremely well concealed. He had never come across that before – the display unit had to be dismantled.
- b) There was no suspect tobacco on the counter, it was all concealed.
- c) It would have taken them at least 30 minutes to pack all the products inside and TS would never have found it if it wasn't for the sniffer dogs.
- d) There were at least 100 packets of tobacco on display. Only the counterfeit products were concealed.
- e) The products had non-standard packaging in different languages – some English and some foreign.
- f) The gentleman behind the counter didn't look particularly shocked when they discovered the illicit products.
- g) TS received a complaint about illicit products at the premises, the owners had recently changed and so he went and gave them advice and documents detailing what they should and should not be selling.
- h) TS also sent them advice by post in February.
- i) He had all the information.
- j) Counterfeit tobacco meant that the products were not supplied for EU countries and should not be sold in the UK. Its non-duty paid products.
- k) There haven't been any tests on the products to assess the chemicals.

The Chairman then invited the representative of WMP, Chris Jones to make his case, at which point he made the following statements: -

- a) That TS had touched upon what he wanted to say.
- b) The big thing was that the operation was intelligence led – they were supplying illicit products and that information was supplied to TS by a member of the public.
- c) It was strange that all the illicit products were concealed, perhaps they were about to restock from the hidden products.

- d) It suggested they had been selling illicit products which were non-duty paid.
- e) It gave them an unfair advantage over the retail world and had implications for legitimate traders as they couldn't compete with the prices and also may lose traders.
- f) The customers thought they were getting legitimate products and had no idea what was in them. The products didn't meet British standards.
- g) It wasn't possible to know what was in the products – whether they were harmful or not.
- h) There was a total disregard for public safety.
- i) The premises had received previous warnings and advice and had still taken no notice or regard for the licensing objectives of public safety and prevention of crime and disorder.
- j) The trade of illicit tobacco was often run by organised crime groups, draining resources from the welfare system and government.
- k) It was funded by organised criminal activity, putting peoples lives at risk and creating further strain on the NHS.
- l) He had no confidence in the management of the premises and had no belief that they would uphold the licensing objectives.

In answer to Members questions Chris Jones made the following points: -

- a) That they had also found illicit products at another premises where the products were concealed in walls and ceilings. So, it wasn't just this premises.

The Chair invited Licensing Enforcement to make their case and Sharon Watts made the following points: -

- a) The current licence holder was also the DPS and had been since the transfer in February 2021.
- b) 15 June 2021 TS submitted the review as a result of finding illicit tobacco.
- c) Following on from that a licensing inspection was carried out. The licence holder wasn't present at the time, but one of the employees phoned him and he did attend. She went through the conditions with him and a number of them were not being met.
- d) The staff training was not being maintained or recorded, Thee CCTV conditions were not met, as he was unable to produce any recordings for June 2021. The refusals book had nothing to how for 3 months and there was no records of the emergency training procedures.

Licensing Sub-Committee C – 4 August 2021

- e) She informed him of the breaches and told him she would return to ensure compliance.
- f) She revisited the premises yesterday and although the CCTV was operational due to issues with the CCTV and the engineer being called out he was unable to show a 31 day time span due to the problems.
- g) She requested the training records to which he supplied her with a template document, but no actual training record was produced. He stated he only employed one member of staff, but no record was produced for that staff member.
- h) She then requested the emergency procedures and he supplied her with a document on his mobile phone, however nothing was signed to show the staff had even received it. He stated his solicitor had these records.
- i) Under Section 136 he was clearly not complying with the conditions of the licence. He had also not been upholding the licensing objectives of crime and disorder and public safety, which is a serious matter.

In answer to Members questions Sharon Watts made the following points: -

- a) When she spoke to the licence holder on the first visit he said he wasn't aware of the conditions in regard to staff training. However, he did hold a personal licence and therefore should be aware of those things.
- b) That they usually visited premises applying for new licences or varying an existing licence, or as the result of a complaint. They didn't carry out random inspections.
- c) They usually visited premises every day.
- d) She had a great deal of experience under her belt.
- e) That there was a great deal of non compliance with the conditions attached to the licence. The PLH said he didn't understand or realise, but he is a personal licence holder so he would have been aware of what was expected and required in order to comply.
- f) He did not give the impression that he understood what the conditions were.

Ian Howell was then invited to make his submissions and made the following points: -

- a) That WMP and TS had already picked up on the sale of illicit tobacco being a problem. However, concealment wasn't uncommon and they were often opened using remote controls on the counter top. They might appear difficult to gain to access yet were usually designed for easy access.
- b) They did 22 store visits last year in the area and 9 were selling illicit tobacco to test purchasers.

- c) They hoped today's decision acted as a deterrent to those stores and showed that the Council supported legitimate businesses.

In answer to a question from one of the Members Ian Howell responded: -

- a) That he was sure the exact amount of products found which were JTI.

The Chair then invited the PLH/representative to make their case, at which stage Victoria Cartmell made the following statements: -

- a) That she was a prosecutor and illicit tobacco was her 'bread and butter'.
- b) She wouldn't play down the issue.
- c) The fact that the concealment had to be taken apart meant it wasn't sophisticated.
- d) That the PLH went into business with Abdullah (the man in the shop who was present at the time of the visit back in March).
- e) The premises was taken over by the licence holder in February and he went into business with Abdullah because he didn't have a personal licence at the time. Her client was not present at the time of the visit in March.
- f) Her client was shocked about the tobacco because he had no knowledge about it. This led to a fall out between Abdullah and her client.
- g) These activities were carried out whilst he was the licence holder and responsible and subsequently Abdullah is no longer part of the business.
- h) Upon notification of the review the PLH contacted her and then she caught Covid so she couldn't send him the documents. Licensing attended the premises and raised concerns regarding training records. He indicated that he had trained staff verbally and didn't know he needed signed documents.
- i) The CCTV following that visit was immediately rectified – they don't have 31 days of recording because it hasn't recorded for long enough after having a new hard drive.
- j) She emailed him the training documents on 6 July and he confirmed he had done the training. She had seen the signed training documents. He had them at home and not in the file.
- k) She had made it clear to her client that documents needed to be provided immediately.
- l) The documents he showed on his phone were for emergency procedures. He didn't realise there was somewhere to sign them.

Licensing Sub-Committee C – 4 August 2021

- m) The documents were in English, but the staff Members wasn't English and therefore she went through it with him in his language.
- n) Her client was a man of good character with no convictions – he had never been in trouble prior to this.
- o) He understood that these issues would lead to prosecution or even the loss of his licence.
- p) He told her he didn't sell the cigarettes but knows as the licence holder he is ultimately responsible.
- q) The issues had been sorted and they invited the responsible authorities to carry out inspections to check compliance.
- r) He wanted to work in partnership with the responsible authorities and appreciated the seriousness of the issues.
- s) She asked the Committee to give him a chance.

Mohammed Sheikehpour made the following points: -

- a) The man couldn't get a licence so he got the licence and they worked together. He was the licence holder but the other man owned the shop.
- b) When they found the tobacco he asked his partner what it was as he hadn't been told about it. He also asked him why he never told him. The response was that he got them from the previous licence holder and the products were Romanian and Polish so they were sold to them.
- c) After 2 months Abdullah left the shop and he was now the manager, owner and PLH.
- d) The CCTV wiped itself and when he got it sorted, they changed the hard drive.
- e) Everything was recording but there was 3 days missing because it wasn't sorted in time.
- f) He didn't realise he had to get the training documents signed.

In answer to Members questions Mohammed Sheikehpour and Victoria Cartmell made the following points: -

Victoria Cartmell:-

- a) The warnings would have gone to the shop and he wasn't aware.
- b) He was aware of his duties, but not the importance of the records.

Mohammed Sheikehpour:-

Licensing Sub-Committee C – 4 August 2021

- c) That he was responsible for everything. He didn't touch anything from the previous owner and he thought it would be alright.
- d) That he didn't know what had happened with the previous owner and he had done all the training and checked the camera. He didn't realise he needed to sign the documents.
- e) He couldn't read much but was pretty good. He studied in his country and his English was not as good as it should be. (Victoria Confirmed that she had sent documents to him and he could read and write English.)
- f) That he could read English.
- g) That the cigarettes, usually 10 in a box, would sell for £70 - £100.
- h) The 107 packets of cigarettes would be worth roughly £170 - £500.
- i) That they sold roughly 30 packets a week.
- j) He purchased the premises in November 2020, took over in May and got the licence in February.
- k) He received the letter about selling illicit products and gave it to the owner.

When the Councillor asked him to state two of the licensing objectives Victoria Cartmell advised that she had discussed them with him, and he couldn't repeat them but understood about challenge 25 and the stuff behind promoting the licensing objectives.

Mohammed Sheikehpour told the Committee that for challenge 25, he would ask for ID, not serve drunk people or sell alcohol or tobacco to minors. He also told them he could only sell alcohol between the licensable hours.

In summing up Sharon Watts made the following points: -

- That having listened to the submissions, it did seem that Mr Sheikehpour could read English.
- He had not been complying with the licence conditions since February. If he had read the licence conditions he would have understood what was required of him. He clearly had never read them. He had failed to uphold the licensing objectives.

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

- That the PLH had been involved with the business since TS received intelligence regarding the premises.
- The tobacco was concealed and it took sniffer dogs to discover it – it showed pre-planning and deceit by the premises.

Licensing Sub-Committee C – 4 August 2021

- LE had advised of the breaches of licence conditions which suggested a lack of management. He clearly wasn't aware of his responsibilities as the PLH.
- The premises and PLH has been given various chances and failed to uphold the licensing objectives.
- The only reason he had taken responsibility was because of the potential that the licence could be revoked.
- WMP asked that the licence be revoked.

In summing up the representatives of TS made the following points: -

- That they echoed what Chris said – the licence holder didn't seem to have a full understanding of his obligations despite having received advice from TS.
- The PLH didn't appear to have read the conditions on the licence and on that basis the Committee should consider all outcomes available to them.
- Back in December Paul Ellson issued an advisory notice at the premises and the PLH was in the shop at the time and signed the notice. He was given a written notice and verbal advice.
- The licence is a privilege and not a right, and it came with a level of control. The licence was granted in November.
- That it was not that hard to comply with the licence.
- The level of control had been haphazard even after intervention from TS. Nothing had changed, he had ignored the advice given.
- There was no control whatsoever.
- He was grateful that Victoria had become involved but after what he had heard he felt it was not good enough and illicit tobacco was just the tip of the iceberg it needed addressing.
- The conditions hadn't been met at all.

In summing up, Victoria Cartmell on behalf of the PLH made the following points:

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- That she was hoping her involvement would help and she did have breakthroughs with some of her clients.
- That she accepted it wasn't good enough.
- He did have some involvement in the premises in November, but he didn't take over as PLH until February.

Licensing Sub-Committee C – 4 August 2021

- When the licence was transferred to him, he should have got his house in order.
- Any decision shouldn't go over and above. It was a problem-solving piece of legislation and revocation was used as a last resort.
- The guidance did not suggest that revocation should be seriously considered.
- The review had acted as it should have, Abdullah had gone and her client was now the sole owner of the premises.
- Her client wasn't aware of what was going on.
- She thought it could be dealt with by way of conditions – all alcohol must be purchased by reputable wholesalers and invoices must be made available at all times.
- She had explained that he had to meet the conditions otherwise he could go to jail – it was very serious.
- Another condition could be that invoices must be kept on record at the premises for 6 months.
- The other option would be to remove him as the DPS and the licence be suspended until a new DPS was found.
- If the Committee felt that he wasn't focused enough a short suspension would ensure all documents were in order.
- Perhaps a 7 day suspension and an authority inspection before reopening.
- He wanted to work with the authorities.
- A short suspension would focus his mind and give him a chance. She would also be assisting him.
- That her client would be pro-active.

At this stage the meeting was adjourned in order for the Sub-Committee to make a decision and all parties left the meeting.

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

4/040821

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by

Licensing Sub-Committee C – 4 August 2021

Mohammed Sheikehpour, in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham, B25 8UT upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that:

- the Licence be revoked, and that
- Mohammed Sheikehpour be removed as Designated Premises Supervisor

in order to promote the objectives of the prevention of crime and disorder, and public safety, in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed on behalf of the Chief Inspector of Weights and Measures, as outlined fully in the Report. Mr Sheikehpour was both the licence holder and the designated premises supervisor for DC Minimarket.

Officers of the Trading Standards department of the City Council attended the meeting and told the Sub-Committee that on 12th March 2021, officers attended at DC Minimarket, accompanied by a tobacco detection dog and handler. Upon receiving an indication from the tobacco detection dog, they dismantled a display unit in the shop, and found 107 packets of illicit tobacco concealed behind it. Some of the packets were non-duty paid products; the rest were counterfeit products. All of this concealed stock was therefore not legal for supply in England. Samples of some of the seized products were sent to the relevant brand manufacturers for analysis; the manufacturers confirmed that those products were counterfeit.

The application for review was supported by West Midlands Police, who advised the Sub-Committee that illicit goods subvert the normal supply chains of legitimate trade. The supply of such goods is controlled by criminal organisations who seek to maximise profit by avoiding legitimate controls and systems. The Sub-Committee was aware that the purchase and sale of counterfeit products is usually made via cash transactions - therefore with no traceability, and of course no UK duty being paid.

Traders acting unscrupulously in offering counterfeit tobacco for sale cannot have any idea of the provenance of these goods, or even if they are fit for their intended use. The Sub-Committee considered that the only intention behind such practices was to maximise profit by tricking consumers; it was doubly unsatisfactory that that no duty would have been paid on the products either.

The Sub-Committee was also aware that the victim in the sale of illicit/counterfeit tobacco is not only the consumer, but the brand itself. These underground activities cause damage to brand manufacturers, destroying consumer confidence in their products and putting their businesses at risk in these uncertain times. A representative of the tobacco brand JT International Group addressed the Sub-Committee to confirm that this was indeed the case; he observed that brands wanted a deterrent for unscrupulous traders, and support for legitimate businesses.

The illicit tobacco trade was of course also detrimental to other retailers who, in offering genuine products, found themselves unable to compete fairly with those shops which chose to break the law by stocking counterfeit goods.

The Sub-Committee therefore considered that counterfeit products damaged the reputation of successful businesses, both manufacturers and retailers; as such, the Sub-Committee took a very dim view of it.

The trade in illicit tobacco was also a drain on the public purse, as West Midlands Police and Trading Standards had to allocate resources to investigate and deal with a criminal activity which had been undertaken, for profit, by a person who should have been more than aware of the standards expected of all licence holders in Birmingham. The Police in particular observed that they had no confidence whatsoever in Mr Sheikehpour to uphold the licensing objectives.

An Enforcement Officer of the Licensing department of the City Council then addressed the Sub-Committee to confirm that there had been a lack of compliance with the licence conditions in general - such as the requirements relating to CCTV, keeping records, and training. The Sub-Committee considered that Mr Sheikehpour should have been aware of his obligations relating to the licence as he was both the licence holder and the designated premises supervisor.

Mr Sheikehpour, via his solicitor, asked for a chance to prove that he could trade in a responsible manner, and offered to welcome the responsible authorities into the shop in order to work in partnership with them in future.

The Sub-Committee looked at all options when making their decision, and placed particular emphasis on the need to ensure that they had confidence that the management of the shop would not engage in, and encourage, criminal activity; criminal activity affected not only consumers in Birmingham, but also respectable businesses and companies.

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence as suggested by Mr Sheikehpour's solicitor, or suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, for the reasons set out above.

The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Sheikehpour as the licence holder, and he had demonstrated that he was incapable of upholding the licensing objectives. After hearing all the evidence, the Sub-Committee determined that the purchase and sale of illicit and/or counterfeit tobacco was indeed so serious that it could not be tolerated. The Sub-Committee therefore resolved to revoke the licence.

A determination to revoke 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.

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 Chief Inspector of Weights & Measures, West Midlands Police, Licensing Enforcement and the brand manufacturer JT International Group, and also by the licence holder's solicitor.

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.