

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 18 APRIL 2016</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON MONDAY, 18 APRIL 2016 AT 1000 HOURS, IN COMMITTEE ROOM 1, COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:** - Councillor Buchanan in the Chair;

Councillors Eustace and Leddy

### **ALSO PRESENT**

Shaid Yasser - Licensing Section  
Sanjeev Bhopal - Legal Services  
Joanne Swampillai – Legal Services  
Victoria Williams - Committee Services

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### **NOTICE OF RECORDING**

1/180416 The Chairman advised the meeting, and the Sub-Committee noted, that members of the press/public could record and take photographs except where there were confidential or exempt items.

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### **UK ZABKA, 270 HIGH STREET, ERDINGTON, BIRMINGHAM, B23 6SH – LICENSING ACT 2003 - PREMISES LICENCE REVIEW**

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

(See document No. 1)

### **Presenting the Application for the Review**

Mr Martin Williams, Trading Standards, Birmingham City Council, on behalf of the Chief Inspector of Weights and Measures.

### **On Behalf of the Premises Under Review**

Mr Abdullah Salami, Premises Licence Holder/Designated Premises Supervisor.

Following introductions by the Chairman, the main points of the report were outlined by Shaid Yasser, Licensing Section.

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Mr Williams, Trading Standards, stated the grounds for review and highlighted the information provided in support of the application as set out in the report now submitted.

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

1. Since the original inspection on 15 February 2016 he had visited the shop once but Mr Darun Mahmoud, the former Designated Premises Supervisor, was not present.
2. A police detection dog had found cigarettes and tobacco products in a cupboard to the rear of the shop.
3. There were no legitimate cigarettes, advertising, statutory warning signs or premises licence on display in the shop. However, there was alcohol displayed.
4. Whilst there were some individual packets of cigarettes, some were still in 'sleeves' and had not been broken down.
5. No duty had been paid on any of the cigarettes or tobacco products.

At 1024 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, Committee Lawyer and Committee Manager, withdraw from the meeting.

After an adjournment all parties were recalled to the meeting at 1029 hours.

6. Illicit products were found on the premises. However, they were not counterfeit. There was a safety issue regarding the sale of contraband illicit cigarettes and tobacco products.
7. The fact that illicit products had been found on the premises was subject to a criminal investigation.
8. Discussions had taken place with the local licensing police officer. However, the police had not challenged the application to transfer the licence.
9. It was suspected that the former premises licence holder was still involved with the shop and that even though there was a new premises licence holder/designated premises supervisor, there had been no change to the way in which it operated. Mr Williams had no confidence in the licence moving forward.
10. There were no documents available regarding the transfer of the business from Mr Mahmoud to Mr Salami and the Council Business Tax was still being paid by Mr Mahmoud.

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The Sub-Committee noted that there was no-one present to make verbal representations and considered the written submission attached as appendix 1 to the report in respect of the application.

Mr Salami, on behalf of the premises under review, made the following points:-

1. He lived in Nottingham and was not involved in the shop at the time of the incident.
2. He was shocked about the fact that illicit cigarettes had been found on the premises.

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

1. He knew the shop owner and worked for him.
2. It was a business move and he had taken on a lease for 10 years.
3. Mr Darun Mahmoud, the former Designated Premises Supervisor/ Premises Licence Holder, had gone back to his country on holiday.
4. Mr Salami did not know how long Mr Mahmoud would be away.
5. They had known each other for a long time and Mr Mahmoud had asked Mr Salami to manage the shop on his behalf.
6. A neighbouring shop owner had alerted him to the fact that there had been a problem at the premises.
7. He had no experience in running a shop.
8. Mr Mahmoud had been advising him on the running of the business.
9. He was not the Premises Licence Holder/Designated Premises Supervisor at the time of the incident.
10. He understood his role and duties as the new Premises Licence Holder/ Designated Premises Supervisor.
11. He owned the shop but did not know the value of the premises or stock. He did not pay anything for the shop.
12. He still lived in Nottingham and had only owned the shop for two months.
13. Mr Darun Mahmoud was still involved in the running of the shop.

Mr Salami advised that he had nothing more to add and declined the invitation to sum up his case.

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Mr Williams summed up his case and at 1044 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, Committee Lawyer and Committee Manager, withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1132 hours and the decision of the Sub-Committee was announced as follows:-

2/180416     **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Abdullah Salami, in respect of UK Zabka, 270 High Street, Erdington, Birmingham, B23 6SH upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines to revoke the premises licence.

In reaching this decision, the Sub-Committee was mindful of the promotion of the Licensing Objectives in the Act, particularly the prevention of crime and disorder and public safety objectives.

The Sub-Committee's reasons for revoking the licence are due to concerns by the Chief Inspector of Weights and Measures in relation to the seizure of 261 packs of illicit cigarettes and 23 packs of non-duty rolling tobacco on the premises on the 15 February 2016.

Of particular concern to the Sub-Committee were quantities of non-duty-paid tobacco goods on the premises. The Sub-Committee were persuaded that the items seized were likely to be a representative example of the total number of items purchased and sold on to consumers. No UK duty had been paid on them, and it was noted that there was no attempt by the business to stock any legitimate duty-paid tobacco products at all. The fact that the tobacco was hidden in the shop makes it clear that those supplying the items knew that the goods were illicit, and wished to keep them concealed.

The new Premises Licence Holder/Designated Premises Supervisor accepted that the previous DPS still had a connection with the business, and was maintaining an active role. Although the precise terms were unclear, it was stated by the new DPS to the Sub-Committee that he receives advice and support from the previous DPS on an ongoing basis.

In addition the Sub-Committee noted that there was no evidence of a legal transfer of the business. (The Sub-Committee asked, but did not receive, any legal documents evidencing any transfer). The Sub-Committee also noted that when checks of the Business Rates register were made, on 4 April 2016, the previous Premises Licence Holder was found to still be paying the Business Rates for the premises, suggesting active involvement in, and responsibility for, the business.

On questioning the new Premises Licence Holder, the Sub-Committee observed that the new PLH had little or no knowledge of how to promote the Licensing Objectives, notwithstanding the fact that he is the DPS.

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The Sub-Committee was informed by Trading Standards that despite the change in arrangements the business was still considered to be likely to be associated with Crime and Disorder. The risk to public safety was considerable. The Sub-Committee bore in mind the observation made by Trading Standards - that the responsible sale and supply of tobacco products is just as important as that for alcohol. The Sub-Committee noted that in addition to the tobacco products being contraband, there were no statutory warning signs on display in the shop regarding sales to under 18s.

These matters seriously compromised the ability of the premises licence holder and DPS to properly promote the Licensing Objectives, particularly the prevention of Crime and Disorder and the promotion of Public Safety. The Sub-Committee had no confidence in the new PLH's ability to run the business in terms of the promotion of the Licensing Objectives.

The Sub-Committee carefully considered the guidance under Section 182 of the Licensing Act 2003 by the Secretary of State, particularly Reviews in connection with Crime. They reviewed the Guidance at sub-paragraph 11.27, which states that certain criminal activity should be treated particularly seriously – and which includes 'the use of licensed premises for the sale or storage of smuggled tobacco'. Given the circumstances set out above, and the fact that the Sub-Committee felt that the Premises Licence Holder/DPS was undermining the Prevention of Crime and Disorder objective within the Act (a seizure of illicit tobacco, ie which did not bear the correct safety labels and was non-UK-duty-paid, had been made), and also given the continuing involvement of the previous DPS in the operation of the business, there were no compelling reasons to depart from the Guidance when considering revocation of the licence.

Revocation was therefore the correct course, as revocation was the only measure the Licensing Sub-Committee considered to be appropriate, reasonable and proportionate in order to properly promote the Licensing Objectives.

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 representation received, and the submissions made at the hearing by the applicant.

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.

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The meeting ended at 1138 hours.

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CHAIRMAN