

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B

TUESDAY, 18 SEPTEMBER 2018 AT 09:30 HOURS
IN ELLEN PINSENT ROOM, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.

A G E N D A

1 NOTICE OF RECORDING

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

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant 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.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3 - 12

4 MINUTES

To note the public part of the Minutes of the meeting held on 24 July 2018.

To note the public part of the Minutes of the meeting held on 14 August 2018.

5 OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

6 EXCLUSION OF THE PUBLIC

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

PRIVATE AGENDA

1 MINUTES

To note the private part of the Minutes of the meeting held on 24 July 2018 and to confirm and sign the Minutes as a whole.

To note the private part of the Minutes of the meeting held on 14 August 2018 and to confirm and sign the Minutes as a whole.

2 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847, PRIVATE HIRE AND HACKNEY CARRIAGE DRIVER LICENSES

Report of the Director of Regulation and Enforcement.

(Paragraphs 1 & 7)

3 OTHER URGENT BUSINESS (EXEMPT INFORMATION)

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

BIRMINGHAM CITY COUNCIL

LICENSING SUB - COMMITTEE B - 24 JULY 2018

**MINUTES OF A MEETING OF
LICENSING SUB-COMMITTEE B HELD
ON TUESDAY 24 JULY 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Adam Higgs

ALSO PRESENT:

Chris Arundel – Licensing Section
Paul Franks – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole – Committee Services.

NOTICE OF RECORDING

1/240718 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/240718 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest are declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/240718 There were no Nominee members.

4/240718 **ANY OTHER URGENT BUSINESS**

There were no matters of urgent business.

EXCLUSION OF THE PUBLIC

5/240718

RESOLVED:

That in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-
(Paragraphs 3 & 4)

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 14 AUGUST 2018

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON WEDNESDAY 14 AUGUST 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair

Councillors Barbara Dring and Adam Higgs

ALSO PRESENT

Shaid Yasser, Licensing Section
Joanne Swampillai, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

- 1/140818 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.
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DECLARATIONS OF INTERESTS

- 2/140818 Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.
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APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/140818 Apologies were submitted on behalf of Councillor Brennan and Councillor Dring was the nominee Member.
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MINUTES – PUBLIC

- 4/140818 That the Minute of meetings held on 3rd July 2018 were confirmed and signed by

the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE – (REVIEW) – EXTRA
SUPERMARKET, 187 HIGH STREET, ERDINGTON, BIRMINGHAM, B23 6SY**

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

(See document No. 1)

The following persons attended the meeting.

On behalf of the applicant

Roman Koloda – Premises Licence Holder and Designated Premises Supervisor

Those making representations

Martin Williams – Trading Standards

* * *

Following introductions by the Chairman, Shaid Yasser, Licensing Section, made introductory comments relating to the report.

In response to questions from Members of the Sub-Committee, Mr Martin Williams, on behalf of Trading Standards made the following points:-

- a) That they were informed by West Midlands Police that they had received intelligence from a member of the public that the premises were selling illegal cigarettes for roughly £3.00. They had also received a complaint of a similar nature earlier in the year.
- b) That an inspection took place, and under the counter vodka was found without the duty stamps and they all had over 30% abv.
- c) More alcohol was found on the display shelf with no duty stamps; there were over 30 different types. Most of which had special offer stickers on them.
- d) That during the inspection the police officer attended and went into the back of the premises and saw an employee stuffing a rucksack with cigarettes, all of which were illegal, none of which had plain packaging and they were all foreign. The rucksack contained 80 packs of the illegal cigarettes and the draw contained further packs upon inspection.
- e) On further inspection there were another 90 bottles of illicit vodka and a further 43 bottles discovered in another store room.

- f) The total number of illicit bottles of alcohol was 183 and cigarettes were 184. They were all seized for investigation, and the outcome from that investigation was that none of the products were suitable for sale.
- g) There were also 4 bottles of alcohol which was 95% abv, yet it was being stored under the counter and suggested to Mr Williams that it was not a very responsible thing for a licensed premises to be selling, and the fact they were under the counter made him concerned.
- h) The premises had only been trading 2 years and there were already issues. Mr Williams felt that it was not a good sign for a new shop to be having such issues.
- i) The premises clearly knew they were selling illegal products due to the fact they were trying to hide them.
- j) It concerned him that the premises had no regard for public health.
- k) That Mr Koloda was not at the premises at the time of the inspection, however, the lady that was present acting extremely unprofessionally and should not have been involved in selling alcohol.
- l) That he had no confidence whatsoever in the premises or the management and therefore the licence should be revoked.
- m) That the products were counterfeit.
- n) That it was irresponsible selling alcohol with a 95% abv when the standard for spirits was usually 35%-40% abv.
- o) That there were non-duty products under the counter and on the shelves.
- p) That the female in the premises at the time of the inspection was evasive and almost obstructive. She was trying to stop them doing their job.
- q) There were a number of people in the premises at the time. The lady and her husband, 3-4 people in the rear part of the shop. Some stage later Mr Koloda arrived.
- r) That he thought someone had told the man to stuff the cigarettes into the bag.
- s) That other council bodies had received complaints – but that was not a matter for today.

In response to questions from Members of the Sub-Committee, Mr Koloda made the following points:-

- a) That he was trading on the high street selling stuff from other countries, it became a focal point.

- b) The existing management was not willing to control all areas; the owner Mr Patel was unable to control this.
- c) That the premises was not selling u alcohol to persons who were underage, and there were no issues with protecting children from harm.
- d) That the purity of the alcohol and the high concentration was for mixers, to create cocktails and punch. It was also used for making homemade liquors such a Limoncello.
- e) It was also used for cooking and medicines. Much of the high percentage alcohol would be used for sterilization.
- f) That the staff had been given notification that they must leave there jobs.
- g) That additional risk assessments had been carried out.
- h) That Mr Patel was not satisfied with the management and had taken control over the premises. That after careful consideration Mr Patel had decided to sell the business and it had been attracting potential buyers.
- i) That the business was lucrative, with a wide range of products to attract potential buyers.
- j) That as far as they were aware there were no restrictions on the strengths of alcohol they could sell.
- k) That they sold cigarettes and tobacco as well as chocolates and other things.
- l) They employed 11 members of staff.
- m) That Mr Patel held a personal licence.
- n) That alcohol was purchased from the local cash and carry and Mr Patel was the one who went to the cash and carry.
- o) That receipts were kept and a log of all alcohol purchased.
- p) That he never purchased illicit alcohol and he did not know where the illicit alcohol came from.
- q) He had questioned the members of staff regarding the illicit alcohol, but they all blamed one another.
- r) That as DPS it was his job to know what was going on, so he failed in that.
- s) That the premises was still operating.
- t) The owner Mr Patel was the one dealing with the illicit alcohol, and he was aware he would never be able to manage a premises again and had

therefore, decided to sell the business.

- u) That he should have managed the premises better.
- v) That the high percentage alcohol was purchased through the cash and carry as it was commonly used in the European community.
- w) That he wasn't visiting the premises very often due to personal circumstances.
- x) That £8000 -£9000 was coming out of the premises in alcohol sales.
- y) That in the beginning he visited the premises regularly, but then he had a disagreement with the owner and he was therefore, no attending the shop. The personal licence holder was managing it.
- z) That Mr Patel was also the director of the company.
- aa) That he would walk around the shop and check the stock, but the illicit alcohol had been mixed with the legal so he did not see it.
- bb) That it never came to his attention that anything funny was going on.

Mr Koloda was asked to sum up his case, however, he advised that he had no closing submissions.

In summing up, Mr Martin Williams, on behalf of Trading Standards, made the following points:-

- a) That both Mr Koloda and Mr Patel were directors of the company.
- b) Mr Patel owns the company, or at least the majority. He's the controller of the business and the premises.
- c) That things between Mr Koloda and Mr Patel clearly went wrong and Mr Koloda should have left as DPS.
- d) Mr Koloda is negligent, but not wholly responsible.
- e) People acted unlawfully and used Mr Koloda as a front.
- f) That he would be investigating the business further.
- g) That he had no information that Mr Patel was selling the business and until he does he does not want the business to continue operating.

At 1026 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1058 all parties were invited to rejoin the hearing, and the decision of the

Licensing Sub-Committee was announced.

5/140818

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Paramstor Ltd, in respect of EXTRA SUPERMARKET, 187 HIGH STREET, ERDINGTON, BIRMINGHAM B23 6SY, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that the Licence be revoked, and that Mr Roman Koloda 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. A Trading Standards Officer attended the meeting and told the Members of the Sub-Committee about the bottles of illicit alcohol, and packets of illicit tobacco products, which had been discovered during an inspection of the premises carried out by Trading Standards Officers and West Midlands Police. The Sub-Committee was given full details of the illicit stock, which was found behind the counter and on the shop shelves. The details were as per the Report submitted. The alcohol products did not bear the 'duty paid' stamp as required by law, and were of entirely unknown provenance. The illicit cigarettes were being sold under the counter for £3.50 for a pack of 20.

Whilst Trading Standards Officers dealt with the discovery of items in the front of the shop, a Police Officer went to the back of the premises (as per the standard procedure), where he found a member of the shop staff stuffing further packets of illicit cigarettes into a rucksack. All in all, 183 packets of illicit cigarettes were discovered, and 184 bottles of illicit alcohol.

The Trading Standards officer observed that the shop had only been licensed to sell alcohol since 2016, yet in a very short time had slipped into entirely unlawful and unsafe practices. It was his recommendation that the licence should be revoked as the premises was incapable of upholding the licensing objectives.

West Midlands Police and Public Health made written representations supporting this proposed course, confirming that the sale of these illicit products was in direct contravention of the licensing objectives - in particular, it undermined the prevention of crime and disorder objective, but there were also general safety concerns about the consumption of illicit products by consumers.

The Sub-Committee had grave concerns about the manner in which this relatively new premises had been operating, and therefore paid close attention to the submissions of Mr Roman Koloda, who attended the meeting and addressed the Sub-Committee. Mr Koloda was both the Designated Premises Supervisor, and a Director of the company which held the Premises Licence.

Mr Koloda stated that he had not been aware of what was being sold in the shop, yet he was the Designated Premises Supervisor. He stated that there

had been an inability to keep control of the staff; as a result of the inspection, those staff had been given notice and told to leave. The shop had employed eleven members of staff in total. Mr Koloda stated that he was at the shop for about two hours a week. He stated that he did walk around the shop when he visited, but that he had 'missed' the illicit stock due to 'negligence'.

When the business started in 2016, Mr Koloda had been responsible for buying the alcohol stock, and had bought it from a legitimate cash & carry premises. However, over time, the responsibility for dealing with the alcohol stock had been passed to a member of the staff. Mr Koloda stated that following the inspection by Trading Standards, he had called a meeting to ask how the illicit stock had come to be on the shelves; the staff had 'all blamed each other'.

After hearing all the evidence, Members of the Sub-Committee determined that the sale and storage of illicit alcohol and tobacco was indeed so serious that it could not be tolerated, and therefore resolved to revoke the licence as recommended by the Chief Officer of Weights & Measures. The Sub-Committee agreed with Trading Standards that the operation had been managed in a way that was not merely irresponsible, but also illegal. 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.

Mr Koloda's explanations did not inspire any confidence whatsoever that the management at the premises understood the licensing objectives. This warranted the removal of the Designated Premises Supervisor.

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 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 Public Health, and the Designated Premises Supervisor.

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.

OTHER URGENT BUSINESS

6/140818 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/140818

RESOLVED:

That in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-
(Paragraphs 3 & 4)
