

BIRMINGHAM CITY COUNCIL

LICENSING SUB - COMMITTEE A - 13 JANUARY 2020
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**MINUTES OF A MEETING OF
LICENSING SUB-COMMITTEE A HELD
ON MONDAY 13 JANUARY 2020
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Philip Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp

ALSO PRESENT:

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services.

NOTICE OF RECORDING

01/130120 The Chairman advised the meeting that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

02/130120 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

03/130120 Apologies were submitted on behalf of Councillor Nicky Brennan and Councillor Bob Beauchamp was the nominee Member.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – SELLY ACRE NEWS,
1049-1051 PERSHORE ROAD, STIRCHLEY, BIRMINGHAM, B30 2YH**

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

Paul Ellson – Trading Standards (TS)

On behalf of the Premises

Changez Hussain – Premises Licence Holder (PLH)

Patrick Burke – Agent – PMB Licensing

Those making representations

PC Abdool Rohomon – West Midlands Police (WMP)

Chris Jones – West Midlands Police (WMP)

Gary Callaghan – Birmingham City Council - Licensing Enforcement Officer (LEO)

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The Chairman outlined the procedure to be followed during the meeting and enquired as to whether there were any preliminary points at which stage Gary Callaghan (LEO) advised that he knew Mr Hussain as he was also a taxi driver.

Further, the Chairman also informed all parties that Cllr Locke represented Stirchley, however, this premises was situation in the neighbouring ward and therefore, there were no conflicts. The Chairman was just ensuring transparency.

Bhapinder Nandhra, Licensing Section, outlined the report.

Mr Paul Ellson, on behalf of TS made the following points: -

- a) That they received a complaint from WMP on the 27th August 2019 regarding several shops in Selly Oak who were selling illicit tobacco. Selly Acre News was one of the premises alerted to them by WMP. They visited the premises and upon arrival found an employee in the shop of the name 'Zamar Hussain'. Changez Hussain was the PLH and DPS at the time of the inspection.
- b) The male employee was asked if he had illicit tobacco in the shop and he was also told what constituted as illicit tobacco to avoid confusion. He said that there was no illicit tobacco in the shop.
- c) TS carried out a full investigation of the shop, and found 1 sleeve of Richmond cigarettes, a Russian cigarette sleeve, 1 Regal cigarette sleeve

and 3 packs of Benson and Hedges cigarettes and some Russian hand roll tobacco. All of them were illicit.

- d) Further during their inspection, they also found Viagra under the counter, approximately 300 tablets.
- e) The employee stated that the tobacco was for personal use and the tablets were for a friend. However, TS believed if that was the case then they should not have been in the premises or anywhere near a licensed premise. Additionally, TS were concerned that the employee had said that there were no illicit cigarettes on the premises, yet they found multiple packs hanging in a plastic bag right in front of the employee.
- f) That the illicit cigarettes breached two major pieces of legislation, namely the Standardised Packaging of Tobacco Products Regulations 2015, and the Tobacco and Related Products Regulations 2016. No UK Excise Duty had been paid and the packets bore Russian Cyrillic script.
- g) Further, the cigarettes were illicit, non-duty paid with Russian writing on them and should not make it into the UK market.
- h) Mr Hussain claimed they were for personal use; however, it was unusual that the cigarettes were of all different brands. Moreover, the excuse Mr Hussain gave was the normal excuse most persons gave when they had been found in possession of illicit cigarettes.
- i) That the PLH should have exercised more control over the premises and staff to prevent these incidents ever occurring.
- j) The cigarettes had ended up in the shop and should never have been in there in the first place.
- k) On 25th September 2019 WMP visited the premises and seized a further quantity of Viagra medication. This type of medication should not be sold by an off licence and should not have been sold to the public without a medical history assessment.
- l) It was a concern that the purchase of the medication to sell to the public was informing a criminal network underneath.
- m) He was aware that the medication could be purchased off the internet.
- n) The tablets were being sold out of the packet thus they had no warnings or information provided with them.
- o) That the opinion of TS, was that the Committee should consider all options open to them.
- p) In his view the premises was “shambolically run” and chaotic.
- q) That Mr Hussain didn’t really know what was going on, he provided the usual excuses when the medication was found inside his premises. The

PLH was exercising a “hands-off approach” and was clearly having nothing to do with the premises.

- r) He could not locate a refusals book.

In answer to Members questions Mr Ellson made the following points: -

- a) That Mr Changez Hussain was the PLH and was present at the meeting.
- b) That WMP informed TS that they had received a complaint.
- c) That the small amount of illicit tobacco found was in a bag near the front of the counter and indicated to them that it was being sold over the counter.
- d) The medication was known as Viagra and could only be dispensed at a pharmacy, whilst it did not require a doctor’s prescription there was a process in terms of assessing its suitability for the patient. Moreover, it carried risks and therefore, needed to be dispensed in a responsible way.
- e) That ‘anything’ was available through the internet, but the problem with buying medication over the internet was that it was not always clear what was in it and where the medication originated from.
- f) That the tablets he found were in a big bag with a band tied around the top.

PC Rohomon, on behalf of WMP, made the following points: -

- a) That when they received the application for review, they were already aware of the premises. WMP had visited the premises on 25th September 2019 and they found some Viagra medication but also some other things.
- b) The MHRA [Medicines and Healthcare Products Regulatory Agency] regulated medication like Viagra and they also issued guidelines. When WMP visited the premises it was 26 days after TS had carried out their visit. The premises had nearly a month to get themselves “sorted”, had a warning and yet still there were problems. They were not complying with the conditions on the licence, such as CCTV which had only been running for 20 days, when asked to go beyond 20 days it was not possible.
- c) PC Rohomon asked about other conditions on the premises licence.
- d) The man behind the till during WMP visit identified himself Val he said he had been working there for only 3 months and had not received any training. Further, PC Rohomon asked Mr Changez Hussain for proof of training, which he was not able to provide.
- e) WMP found signatures in the refusals book and till entries from Val from 18 months prior, so he had been working there longer than 3 months.
- f) Whilst carry out their visit, WMP came across an “old Hamlet cigar tin” underneath the till. In it was Sildamax (the same blue pill that TS had found 30 days before). They also found £72.00 in cash, which was said to be “savings”.

- g) Behind the till they also found and confiscated a baseball bat and golf club, which Mr Hussain said were simply items for sale. It was concerning that they were right behind the till, in an “easy to grab” location. (WMP had the bat and golf club in evidence bags for Members to see).
- h) WMP had been online to find out more about the tablets found, which confirmed they were to be sold by pharmacies and were also very expensive 4 tablets for around £20.00. The sale of such tablets was considered by WMP as easy money for the premises, especially sold as singles.
- i) The tablets had no warning labels or information with them.
- j) When PC Rohomon challenged Mr Changez about the pills, he was very laid back about them.
- k) That clearly Mr Changez was not in control and the staff did what they wanted.
- l) That the Home Office Guidance issued under Section 182 of the Licensing Act 2003 talks about engagement, solving problems together, but after the first visit they still hadn't sorted the premises out and that indicated greed.
- m) That the premises couldn't even get the basics right such as, CCTV and staff training.
- n) WMP had no confidence in the PLH.

In answer to Members questions PC Rohomon made the following points: -

- a) That they checked the store rooms during the visit and very little was in them.
- b) The premises sold a huge amount of alcohol.
- c) Due to the breaches of the conditions of licence they had to stop the premises selling alcohol.
- d) The recordings for the CCTV should have gone back 28 days or 31 depending on the exact wording of the condition on the licence. It was normal that the engineer would put a buffer of a couple of days over to ensure that it would comply with the conditions.
- e) There were no recordings for the first 11 days on the CCTV.
- f) That he could not be sure whether it was a purposeful attempt to deceive, but more than likely he PC Rohomon felt it was just due to the shambolic lack of control and lack of regard for the licence conditions.
- g) That he did not get the impression that Mr Changez was in charge of the premises.

Mr Gary Callaghan, on behalf of Licensing Enforcement, made the following points: -

- a) That as a result of the review by TS they visited the premises and put up a Blue Notice.
- b) That they had visited the premises twice as the first time the application wasn't done properly.
- c) One Blue Notice was in the shop window the other was on the lamppost, Mr Changez was made aware that the premises was under review.
- d) They made contact with the local police officer to make sure they were compliant with the conditions of licence.
- e) He visited the premises on the 10th December 2019 whilst the premises was under review and identified a member of staff called Zakar Hussain (discrepancy in the name of the staff from the PC, he said maybe the officer misheard).
- f) That the premises licence should be displayed for the general public to see. When Mr Callaghan asked to see the full licence with conditions, Mr Zakar Hussain couldn't find it. He phoned Mr Changez who said he would come to the shop, however, when he arrived, he still could not locate the premises licence.
- g) That he told Mr Zakar Hussain the conditions and nearly all of them were non complaint. No incident register, no training records.
- h) That it was a family business and Mr Zakar Hussain was the PLH's brother.
- i) The inspection should have been 15 minutes, but instead it was over an hour and 10 minutes. It was extremely poor.

In answer to Members question Mr Gary Callaghan made the following points: -

- a) That a summary licence should have been on display for the public, and the full licence should have been produced on request.
- b) There was no staff registry and staff training records should have been easily produced.
- c) That he believed there were possibly 3 employees.

Mr Patrick Burke on behalf of the PLH, made the following points: -

- a) That Mr Changez had been a taxi driver for 20 years with no issues or complaints.
- b) That the premises was a family run business which was the financial support for his family and his brothers family.

- c) The bat and gold club were items for sale and were on display as being “for sale”. They also sold kitchen knives.
- d) The pills on the second visit were overlooked from the first visit, so Mr Changez wasn’t even aware they were even there.
- e) Mr Changez had realised that he had perhaps not been hands on and moving forward would like the Committee to consider the following conditions; personal licence holder to be present at all times, all staff at premises to hold a personal licence award as a minimum, short suspension of 1 month to allow time for Mr Changez to get everything in order and also complete his level 3 personal licence qualification.

In answer to Members questions, Mr Burke and Mr Changez made the following points: -

- a) Mr Changez advised that 3 persons worked at the premises and his daughter helped sometimes. Moreover, that he understood he had not “done right” but was going to step up and manage the premises.
- b) Mr Burke explained the personal licence course for the benefit of the Members.
- c) Mr Changez explained that his brother was just helping and wasn’t really working there all the time (hence the 18-month-old signatures). His brother had only been working for 3-4 months on a permanent basis.
- d) Mr Changez told the Committee how he had the business for 3 years. He was doing a management course, and everything was there during the last visit but he just didn’t have it all together, but it was all sorted.
- e) Mr Changez referred to the Hamlet box as a place used to store tips and the illicit tobacco was for personal use.

In summing up Mr Gary Callaghan, LEO, made the following points: -

- ❖ That the licence was first issued 22 May 2018.
- ❖ That he couldn’t see how further staff training would make any difference as that should already have been happening, but it wasn’t. He didn’t see how additional training would be of any benefit.

In summing up PC Rohomon, on behalf of WMP, made the following points: -

- ❖ That the excuse that the pills were just overspill from the first visit was inconsistent with what had been said at the time. Additionally, the tin being used as a box for tips was another inconsistency, yet the box was found under the counter. It didn’t add up.
- ❖ The fact they were caught on the first visit doing things wrong and yet nearly a month later they were still doing things wrong, it should have all been sorted after the first visit.

- ❖ The PLH had took his eye off the ball and the offer of a condition regarding staff training was something that was already on the licence and should have been happened yet wasn't.
- ❖ That the conditions regarding personal licence holders was just trying to detract responsibility away from the PLH.
- ❖ That the guidance issued under the Licensing Act 2003 was very succinct and breaching the CCTV condition should have been sorted within minutes. They should have been checking it every single day to make sure it was working in line with the conditions of the licence.
- ❖ That the management was shambolic.
- ❖ That the Licensing Objectives were part of the Level 2 personal licence qualification, therefore the Level 3 qualification was not going to teach them anything that they shouldn't already know.
- ❖ The problems that WMP and TS found upon visiting the premises were not going to be simply sorted by the PLH taking the Level 3 qualification. The PLH shouldn't have been selling illicit tobacco and drugs in the first place and he concurred with TS that the cigarettes would have been one brand only if they had been for personal use.
- ❖ WMP didn't believe the bat and golf club were for sale. There were also Cannabis grinders on sale and drug bags, which weren't illegal but led them to question how responsible the PLH was for the premises and the way it was operated.
- ❖ The PLH had been a taxi driver for some 25 years alongside running the family business with his brother. Why had he not sacked his brother – the PLH had offered nothing to the Committee to alleviate concerns or to address the issues.
- ❖ That if the Committee were not minded to revoke the licence, then suspension should be for more than 1 months, he recommended 3 months was more suitable. He added that the conditions didn't offer anything at all and that even removing the DPS wouldn't remove the PLH. However, if the Committee were minded to remove the DPS they could put a condition on to remove the DPS and the substitute must be to the satisfaction of WMP and TS.

In summing up Mr Paul Ellson, on behalf of TS, made the following points: -

- ❖ In his original submission he told the Committee there were approx. 300 Viagra tablets, however, when he got back to the depo there were 890 – a huge amount.
- ❖ That a licence to sell alcohol was a privilege and came with added duties and obligations.

- ❖ The Committee needed to remember that the shop sold mostly alcohol and a bit of food, therefore, it was the responsibility of the PLH and DPS to ensure they were compliant with the conditions on the licence.
- ❖ That the shop was chaos.
- ❖ They were caught once and then couldn't be bothered to correct the issues highlighted to them, so then they were caught again.
- ❖ The allegation that he may have missed something during his inspection, he did not recall seeing a Hamlet tin and it was not usual for shops to be taking tips in the middle of the year, maybe near Christmas.
- ❖ That if the brother went on a personal licence course, he hoped they taught him the difference between truth and lies, because TS felt he had lied about there not being illicit drugs in the premises when they were right in front of him.
- ❖ The shop was situated near a school.
- ❖ The pills found were not in original packets and that concerned them due to the safety information that would normally be provided with packaged tablets.
- ❖ The alcohol licence was a privilege not a right.
- ❖ That most of the things they needed to do were on the licence, so it was not difficult to get right.

In summing up Mr Burke, on behalf of the licence holder made the following points: -

- ❖ That Mr Hussain's brother had completed the personal licence course and was aware of his responsibilities.
- ❖ That the CCTV was fitted and was recording for 28 days but due to adding more cameras it effected the hard drive and that's why there was a problem.
- ❖ As soon as Mr Changez Hussain was aware, he couldn't sell alcohol he stopped and that was checked by officers.
- ❖ Since the review he was trying to get everything back on track.
- ❖ It was an effective measure to have a personal licence holder in the premises and staff that will have done the training. It would make a big difference.

At 1047 the meeting was adjourned and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1108 the meeting was reconvened and all parties were invited to re-join the meeting and having taken into consideration the legal consequences of the withdrawal of the representations the Committee announced as follows:-

04/130120

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by Changez Hussain in respect of Selly Acre News, 1049-1051 Pershore Road, Stirchley, Birmingham B30 2YH, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that **the licence be revoked**, 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 three Responsible Authorities, namely Trading Standards, West Midlands Police, and the Licensing Enforcement department of the City Council.

Trading Standards' submissions

Trading Standards observed that the shop was 'shambolically run' and in 'a state of chaos'. The 'state of chaos' had been observed by officers in every visit, and even after a warning had been issued. It had quickly become apparent to officers that the premises was not only failing to uphold the licensing objectives, but actively undermining them.

There were two main failings. The first was the discovery of illicit tobacco products behind the shop counter – a variety of brands, none of them compliant with Regulations, none of them in the correct packaging, and none of them with UK Excise duty paid. The second failing was the discovery of an erectile dysfunction medication called 'Sildamax' in a plastic bag on a shelf behind the shop counter – small blue tablets which were unpackaged (other than inside blister packs), and therefore without the manufacturer's box, instructions for use, or the warnings/ side effects information leaflet.

Trading Standards explained that the sale and storage of illicit tobacco is a very serious breach; such products were of unknown provenance and usually associated with crime. It was quite unacceptable for any licensed operator in Birmingham to have procured this type of illegal product, through some unknown supplier, and for it to be found in a bag behind the counter in a local off-licence. The supply of illegal items is well known to be an activity of underground criminal networks which exchange all kinds of illegal products, fund more serious criminal enterprises and cheat revenue. They also undermine those legitimate businesses who do uphold the licensing objectives in Birmingham.

Equally unacceptable was the erectile dysfunction medication; this was potentially a significant public safety risk. Trading Standards advised that medicinal products, intended to treat specific health conditions, were not something that should ever be found in any small off-licence premises. Shop sales of such medications should only ever be via a pharmacist, who could ensure that they were suitable for the individual. Moreover, these small blue pills were again of unknown provenance, without the manufacturer's exterior packaging. The fact that they were in blister packs suggested that the shop was offering them to customers as single pills – but they would be sold without the manufacturer's leaflet/ instructions. Given the nature of the product, this was an obvious danger to public safety. It also showed

that the shop management and staff were irresponsible regarding public health, which was entirely incompatible with the promotion of the licensing objectives.

These two matters on their own were so serious that they would have given the Sub-Committee sufficient cause to revoke the premises licence. However, there were additional matters of concern.

Trading Standards were particularly unimpressed at Mr Hussain's management style. He had no control at all over his staff – particularly his brother, who was one of two people Mr Hussain employed in the shop. The conduct of the brother had been very poor, most noticeably in the answers he gave to officers during their visits.

When the brother was asked if he had any illicit tobacco products on the premises, he replied that he did not do that. 600 cigarettes of various brands, and 75g of hand-rolling tobacco, were then discovered in a Sainsbury's plastic bag, hanging from a hook behind the counter.

The brother's explanation for these illicit goods was that they were for his own personal use. This was not plausible given that they were located behind the shop counter and were of various brands, including some foreign brands.

When asked to explain the Sildamax pills, the brother replied that they were 'for a mate'. Given that the quantity which officers found behind the till on that occasion was 300 pills, that answer was difficult to believe. Trading Standards therefore issued the premises with a warning. The Sub-Committee accepted all the observations of Trading Standards.

West Midlands Police's submissions

The West Midlands Police visit was made 26 days after the Trading Standards visit. The Police agreed that the operating style that they observed during their visit to the shop was shambolic. The Police examined the conditions of the licence and observed to the Sub-Committee that the shop was in breach regarding various aspects – the requirements for CCTV were not being observed; nor were the requirements for staff training. These are elementary and simple issues for any premises licence holder, yet were not being done properly.

The Police discovered a baseball bat and a golf club behind the counter. The explanation given for these was that they were for sale to customers. This seemed improbable in a small off-licence shop, in which selling alcohol was the main focus of the business. The Police view therefore was that these two items were more likely to be weapons, undermining the promotion of the licensing objectives.

Furthermore, the Police were thoroughly unimpressed with the staff member behind the counter on this occasion. They described this person as 'cavalier' in his attitude. He was also untruthful in his answers. He stated that he had been employed in the shop for "three months", yet officers found records in the shop's Refusals Book, signed off by this employee, from 18 months ago.

A quantity of 45 of the Sildamax pills was found behind the counter – this time in a Hamlet cigar tin, together with some £72 in cash. The staff member stated that the 45 Sildamax pills were his own, and that the £72 was his own savings. Neither of these answers were plausible.

The Police were also unimpressed with the behaviour of Mr Changez Hussain himself. His management style was wholly inadequate. His answers to some questions alarmed the Police – when discussing the Sildamax, he confirmed that the pills were owned by the staff member, and stated that the staff member just did what he wanted with the pills. The Police were taken aback at this comment. When combined with the breaches of licence conditions, the Police found it necessary to remind Mr Changez Hussain that it was he, as the premises licence holder, who was the person in control of the premises. As such, he should have ensured that all recommendations of Trading Standards were put into effect immediately.

The Sub-Committee accepted all the submissions made by West Midlands Police. Members were particularly unamused that any licence holder should need to be advised by a Police Officer that he is the person responsible for operating.

Licensing Enforcement's submissions

Licensing Enforcement also noted the poor management of the shop during their visit to check compliance. A number of breaches were found, and it was striking that Mr Changez Hussain was even unable to locate the Premises Licence to produce it to an authorised officer when requested – one of the most elementary requirements for any licence holder.

The Licensing Enforcement visit was conducted on a date after Mr Hussain had been made aware of the forthcoming review hearing, and also some months after he had been reminded by Police that he was the person meant to be in control of the shop. The breaches which were found by Licensing Enforcement, and the inability to even produce the licence for inspection, did not inspire any confidence whatsoever that Mr Changez Hussain had been taking even a basic level of responsibility as operator. The Sub-Committee accepted all the submissions made by Licensing Enforcement.

Premises Licence Holder's submissions (via his agent)

The Sub-Committee gave careful consideration to the submissions made by Mr Changez Hussain and his agent, but was not remotely satisfied, given the evidence submitted by the responsible authorities, that the offer of voluntary conditions was sufficient to ensure that the licensing objectives would be properly promoted. In coming to this conclusion, the Sub-Committee was helpfully assisted by advice and recommendations from the responsible authorities.

The offer for staff to undertake licensing qualifications, made by Mr Hussain via his agent, was inadequate. Training was being proposed as the focus, but as all three of the responsible authorities observed, training requirements were already a condition of the licence, and clear breaches had already been noted by officers during the visits.

The Police noted that Mr Hussain's brother should have been dismissed; the Sub-Committee agreed that it was surprising that the brother had retained his employment. The Sub-Committee looked askance at the explanations given by Mr Hussain, his brother, and the other member of staff, all of which were unsatisfactory and many of which were difficult to believe.

The excuse given for the illicit products, namely that they were for 'personal use', was not accepted, but even if they were for personal use, it was the responsibility of Mr Changez Hussain to ensure that such items did not enter the premises, and to instruct his staff regarding the proper promotion of the licensing objectives. He had not done this.

During the meeting Mr Hussain stated that the explanation for the £72 cash in the Hamlet cigar tin was that it was "tips" given by customers. The staff member had originally described it to Police as his own personal savings. The Sub-Committee was doubtful whether either of these explanations were correct. There had been an overwhelming impression that the answers given to the responsible authorities, by all three persons associated with the shop, had not been truthful. The Sub-Committee was therefore of the view that it was impossible to have any confidence that such people would prioritise the licensing objectives even after undertaking the training courses which had been suggested as voluntary conditions by Mr Hussain's agent.

The view of Trading Standards, namely that Mr Hussain's management style was not simply a 'hands off' approach, but rather a failure to exercise any control whatsoever, was an accurate summary. It was also entirely correct to describe his operation as 'shambolic'. Mr Hussain (via his agent) accepted that he had "not been as hands-on as he should have been"; however, this was an understatement.

The licensing objectives were being undermined in a residential area with a school nearby. Accordingly, the only course was to revoke the premises licence.

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.

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.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – D&B WINES 201
DUDLEY ROAD, WINSON GREEN, BIRMINGHAM B18 7QY**

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

Martin Williams – Trading Standards (TS)
Rupinder Sangma – Trading Standards (TS)

On behalf of the Premises

Marius Miclescu – Premises Licence Holder (PLH)
Walaa Jasim (Translator for PLH)
Mohammed Turay – Solicitor – Toussaint Solicitors
Adi-Romulus Ileana – Employee

Those making representations

PC Abdool Rohomon – West Midlands Police (WMP)
Chris Jones – West Midlands Police (WMP)

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The Chairman asked for clarity as to the position of the translator. Mr Jasim confirmed he was the translator for the PLH who spoke Romanian.

The Chairman outlined the procedure to be followed during the meeting and enquired as to whether there were any preliminary points at which stage Mr Turay advised that in his clients statement there was reference to a fridge that the cigarettes were found in, they had a sketch to show the location of the fridge and he had a further document to submit (Document 3).

The Chairman enquired whether any of the parties had any objections to the additional documentation being served.

Mr Martin Williams (TS) advised that he had no issues so long as the it was accepted that the fridge was inside the premises.

All parties accepted the submissions from the TS officer.

The Chairman confirmed that the documents would be accepted.

The Chairman continued to outline the procedure and then invited Bhapinder Nandhra, Licensing Section, to outline the report.

Mr Martin Williams, on behalf of TS made the following points: -

- a) On the evening of 1st September 2019 a police officer found a girl unconscious due to alcohol consumption. She had been to D&B Wines and purchased wine and vodka from them. The girl was 15yo, 5ft tall and would never have passed a challenge 25 assessment.
- b) Further a complaint was raised by Birmingham TS and a joint visit with BCC Licensing Team was carried out. BCC Licensing Team issued a trader notice advising the premises that it was illegal to sell alcohol and cigarettes to underage persons and that a test purchase may be carried out. Officer Watts, LEO was concerned that the employee did not appear to speak

English and was unable to explain to the officers what his responsibilities were and whether he was selling alcohol or not.

- c) The PLH was not present at the time of the visit, and officers were advised that he was abroad.
- d) Furthermore, officers also had a meeting with the PLH's wife as they were still concerned regarding the operation of the premises and she was given further advice.
- e) Saturday 2nd November 2019, TS undertook a test purchase exercise with a 14yo girl volunteer. She was able to purchase a large bottle of WKD from the shop. Mr Adi-Romulus Ileana made the sale and did not ask her for ID or even ask her age.
- f) When he was questioned regarding the sale, he was unwilling to submit any explanation as to why he made the sale. Then another person attended in order to translate, and he said he was the brother of the PLH. Whilst TS were in the shop, they found counterfeit hand rolled tobacco in the fridge, which was a serious offence and had consequences.
- g) The premises was poorly run and TS did not have confidence that the shop could be operated in a responsible way.
- h) The girl found unconscious having consumed alcohol purchased from D&B Wines could have been a victim to other people and was extremely vulnerable being in a state like that out on the street. She should never have been able to purchase alcohol.
- i) That Mr Adi-Romulus Ileana would not cooperate or communicate with authorities and was not aware of the responsibilities under the Licensing Act.
- j) The premises licence was granted in 2017 and then a complaint was received about fake cigarettes and underage sales in 2018 and then in October 2018 a warning and a visit was done, and the officers witnessed 3 attempted sales for single cigarettes. Therefore, a trader's notice was issued on that occasion and an information pack was given to the premises regarding underage sales. Additionally, posters were given to the premises to help with the issues. PLH was not present on that occasion either.
- k) That in light of the history and problems, TS felt there was no alternative other than to revoke the licence.

In answer to members questions, Mr Williams made the following points: -

- a) That TS usually only responded to consumer complaints, so if they received information and intelligence then they visited the premises.

PC Rohomon, on behalf of WMP, made the following points: -

- a) That WMP were deeply disturbed that a 15yo girl had been put into safety as she was so drunk, she was vomiting all over herself. The alcohol was

purchased at D&B Wines and was consumed in the park. The premises had then also failed a test purchase exercise carried out by TS.

- b) WMP had submitted the 999 logs from the concerned parent who had been called to say her daughter was drunk at the park and there was an allegation of sexual assault. An ambulance had to be called to attend.
- c) WMP had major concerns that a 15yo girl was unconscious in a park in the city centre, she was incredibly vulnerable and was covered in her own vomit.
- d) The friend of the 15yo female said they purchased the alcohol from D&B Wines.
- e) WMP made a referral to TS whom then visited the premises to warn them about underage sales. The Licensing Act 2003 recommends that responsible authorities work with premises and provide help. WMP felt that the premises had been offered help and been advised numerous times.
- f) There were also concerns raised over how an employee who didn't speak very good English would challenge people or check someone's age.
- g) WMP were concerned over the premises operation that they arranged a meeting with the DPS and PLH, however the premises sent the PLH wife to attend and she was given the advice. The responsible authorities had done everything they could to make sure the premises were aware of the issues and concerns that they had; they had done the ground work.
- h) A test purchase was not easy to organise and yet, a 14yo girl was sold alcohol without any questions and subsequently added weight to what happened in September – why would the children lie about where they purchased the alcohol? The premises failed the test purchase having been given advice on two separate occasions.
- i) The employee said at the time of the test purchase he was distracted by someone acting suspiciously, yet there was no mention of that previously.
- j) The Committee should bear in mind that at the time of the test purchase when officers asked why he had sold to a minor, no explanation was given, yet months later after the review was issued, he suddenly said he was distracted.
- k) It was concerning that a person behind the till would become so distracted that a 14yo girl (4 years under the legal age of buying alcohol) could easily purchase alcohol.
- l) The volunteers used for test purchases were not allowed to wear make up and had to look their age. They were not allowed to entrap premises.
- m) WMP felt it was an unsettling situation and the premises were selling to children. The consequences of the underage sale of alcohol were a direct impact on the 15yo girl, her family and her friends.

- n) PC Rohomon referred to the Section 182 Guidance 11.27, which outlines the criminal activity arising in connection with licensed premises which should be treated particularly seriously, to indicate to the Members just how seriously the sale of alcohol to minors was regarded by the Secretary of State.
- o) PC Rohomon also advised the Committee that he had googled alcohol and the effects on children and had taken information from websites such as; Barnardo's who said that young people who used alcohol were more likely to miss school, commit crime and sexual assault; the NHS referred to the damage it can have on organs, brain, liver, bones and hormones and also the higher risk of underage pregnancy, injury and health issues; Drink Aware also talks about the consequences of alcohol similar to Barnardo's.
- p) The alcohol the 14yo female purchased during the test purchase was WKD, a type of sweet 'alcopop'.
- q) That WMP didn't believe that the employee was distracted.
- r) That WMP did not know what more they could do as a responsible authority (RA), they had given advice, as had other responsible authorities on numerous occasions. They had followed paragraph 11.10 of the Guidance issued under section 182 of the Licensing Act 2003, which stated that it was good practice for RA's to give early warning of concerns and the need for improvement and that they should advise steps to address concerns and then failure to address concerns could result in review of the licence. The premises had received guidance, help, warnings and advice therefore, there was no other option other than to review the licence.
- s) The Committee had options such as adding conditions, however, WMP did not see how any conditions could alleviate the concerns. Further, the Committee could remove the DPS however, that would not remove the PLH and as previously stated the Committee could put a condition on the licence that the DPS be removed and the substitute must be approved by WMP and TS.
- t) That another option for the Committee was to suspend the licence for 3 months but given the history WMP were completely supporting TS's recommendation of revocation as they had major concerns over under age sales and consumption.

In answer to Members questions PC Rohomon made the following points: -

- a) That WMP used to do test purchases with TS and they are governed very tightly, therefore, the girl would have had to look 14yo.
- b) That 'alcopops' were the type of alcohol that young people liked to drink especially minors.
- c) That complaints alone were not enough, they had to do a test purchase to see what had happened.

Mr Williams advised that when he visited the premises he did not see the posters on display which had previously been given to the premises.

Mr Turay, representing the PLH, made the following points: -

- a) That he was a trainee solicitor. He would make submissions on 3 main points and the first being the allegation of the intoxicated female, second in respect of a complaint made by a member of the public regarding counterfeit products being sold at the premises and the third would be in relation to the test purchase.
- b) He confirmed that his client understood the Licensing Objectives.
- c) He referred the Members to paragraph 20 of the witness statement dated 6th January. The allegation relating to the incident in the park was denied. There was no indication that the victim had said that she bought the alcohol from D&B Wines, yet she must have been asked.
- d) A telephone call was made, and TS received information from a friend of the victim who said she purchased cigarettes from the premises, however there was no indication that the alcohol was purchased from the premises. They had no evidence that the alcohol was purchased from D&B Wines only what the friend said.
- e) That the Committee should take allegations on face value, he was not challenging that the girl was drunk, but perhaps due to the location the girl was found in and the locality to the shop it was potentially the first thing that came into her head at the time.
- f) The allegation that illicit tobacco was found inside the premises and was being sold from the premises was not the case and his clients statement gave an explanation as to why a member of the public would make such an allegation. The member of the public purchased tobacco from the premises, took it out, then came back and tried to return it. The premises refused the return of the product and then she advised she would report them for selling fake tobacco.
- g) That was the second complaint, and yet TS and WMP did nothing about it even though they would have had the right to apply for a review at that point.
- h) In relation to the test purchase, his client came back from the cash and carry, and the shop worker informed him that a test purchase had taken place. The volunteer was said to be 14yo. The shop worker was distracted by a gentleman in the shop acting suspiciously. The alcohol that the young girl purchased was in the "general isle" and was 4% ABV, and not stored behind the counter with the high strength alcohol. The girl did not look around she went straight to the bottle and took it to the sales desk. The employee did not ask her for ID like he would normally. Although he didn't speak very good English he knew how to say "where is your ID" or "show me your ID" however, on this occasion he didn't ask for ID as he was distracted by the gentleman in the shop – Mr Williams. Moreover, they both exited the shop and then Mr Williams came back in and told them it was a

test purchase. They had concerns over the way in which the test purchase was carried out.

- i) It was the first test purchase that had been carried out at the premises. If they had done more maybe things would be different.
- j) That the premises had posters up regarding the challenge 25 policy and no alcohol being sold to under age persons. There were at least 4 posters of that type in the shop.
- k) That the PLH had not been present during any of the incidents and the PLH would not allow the shop workers to sell to minors. Mr Adi-Romulus Ileana was no longer working at the premises.
- l) Since the test purchase failure, the PLH had asked his wife to do the personal licence training course.
- m) That it was not a situation whereby the PLH had sat back and not made adjustments.
- n) That the PLH couldn't run the premises without help, he needed other employees.
- o) That if the licence was revoked it would have a massive impact on his family.
- p) That all the issues from 2017 were a result of the previous DPS and he asked the Committee to consider that revocation would cause untold hardship on him and his family.
- q) Further, that the two allegations could not be linked, and the test purchase was a deliberate attempt "to get him, they wanted to get him".

In answer to Members questions Mr Turay made the following points: -

- a) That they had 3 employees previously, however, moving forward it would just be Mr Miclescu and his wife.
- b) That his client would not accept that the 15yo girl purchased and drank alcohol from his store. TS did not provide any evidence to indicate that the alcohol came from D&B Wines.
- c) That the TS officer distracted the employee, and the employee felt the female looked 18yo.
- d) That the PLH and employee always asked for ID.

After a discussion between Mr Turay and his client Mr Turay continued: -

- a) That they did have a record of refusals.
- b) That there were posters in the shop, one of which was provided by TS.

- c) That the tobacco found in an old fridge at the back of the premises was a storage place for staff's personal items. The tobacco belonged to Mr Adi-Romulus Ileana and was not for sale in the shop.
- d) That it was not in dispute that persons tried to purchase single cigarettes in the shop, however, they were refused.
- e) That all incidents happened in absence of the PLH and he realised how serious it was, however, Mr Williams should have spoken with him directly and told him what was going on, Mr Williams should have...

The Chairman interjected and advised Mr Turay that it was not a Licensing matter and that he should move on.

In summing up, PC Rohomon on behalf of WMP made the following points: -

- ❖ That he had listened with some interest to the points put forward by the PLH/representative however, he wanted to pick up on the point in Mr Adi-Romulus Ileana's statement where he commented that he saw "her pick up a bottle of WKD", therefore he was aware of the female and yet he said he was distracted and not aware of her. He either was aware of her or he wasn't.
- ❖ The fact that the employee stated he didn't think she was underage was hard for WMP to believe. Moreover, they were concerned by the submissions that the alcohol was from the 'general isle' and therefore, not as bad in some way.
- ❖ That the submissions from Mr Turay were that the 'PLH and employee always asked for ID' yet they failed a test purchase.
- ❖ There was no evidence of a refusals book.
- ❖ That the DPS and PLH had already done a personal licence course and therefore should know all about refusals books and yet no evidence of one.
- ❖ That the girls in the park confirmed they purchased the alcohol from D&B Wines. Officers visited the premises and gave general advice about not selling to minors and yet 6 weeks later they failed a test purchase.
- ❖ That there was nothing further WMP could do to help the premises. All the right people had tried to help and offer advice yet the PLH had made no effort to contact TS. The guidance was clear.
- ❖ That WMP felt revocation was the only option.

In summing up Mr Williams, on behalf of TS made the following points: -

- ❖ That the intelligence that the girl got the alcohol from D&B Wines came from WMP.

- ❖ That the procedure for the test purchase meant that the volunteer would go into the shop with a TS officer for safety reasons but also for evidential purposes.

At 1250 Mr Jasim (translator) requested that he be allowed to leave the room to go and renew his parking fee as it was due to expire, and he didn't want to get a ticket.

The Chairman agreed to the request and he left the room.

At 1253 the solicitor and his client requested to have a brief chat outside the meeting room.

The Chairman granted the request and allowed all the other parties to remain inside the meeting room but to only reconvene the summing up process once all parties returned.

At 1254 Rupinder Sangma left the room for a comfort break and at 1256 all parties rejoined the meeting without Rupinder Sangma, who rejoined the meeting a few minutes later.

Mr Martin Williams continued to sum up: -

- ❖ That the volunteer never went into the shop alone, Mr Williams was observing whilst the volunteer made the test purchase.
- ❖ The same day they did 8-10 test purchases at other premises and only 2 premises allowed the sales, so it wasn't an attempt to target a particular shop.
- ❖ That he wouldn't dispute the posters being up, as whilst the traders notice said it wasn't up, he could see the posters on the photographs.

In summing up Mr Turay, on behalf of the PLH made the following points: -

- ❖ That he had found the hearing helpful as he was only a trainee solicitor.
- ❖ That there was no evidence to support the submissions from both RA's that the 15yo girl purchased alcohol from the premises, he suggested the submissions from TS were venomous.
- ❖ The lady who purchased tobacco and wanted to return it but was refused was the lady who made the allegation regarding illicit tobacco and therefore, the allegation was not valid.
- ❖ That if the allegation was so serious why did TS not do anything.
- ❖ The 15yo ended up in hospital and yet TS did nothing, yet it was only now they wanted the Committee to decide. There was no evidence that the sale was carried out at the premises.
- ❖ The test purchase was carried out by professionals who wanted to trap the PLH.

- ❖ The PLH's wife intended to do training and they would provide proof of that.
- ❖ That the PLH wished to address the Committee regarding why he was not in the shop on any of the occasions mentioned at the hearing.

The Committee Lawyer advised that it would be considered as new evidence and therefore, would only be considered at the Members discretion and once the other parties had confirmed whether they objected.

PC Rohomon advised that it was new evidence and without knowing what the submission was, he couldn't say.

There were no further objections.

Mr Turay advised that the PLH wanted to explain regarding a medical condition which was part of the reason he had not been at the premises. He would travel to Romania for treatment.

The Chairman advised that it was new evidence and therefore, the other parties would be able to make comments in relation to the submission.

Mr Miclescu via his translator Mr Jasim told the Committee how sorry he was and that he had been to hospital. He wasn't aware of what had happened, but he didn't know if the 15yo purchased alcohol from his premises or from another premises.

The Chairman advised that the solicitor had already put forward the point regarding where the 15yo girl purchased her alcohol and to not repeat what the solicitor had said.

Mr Miclescu via Mr Jasim advised that he had been in Romania for a personal health problem as it was easier to get appointments in Romania. He wasn't sure if the Committee wanted to hear about his personal problem.

The Chairman advised that the solicitor had already told the Committee that the shop was family run and if the licence was revoked it would have a direct impact on his family as it was their main source of income.

All parties confirmed that they had nothing more to add.

At 1313 the meeting was adjourned and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1327 the meeting was reconvened and all parties were invited to re-join the meeting and having taken into consideration the legal consequences of the withdrawal of the representations the Committee announced as follows:-

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RESOLVED:-

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

by Marius Miclescu in respect of D&B Wines, 201 Dudley Road, Winson Green, Birmingham B18 7QY, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that **the licence be revoked**, in order to promote the prevention of crime and disorder, public safety, and protection of children from harm objectives in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by the responsible authorities, namely Trading Standards and West Midlands Police.

Trading Standards had submitted a Report to the Sub-Committee explaining that in September 2019 there had been an alcohol-related incident in a park located near the premises. As a result, Trading Standards had visited the shop together with the Police. The visit was not to take any direct action, but simply to advise the management about preventing underage sales, and to assist them by supplying posters for display in the shop. The licence holder was abroad at the time, and so officers had a meeting with his wife, in which they passed on their advice.

In November 2019 Trading Standards conducted one of their regular test purchasing exercises. They visited a number of licensed premises around the city, including D&B Wines. Test purchasing, which is a regular part of Trading Standards' normal work, is carried out to check compliance with the law – namely whether or not a premises is prepared to sell alcohol to a teenager who is visibly under 18. On the day in question, a 14 year old female volunteer was assisting the officers.

On entering D&B Wines, a Trading Standards officer stood in the shop and observed as the 14 year old volunteer was able to purchase a large bottle of WKD Blue, which is an 'alcopop'-style pre-mixed vodka drink of 4% ABV, by selecting it from the shelf, taking it to the counter and paying for it. The staff member behind the counter (an employee of Mr Miclescu) who permitted the sale did not ask the 14 year old to show some age-related ID; indeed he did not even ask her to state her age.

Officers returned to the shop to ask the employee to explain why he had permitted the sale to a customer who was visibly underage. The employee was unable or unwilling to do so, perhaps due partly to language difficulties, and a family member was called to act as interpreter. Mr Miclescu was not in the shop – instead his employee, unable to speak English, was the person in charge of alcohol sales, and had permitted a 14 year old to buy WKD Blue without any challenge. Trading Standards also noted to the Sub-Committee that on two other occasions when they had wanted to speak to Mr Miclescu, a young man had to be called to interpret for him, as Mr Miclescu himself also had difficulties with English. These circumstances did not inspire confidence that the premises was properly managed, properly staffed, or capable of following the law.

Whilst in the shop, officers also discovered 3 packs of illicit hand-rolling tobacco in a small fridge. These appeared to be counterfeit. It was therefore apparent to officers that the premises was not only failing to uphold the licensing objectives, but actively undermining three of them, despite the advice given at the meeting with Mr Miclescu's wife.

Trading Standards also outlined a previous incident the year before. In October 2018, Trading Standards received a complaint from a member of the public that D&B Wines was selling 'fake cigarettes', and was also selling alcohol to those under age. Officers who attended to give advice on such sales witnessed three attempted sales of single cigarettes by a member of staff behind the counter. Mr Miculescu was not in the shop. A Trader's Notice was issued on this occasion.

Given that the shop had proven itself incapable of handling sales of either alcohol or tobacco legally, the recommendation of Trading Standards was that the Sub-Committee should revoke the licence. This proposed course was supported by West Midlands Police, who addressed the Sub-Committee on the impact that underage sales of alcohol have on the licensing objectives.

The Sub-Committee found the information provided by the Police in the Report to be very useful in explaining the effects of improper sales of alcohol on youngsters, their families and the emergency services. The Sub-Committee agreed with the Police's conclusion, namely that any licensed premises prepared to take such risks with the licensing objectives was failing to uphold the trust placed in them by the City Council.

The Sub-Committee then heard from Mr Miculescu's legal representative, and also from him directly (via an interpreter). The employee who permitted the sale of the WKD Blue also accompanied him to the meeting, despite having had his employment terminated.

The Sub-Committee gave careful consideration to their submissions, but was not remotely satisfied, given the evidence submitted by the two responsible authorities, that the premises was capable of proper operation. The explanation given for the sale of the WKD Blue was that the employee had been distracted by another customer acting suspiciously in the shop; this person was the Trading Standards officer who was there to witness the test purchase. The Sub-Committee did not accept that some distraction, caused by others in the shop, was any reason to justify the failure to challenge a visibly underage girl to show some ID to purchase alcohol. Such a situation was part of the everyday work of any off-licence employee.

The licence holder also stated that ID checks were always made on customers requesting higher-strength alcohol from behind the counter, but the WKD Blue was stocked on the general aisle, for customers to select from the shelf. However the Police reminded the Sub-Committee that all alcohol requires ID checks, not simply the higher-strength products.

The explanation given for the counterfeit tobacco discovered in a fridge was that it was the employee's own property, for his personal use, and not for sale to customers. Whether or not that were the case, the issue was that counterfeit tobacco should not be finding its way into any licensed premises for any reason at all. It was the responsibility of Mr Miculescu to ensure that such items did not enter the premises, and to instruct his staff regarding their own conduct and the proper promotion of the licensing objectives. Equally the attempted sale of single cigarettes was a serious offence that would never arise in any well-run premises. There had been failings from both management and staff.

The offer for Mr Miculescu's wife to undertake licensing qualifications and to become a personal licence holder herself was not sufficient to ensure that the licensing objectives would be properly promoted. The Sub-Committee was of the view that it was impossible to have any confidence in the premises, given the management style which had been described by the responsible authorities.

A submission was made that to revoke the licence would cause 'untold hardship' to the licence holder. The view of the Sub-Committee however was that the Police documents in the Report outlined a similar effect caused by underage sales of alcohol. Accordingly, the only course was to revoke the premises licence.

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.

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 heard.

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ANY OTHER URGENT BUSINESS

No urgent business.

..... Chairman