

BIRMINGHAM CITY COUNCIL

LICENSING SUB - COMMITTEE A - 24 FEBRUARY 2020

**MINUTES OF A MEETING OF
LICENSING SUB-COMMITTEE A HELD
ON MONDAY 24 FEBRUARY 2020
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT:

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services.

NOTICE OF RECORDING

01/240220 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

02/240220 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

03/240220 Apologies were submitted on behalf of Councillor Philip Davis and Councillor Mike Leddy was the nominee Member.

MINUTES

04/240220

That the Minutes of meeting held on the 13 January 2020 were confirmed and signed by the Chairman.

That the public section of the Minutes of meeting held on 3 February 2020 were noted.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – LA BUFET

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

Donna Bensley – Trading Standards (TS)

On behalf of the Premises

Stefan Mustatea – Premises Licence Holder (PLH)/Designated Premises Supervisor (DPS)

Those making representations

PC Abdool Rohomon – West Midlands Police (WMP)

Sharon Watts – 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. None of the parties had any preliminary points to make.

Shaid Yasser, Licensing Section, outlined the report.

Ms Donna Bensley, on behalf of TS, made the following points: -

- a) That a member of her team went on a joint visit with Sharon Watts (LEO) to the premises as a result of a complaint received from a member of the public that alcohol was being sold from the premises.
- b) The visit was carried out and they observed a price list on display which indicated that alcohol was already being sold from the premises; which was not licensed.
- c) They found various types of alcohol all listed within TS's report, all of which were poured down the drain.

- d) They also found 200 'Davidoff' cigarettes hidden in a shop freezer. The cigarettes did not comply with the Standardised Packaging of Tobacco Products Regulations 2015 and were not UK Excise duty paid.
- e) TS left notices and once the premises was issued a licence in August, TS sent a follow up letter to the PLH advising him about the law in relation to alcohol and cigarettes.
- f) In October 2019, TS carried out a further joint visit with the LEO and additional illicit tobacco was found. The PLH was not present at the time of the visit but did arrive some time later. The total number of illicit cigarette packets found was 22, as a result TS enquired as to whether anyone at the premises knew of anymore cigarettes to which they were told there were no more. However, Mr Ellson (TS) then discovered another 100 cigarettes on further inspection of the premises, all of which were again non-compliant with the regulations. As a consequence of those inspections TS submitted a review of the Premises Licence.
- g) The view of TS was that the premises had been trading in illegal tobacco and requested that the Committee consider all the options available to them.

In answer to Members questions Ms Bensley made the following points: -

- a) That the second visit occurred once the premises was licensed.
- b) No other issues had been found, but the sale of illicit tobacco was "extremely serious".

Mrs Sharon Watts, on behalf of Licensing Enforcement (LE) made the following points: -

- a) That on 12th July 2019 LE received a complaint that the premises were selling alcohol without a licence, illicit tobacco and prescription medication.
- b) They informed the relevant authorities and asked TS to carry out a joint inspection of the premises.
- c) On 31st July 2019 along with TS, they carried out a full inspection of the premises. Upon entering the premises they found a woman serving behind the counter. Mr Ellson introduced himself and explained the reason for the visit and inspection.
- d) There was a price list on display in the shop which indicated that alcohol was already being sold at the premises. The price list was in Romanian (Appendix 2).
- e) The full inspection revealed several illegal products; namely alcohol and cigarettes. The alcohol had no labels and they were subsequently poured down the drain.
- f) The PLH was informed that it was an offence to sell alcohol without a licence.

- g) On 6th August 2019 the premises licence was granted and as a result Mr Ellson sent a letter to the premises advising them of the law and warning them of a follow up inspection.
- h) On 7th October 2019 Mrs Watts and Mr Ellson went back to the premises and carried out a full Licensing Act inspection. On that occasion the premises licence conditions were not being complied with and she left a Trader Notice in order to give them adequate time to resolve the issues.
- i) Mr Ellson found more illicit cigarettes which were seized.
- j) On 4th December 2019 Mrs Watts carried out another visit on her own to see if the matters of concern had been resolved. She found no evidence that they were not complying with their conditions of licence on that occasion and confirmed that there were no issues.

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

- a) Having carried out the first visit in July, she could confirm that the premises had not been complying with their licence conditions at that time. The premises were again not compliant with the conditions of licence at the second inspection. However, when Mrs Watts visited in December for the third time, they were compliant with the conditions of the licence.
- b) Illicit tobacco and alcohol was found as a result of an inspection carried out due to a complaint which was received via a member of the public. Advice was given to the premises and then a further visit was carried out whereby additional illicit tobacco was found, and a Trader Notice was issued. On the final inspection the issues had been resolved.
- c) They did not find any prescription medication.
- d) There was a considerable amount of alcohol found during the first inspection. The advertisement was in Romanian however, they had translated it and it was referring to alcohol. Therefore, in her opinion they were selling alcohol before they had a licence.
- e) The conditions already attached to the licence were quite limiting however, the Committee may be minded to attached more stringent conditions to the licence, particularly in relation to CCTV and staff training.
- f) There was no CCTV in place at the time she carried out the inspections.
- g) The lady behind the counter on the first visit did not speak good English.

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

- a) That WMP made an objection to the premises grant application.
- b) A complaint was received alleging that the premises was selling prescription only drugs and a child was taken to hospital. WMP did not deal

with the nature of that complaint, and therefore they notified MHRA (Medicines and Healthcare Regulatory Agency).

- c) The Committee granted the premises licence and gave the PLH the benefit of the doubt.
- d) Alcohol was being sold from the premises, even before they had a premises licence. Subsequently that was a breach of the law.
- e) The PLH was not just selling normal bottles of wine, it went beyond that. There was a level of deception in the way in which he had tried to hide what he was doing.
- f) In the review application it was reported that 5 litres of red wine had been decanted into lemonade bottles. PC Rohomon described this as a deliberate attempt to hide what the licence holder were doing.
- g) Additionally, the price list was in Romanian.
- h) The alcohol was being hidden in baby bottles.
- i) Some of the alcohol was homemade.
- j) A Trader Notice was issued by Mr Ellson.
- k) The homemade alcohol was a concern due to consumers being unable to tell what was in it.
- l) It was also impossible to distinguish the strength of homemade alcohol.
- m) That the PLH had put the public at risk.
- n) The PLH had already been committing crime before he had a licence.
- o) There was counterfeit non duty paid cigarettes found at the premises. The cigarettes would have been smuggled into the country, which was already a massive problem that WMP were dealing with.
- p) The Section 182 guidance advised that for such serious crimes the Committee should consider revocation.
- q) Cigarettes were expensive and the PLH could sell them at a discounted rate due to the fact he was not paying tax on them.
- r) The premises were not compliant with the conditions on their licence.
- s) That selling counterfeit non duty paid tobacco breached so many pieces of legislation.
- t) That the PLH had not been promoting the licensing objectives and had certainly not prevented crime a disorder from occurring. The PLH had put profit before the Licensing Act.

- u) That conditions regarding staff training, keeping record of where was alcohol was being purchased and declaring taxes were already things the premises was supposed to be doing. Therefore, adding them as conditions would not alleviate the problems, as they already weren't doing what they should have been.
- v) The guidance was clear, and revocation should be considered.
- w) WMP were requesting revocation.

At this stage in the meeting, Mr Mustatea made the following points: -

- a) That he declared himself guilty for having the cigarettes at the premises however, it was not his fault, he was not present at the time of the inspection as he was at his other job at the Holyhead Clinic, but he did attend the premises some 30 minutes later.
- b) He declared himself guilty due to his employee leaving the cigarettes in his shop. That's why he denied there being illicit cigarettes in the premises at first, but then his employee told him and then he showed Mr Ellson the box of cigarettes.
- c) Initially he was going to bring a legal representative to the meeting however, everything had been going "down and bringing his business down".
- d) The box contained 126 packets of cigarettes. His friend had paid for the cigarettes.
- e) He told Mr Ellson there were no more when asked. However, another 22 packets were found in a plastic bag. He had forgotten about those ones.
- f) Mr Ellson asked where the cigarettes came from and he told him that his employee had purchased them from the shop next door, but he did not want to mention any names as he feared him.
- g) That the report from Trading Standards stated that the cigarettes in the plastic bag were found first and then the larger amount. Mr Mustatea said, "it was how he told it and not how it was in the report".
- h) The allegations from 31 July were the same day as the Committee meeting for the grant of the premises licence, therefore, he was not at the shop.
- i) His wife alerted him to the issues via 'Whatsapp'.
- j) The lady in the shop understood English and could speak English. The employee and his wife gave Mr Ellson permission to search the premises. However, there was never any mention of alcohol or medicine at that time.
- k) Mr Ellson was threatening to come back with a warrant.
- l) His wife was 6 months pregnant.

- m) The room at the rear of the shop was not a stock room it was not even attached to the shop.
- n) The wine was sent from Romania for his personal use.
- o) The other alcohol was ordered from the cash and carry as he was 100% sure he was going to get a licence. So, it was there for when he was able to start trading. He kept the alcohol in the back room as he knew he could not keep it in the shop.
- p) His wife told the officers that it was for personal use and presented the invoice for the purchased alcohol from the cash and carry.
- q) The cigarettes found in the freezer were for personal use too. The freezer was damaged and therefore, was purely for storage purposes.
- r) The baby bottles were slang for smaller bottles – not actual baby bottles.
- s) He was in the Romanian newspapers and on the news, he was very upset that his reputation was being questioned.
- t) The pictures were zoomed in and therefore, didn't show the state of the storage room.
- u) He did have CCTV inside the shop but didn't have a camera outside the shop. It was his fault that he didn't have the camera outside, but within 2 days he had purchased one and it was working.

Councillor Leddy requested the Mr Mustatea moved on, in order not to repeat himself.

In answer to Members questions Mr Mustatea stated: -

- a) That he had the signs on his computer they just needed printing. There was a sign on the back wall asking customers to leave quietly. However, he should have had another copy on the window – that he admitted it was his own fault.
- b) That he complied with everything.
- c) The back room wasn't his – it was the landlords. He had restored that room himself as the landlord wouldn't.
- d) He apologised for his mistakes.
- e) He had never sold alcohol without a licence, or illicit cigarettes.
- f) The Romanian price list was for Pastrami – the wine was used to marinate the meat.
- g) The Committee could come to the shop and see his Pastrami.
- h) He agreed that the cigarettes were non-compliant.

- i) He disagreed with the submissions from Trading Standards that the cigarettes were in 2 bags.
- j) The stuff in the back-storage room was not in the premises, it was not being sold.
- k) He accepted that personal items should not be in the premises.
- l) The CCTV was set up and available at the time of the inspections however, the employee did not know the administrative passwords.
- m) He did not have the sign regarding no single can sales up in the shop, however it only needed printing.
- n) His employee could speak English.
- o) The employee would know the 4 licensing objectives as he had regular weekly meetings with his employee discussing licensing issues, and customer issues.
- p) The back-storage room was not part of the licence.
- q) The wine was sent by his father in law for personal use.
- r) He decanted the wine as the storage room was leaking and he decided it was better to put the wine in small bottles and in plastic bags for safety.
- s) He used to live above the premises.
- t) That Mr Ellson should explain what he meant by 'baby bottles'.
- u) The pastrami was marinated in red and white wine, and brandy.

PC Rohomon advised the Committee regarding the hearing regulations and explained that Mr Mustatea had submitted new evidence which WMP had not had chance to comment on.

At this stage, 1108, the meeting was adjourned to allow the Members to seek legal advice, and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

The meeting was reconvened at 1116 hours and all parties were invited to rejoin the meeting.

The Chairman advised that they accepted PC Rohomon's submission and therefore would allow the parties to comment on what Mr Mustatea had said, as he had not submitted any evidence prior to the meeting, or to the other parties.

The representative of TS clarified on a few points: -

1. That the second batch of cigarettes found was 126 packets of cigarettes which was a huge quantity. 21 cigarettes were then found under the

counter. All the cigarettes were different brands and therefore, concluded that they were not for personal use.

2. The first visit they found 200 Davidoff cigarettes which was equal to 1 sleeve.
3. Baby bottles was a term used by Mr Ellson to refer to smaller bottles.

Ms Watts, Licensing Enforcement stated that it was concerning that Mr Mustatea said the alcohol was for both personal use and purchased for when the licence was granted, yet there was a price list in Romanian for wine and other alcohol which was identical to what was found in the storage room.

PC Rohomon and Ms Watts advised the Committee of the location of the storage room.

Mr Mustatea stated that the alcohol and cigarettes were for personal use and not for sale. He also stated that the officers never told him about the allegations made about his premises.

Ms Watts explained that they could not bring forward the complaint to the grant hearing as it had not been investigated. They had to ensure the complaint was validated.

Mr Mustatea answers questions from PC Rohomon: -

1. The only wine found was red wine and home-made wine, not 5 products as had been suggested.
2. The back room had its own entrance.
3. The back room was accessed via an alleyway.
4. The back room was for storage.

In summing up PC Rohomon, made the following points: -

- ❖ That wine was decanted into bottles.
- ❖ Home-made alcohol was being stored in the back room as well as alcohol purchased for the grant of a licence.
- ❖ The price list included wine and it was all listed 'per litre' why would it be sold per litre if it was just being used as a pastrami marinade. It "made no sense whatsoever".
- ❖ The cigarettes were supposedly for personal use and yet other people were bringing them into the premises. 126 packets of illicit cigarettes would not have been allowed into the country. Further, cigarettes for personal use were often of the same brand, yet the cigarettes found in the shop were of all different brands.
- ❖ It was "a convenient excuse".
- ❖ The PLH had failed on multiple occasions to uphold the licensing objectives.
- ❖ The Section 182 Guidance was clear.

- ❖ Mr Mustatea had been given multiple chances and had failed.
- ❖ There were no conditions that could alleviate WMP's concerns.
- ❖ They requested revocation of the licence.

In summing up, Mrs Sharon Watts, on behalf of Licensing Enforcement, made the following points: -

- ❖ The allegations and complaints received were found to be correct when the inspection was carried out.
- ❖ TS wanted to give the PLH the benefit of the doubt and therefore, carried out another inspection. However again he was non-compliant and further illicit tobacco was found. The third visit was carried out and the PLH was found to be compliant on the occasion.
- ❖ She had concerns whether the licence should stay in force especially as Mr Mustatea had another job and this therefore made her question whether he truly had enough control over the premises.

In summing up Ms Donna Bensley on behalf of TS made the following points: -

- ❖ They made the review application due to concerns over the lack of regard for the licensing objectives.
- ❖ There was serious breaches of law and it undermined legitimate businesses in the local area.
- ❖ She was not confident that the PLH would be able to comply lawfully in the future.

In summing up Mr Mustatea made the following pointd: -

- ❖ He had made mistake and was sorry – it would never happen again.
- ❖ That he had tried to do things properly however, everything had caused him problems.
- ❖ The Police were mixing his words and changing what he was saying.
- ❖ The meat was sold by the kilo and the brine was sold separately by the litre.
- ❖ He had not done anything wrong apart from the cigarettes.
- ❖ The cigarettes were for himself, his wife and employee.
- ❖ The CCTV was working when the inspections were carried out.
- ❖ When he opened the shop everything was doing well, but then business dropped and dropped and then he got his other job.

- ❖ He didn't sell any cigarettes in the shop.
- ❖ He was sorry and he regretted that the Committee ever granted him a licence, he said they should have refused the application initially.
- ❖ The news was framing him, he was being accused of "killing babies and selling alcohol in baby bottles". He was sorry for his mistakes. He was just trying to survive.

At 1158 the meeting was adjourned and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1252 the meeting was reconvened and all parties were invited to re-join the meeting and decision of the Sub-Committee was announced as follows:-

05/240220

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Stefan Mustatea in respect of La Bufet, 136 Boulton Road, Birmingham B21 0RE, 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 Licensing Enforcement.

The application had been brought by the Chief Officer of Weights and Measures. Trading Standards made submissions about the discovery of illicit tobacco products during an inspection. Following the grant of the licence in the summer of 2019, Trading Standards had promptly sent a follow-up letter advising Mr Stefan Mustatea, the premises licence holder, of the law around sales of alcohol and tobacco. However on a visit to check compliance, conducted on 7th October 2019, illicit tobacco had been found in the premises, in plastic bags under the shop counter.

The Sub-Committee's attention was directed to the statement of the inspecting officer in the Report. A bag containing 22 packets of illicit cigarettes, of a variety of brands, had been taken from under the counter by Mr Mustatea and handed to officers. He was asked by the Trading Standards officer if there was any further illicit tobacco on the premises; he had replied "no". However the officer then found a further 126 packets of illicit cigarettes under the counter, of a variety of brands. They were contained in three plastic bags and one box.

Trading Standards explained that the sale and storage of illicit tobacco is a very serious breach; such products were of unknown provenance. The packets found were not compliant with the Standardised Packaging of Tobacco Products Regulations 2015 (ie they could not be supplied lawfully in the UK), and were not UK Excise duty paid. The discovery was made months after written advice had been given to Mr Mustatea - the letter about lawful

sales of tobacco which had been sent upon the grant of the licence. This showed a complete disregard for the law and gave Trading Standards no confidence that Mr Mustatea would run the shop lawfully in future. The recommendation of Trading Standards was that the licence should be revoked due to the undermining of the licensing objectives.

West Midlands Police endorsed this course, observing that the discovery of illicit tobacco was so serious that the Guidance issued under s182 of the Licensing Act 2003 confirmed that revocation could be warranted even for the first instance. The smuggling of illicit cigarettes was an enormous problem for Police across the country; it was therefore quite unacceptable for any licensed operator in Birmingham to have procured this type of illegal product, through some unknown supply route, and for it to be found in his off-licence. The supply of illicit cigarettes was well known by the Police to be an activity of underground criminal networks which fund more serious criminal enterprises and cheat revenue. It was a risk of the most serious kind to the upholding of the licensing objectives, and also undermined those legitimate businesses who do uphold the licensing objectives in Birmingham.

The Police observed that there had been a very short time between the grant of the licence in the summer, and the discoveries made in the inspection at the start of October; they therefore had no confidence in Mr Mustatea as a safe operator. The Police recommended revocation of the licence.

Licensing Enforcement suggested tightening the conditions; however the Sub-Committee agreed with the Police that the conditions already on the Licence should have been perfectly sufficient in any properly-managed premises. The problem had been the management style of the premises licence holder Mr Mustatea, who attended the meeting to address the Sub-Committee.

The Sub-Committee gave careful consideration to the submissions made by Mr Mustatea, but was not remotely satisfied, given the evidence submitted by the responsible authorities, that he was capable of ensuring that the licensing objectives would be properly promoted.

The Sub-Committee was not impressed by Mr Mustatea's explanations for what had been found by officers. He began his submissions by stating, "I declare myself guilty regarding the cigarettes found on the 7th October". He said that on that date, he had been at his (other) job at the Holyhead Clinic elsewhere in Birmingham, when the La Bufet employee on duty had suddenly telephoned him to inform him that Trading Standards had arrived at the shop to conduct an inspection. He had excused himself to his employer, the NHS, in order to go to the shop straight away.

Mr Mustatea told the Sub-Committee that upon arriving at La Bufet he found that his "friends had brought illicit cigarettes" to the shop earlier that morning, and the employee had left these illicit cigarettes on the shop floor. Mr Mustatea said he had not paid for the cigarettes; the friends had paid for them. These circumstances did not inspire any confidence whatsoever that the premises was properly managed, properly staffed, or capable of following the law.

Mr Mustatea himself appeared to confirm this; the Sub-Committee was not impressed at his statement that he regretted ever applying for a premises licence. He said that he had made the licence application last summer to try to build his business, but it had “only brought problems and pulled my business down”. The Sub-Committee’s view was that Mr Mustatea perhaps found it difficult to take responsibility for his own management decisions.

The excuse given for the large number of packets of illicit cigarettes, namely that they were not for sale but for personal use, was not accepted. The cigarettes were of a variety of different brands, which would be unusual if for personal use, and in any event there was such a very large number of them that such a suggestion was not altogether plausible.

Leaving that aside, even if the illicit cigarettes were for personal use, the Sub-Committee noted that they were being stored under the counter in licensed premises. That was completely unacceptable in terms of the upholding of the licensing objectives. It was the responsibility of Mr Mustatea to ensure that such items did not even enter the premises, and to instruct his staff regarding their own conduct and the proper promotion of the licensing objectives.

He had not done this, and it was therefore apparent to officers from all three responsible authorities that the premises was not only failing to promote the licensing objectives, but actively undermining two of them, despite the advice on tobacco law given by Trading Standards in the letter which had been sent as soon as the licence was granted. The issue was that counterfeit tobacco should not be finding its way into any licensed premises for any reason at all. It was a serious offence that would never arise in any well-run premises. There had been failings from both management and staff.

In making their decision, the Sub-Committee was helpfully assisted by advice and recommendations made by the responsible authorities. Licensing Enforcement observed that Mr Mustatea had separate employment elsewhere with the NHS; for that reason they had concerns about whether the licence should stay in force. The Sub-Committee agreed with this, and also 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 Police went on to observe that the sanction of suspending the licence was not appropriate. Given that the shop had already proven itself completely incapable of handling tobacco in accordance with the law, the Police view of the situation was that it had gone beyond that which could be dealt with by way of a temporary suspension, and accordingly the only option was to revoke the premises licence – the course originally recommended by the Chief Officer of Weights and Measures. The Sub-Committee agreed. It was also difficult to disagree with Mr Mustatea’s own observation, namely, “I honestly regret that you gave me the chance. You should have refused” [*the grant of the licence*]. The Sub-Committee therefore resolved 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 by all parties 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 disposal of the A

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ANY OTHER URGENT BUSINESS

No urgent business.

..... Chairman