



BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE - B

TUESDAY 5 APRIL 2022

AK SUPERMARKET, 868 WASHWOOD HEATH ROAD, BIRMINGHAM B8 2NG

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

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

The Sub-Committee was also aware that the licence holder Mr Hussain had recently surrendered the licence. Under the Licensing Act 2003 however, any surrender of the licence would not take immediate effect; it would in fact take 28 days, during which time the licence could be reinstated, for example via a transfer.

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

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

Following receipt of information about the shop, Licensing Enforcement looked at the licence and noted that there was no designated premises supervisor named on the licence. Licensing Enforcement therefore carried out a test purchase in February 2022 – an officer went to the shop and noted that alcohol was on display for customers to purchase. (This should not have been the case, as there was no designated premises

supervisor on the licence). The officer went to the counter and bought a bottle of wine. The premises was therefore in breach of the mandatory condition requiring a designated premises supervisor in respect of the licence. Mr Hussain stated to officers that he had completed the relevant course, but had not yet been granted a personal licence.

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

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

The application for review was fully endorsed by West Midlands Police. The Police made representations advising that the licence should be revoked as the premises had demonstrated that it was not capable of upholding the licensing objectives. These views were endorsed by Trading Standards, who also attended the meeting and observed that all the conditions on the licence dealt with “basic things” which were not onerous; Trading Standards questioned whether there had been “any point in giving them a licence if they cannot meet the conditions”. Trading Standards also recommended revocation of the licence.

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

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

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

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

After hearing all the evidence, the Sub-Committee determined that to permit an alcohol sale in breach of the mandatory condition (requiring a designated premises supervisor in respect of the licence) was indeed so serious that it could not be tolerated, and therefore resolved to revoke the licence as recommended by the responsible authorities. Mr Hussain's actions did not inspire any confidence whatsoever that he understood the licensing objectives.

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

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence, or suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, for the reasons set out above. The licence had only been granted in November 2021, and Mr Hussain had only very recently completed the personal licence course, yet within a short time he had come to the attention of the responsible authorities for serious breaches of his licence conditions.

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

A determination to revoke would follow the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation) ran the risk of sending a message that a breach of mandatory condition

was not a serious matter, or that there would be no consequences for such a failure, which the Sub-Committee was not prepared to do.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by those representing the licence holder, Licensing Enforcement, West Midlands Police, and Trading Standards.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the determination of the appeal.