

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE B,
TUESDAY, 24 JANUARY
2017**

**MINUTES OF A MEETING OF THE LICENSING
SUB-COMMITTEE B, HELD ON TUESDAY, 24
JANUARY, 2017 AT 1000 HOURS, IN COMMITTEE
ROOM 1, COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Lynda Clinton in the Chair.

Councillors Nawaz Ali and Gareth Moore

ALSO PRESENT

Bhapinder Nandhra, Licensing Section
Joanne Swampillai, Legal Services
Tayyibah Daud, Committee Manager

NOTICE OF RECORDING

01/240117 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

APOLOGIES

02/240117 No apologies were received.

MINUTES

03/240117 The private section of the Minutes of the meeting held on 3 January 2017 were deferred.

**LICENSING ACT 2003 PREMISES LICENCE REVIEW – INTERNATIONAL
SUPERMARKET, 117 VILLA ROAD, BIRMINGHAM, B19 1NH**

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

(See documents no. 1)

The following persons attended the meeting:-

On behalf of the representative

Heath Thomas (Solicitor)

Mahir Akgul (Licence Holder of Premises at 233 Lozells Road, Birmingham, B19 1RJ)

Aisha Tektimehr (Interpreter)

Sarah Jane Martin (Trainee Solicitor)

On behalf of West Midlands Police

PC Abdool Rohmon

On behalf of Trading Standards

Phil Quinn (Enforcement officer on behalf of Chief Inspector of Weights & Measures)

Martin Williams (Enforcement Officer)

Jerry Wintry (Enforcement Officer from Dudley Metropolitan Borough Council)

On behalf of the Premises Licence Holder

There was no-one present on behalf of the Premises.

Ms Swampillai, the Committee Lawyer pointed out that under Regulation 12 of the Licensing Hearings Act 2003 (Hearings) Regulations consideration needed to be given for an adjournment to allow adequate representation for all parties and in the public interest. The Chairman stressed that with regard to the principles of natural justice for both parties the request for an adjournment needed to be considered by the sub-committee thus enabling a clear and transparent hearing and the fairest way forward. The meeting was adjourned until 1100 hours to give the licence holder reasonable time to attend the meeting.

The Licence Holder was invited via a formal letter on the 26th December 2016 sent by Mr Nandhra on behalf of the Licensing authority. The Licence Holder was called twice at 1015 hours and 1045 hours. However, no response was received.

All parties were invited back at 1100 hours. The chairman requested comments from all parties that were present as to whether or not they felt the meeting should proceed in the Licence Holder's absence.

The Chief Inspector of Weights and Measures, the applicant for the review informed the Committee, the Licence Holder was invited to an interview at the Enforcement Office on 19th January 2017. The Chief Inspector of Weights and Measures assured the Committee that he had reminded the Licence Holder that he had to attend a Committee hearing on the 24th January 2017. The Chief Inspector of Weight and Measures alongside Enforcement Officer Jerry Wintry agreed that the meeting should go ahead as scheduled.

PC Rohmon on behalf of West Midlands Police stated that there are substantial grounds to carry on the meeting as the Licence Holder was not oblivious that he had to attend the meeting today. It was stressed by PC Rohmon that there are serious allegations of the licensing objectives being breached at these premises which should be addressed at this meeting and cannot be delayed any further.

Mr Thomas on behalf of his client, stated as a recipient of reviews in the past for various Licence Holders, it is clear the letter sent out to the Licence Holder by the licensing authority states that in the absence of the Licence Holder the meeting may proceed. On this basis, Mr Thomas believed reasonable attempts had been made to contact the Licence Holder and the meeting should ensue.

At 1111 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1114 hours all parties were recalled to the meeting and the Chair informed everyone present that after careful consideration the appellant had been well aware of the date and time of the meeting, it had been agreed by the Sub-Committee that it was in the public interest to continue with the meeting.

Following introductions by the Chairman, the main points of the report were outlined by Mr Nandhra, Licensing Section.

The Chief Inspector of Weights and Measures made the following points in respect of his representation and in response to Members' questions:-

1. On 19th October 2016, a co-ordinated exercise was taken alongside West Midlands Police, where numerous premises were inspected with the assistance of a dog handler that is trained to detect illicit and concealed tobacco.
2. The inspection revealed a total of 1652 packets of counterfeit and illicit cigarettes and 26 packets of illicit hand rolling tobacco
3. Majority of these products were found hidden in the ceiling cavity in the shop and a smaller amount behind the counter.
4. The premises did not comply with the Consumer Protection Act. All the items discovered were ceased.
5. At that time of the inspection the premises Licence Holder who is also listed as the current designated premises supervisor was not present.
6. On 20th October 2016 Nawaz Howla, the previous Licence Holder of the premises, stated that the counterfeit items belonged to him and that the current Licence Holder had no knowledge of these items being there.

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7. Since February 2016 various reports have been received stating that the licencing objectives are being breached at the premises. West Midlands Police stated that CCTV footage showed alcohol been sold to drunk people.
8. Trading Standards have received anonymous information in regards to counterfeit cigarettes being sold as well as single cigarettes were being sold to children in July & November 2016 .
9. On 12th September 2016 officers of Birmingham Trading Standards attempted to make a test purchase. However, this operation had to be aborted as there were numerous drunken individuals loitering outside the premises. The officers believed that it would be unsafe to send the volunteer into the premises; therefore they believed that aborting the operation was the best course of the action.
10. The Sub-Committee were concerned that if intelligence was received that the licencing objectives were under a threat of being undermined, they questioned why there was a substantial delay in any action being undertaken by the responsible authorities. The Chief Inspector of Weights and Measures highlighted that the issue with these premises is that the tobacco is that well-hidden, a sniffer dog is required to locate exactly where the tobacco is. There were delays in obtaining a dog, the enforcement officers did not want to go the premises without a sniffer dog.
11. In regards to the test purchase both responsible authorities stated this was difficult as the environment the test purchaser is sent to can be hostile, especially with alcohol being sold to drunken people, the behaviour of these individuals can be unpredictable. In addition, it was stated that at times it is difficult to obtain a volunteer test purchaser.
12. The Sub- Committee were concerned that the why the counterfeit and illicit tobacco was not tested to see if the cigarettes contained dangerous chemicals allowing an insight to see how harmful they could be for the public. The Chief Inspector of Weights and Measures stated that due to resource issues and not having their own internal labs to carry out testing it was difficult to test illicit products.
13. The packets of cigarettes seized were from foreign countries therefore the warning signs were not in English and met the threshold of being a threat to public safety.

PC Rohomon, behalf of West Midlands Police, made the following points in respect of his representation and in response to Members' questions:-

1. It is transparent that there was clear intention for the illicit cigarettes and tobacco to be at the premises as they were situated underneath the counters and the cavity of the ceiling.

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2. Illicit Tobacco does not have duty paid on it, and has the ability to undermine safety measures such as rising the age of sale to 18 and picture health warnings on packaging. The premises are selling single cigarettes to children and alcohol to drunk people.
3. Therefore the danger to children and public safety is paramount. The Licence Holder has failed to uphold the licencing objectives especially the prevention of crime and disorder and public safety, which have been severely been breached at these premises.
4. The Sub-Committee were concerned that there was foreseeable link between the previous Licence Holder, Mr Howla and the current Licence Holder, Mr Asakzai. As Mr Howla within twenty four hours of the inspection was willing to accept that the illicit products found were his. It is to be noted the previous Licence Holder had his licence revoked in June 2016.

Mr Thomas, behalf of his client Mahir Akhgul, made the following points in respect of his representation and in response to Members' questions:-

1. Mr Akhgul has his own licenced premises, which are in close proximity to International Supermarket. However, Mr Akhgul is concerned about other traders who do not operate in the law. A lot of customers had visited Mr Akhgul's shop and had asked to be sold cheap tobacco and cigarettes from foreign countries.
2. As the Sub-Committee were greatly concerned if there was a link from previous Licence Holders and the current Licence Holder, it came to light that a premise Licence Holder in Dudley, Mr Mishaati, had his licence revoked as the result of a review which unfolded large amounts of illicit tobacco.
3. It was apparent that Mr Mishaati is now an employee of Mr Asakzai at International Supermarket.
4. Mr Thomas presented the Committee with video footage, which has been served on all parties attending today including the Licence Holder. The footage was of three separate dates: 19/09/16, 29/09/16 and 24/10/16. In all these footages it transpired that different staff members including Mr Mishaati would bend down the till and produce illicit cigarettes, place them in a black opaque bag and pass the products on to customers. Emphasising, that the employees at International Supermarket had the full intention and knowledge that they were selling customers illicit and counterfeit products.
5. Still photographs of the video footages were also provided for Members to see. (See documents No.2)
6. Mr Thomas stressed that the actions of Mr Asakzai were not the actions of an honest and genuine retailer. Counterfeit and illicit products had been sold which did not belong to the brand holder advertised, did not meet the consumer protection act and no tax/duty had been paid of these products.

7. It is evident this is a multimillion pound enterprise and it is up most important that the Licensing Authority sends out a message that such criminal activities will not be tolerated.
8. The Sub-Committee questioned whether the representation made by Mr Akgul had some financial gain as it was unusual for another Licence Holder to take undertake such lengths to obtain video footage. Mr Thomas assured the Sub-Committee that the main concern was that the sale of illicit and counterfeit products were having a direct impact on a legitimate business.

Summing up Mr Thomas, reiterated the actions in the footage shown proves that there is clear intent in the trade of counterfeit and illicit products at these premises. The Licence Holder is seen engaging in these activities. This is an entrenched operation and that revocation is the only sensible outcome.

In summing up PC Rohmon stressed that there is strong evidence to reflect that these premises are being used for organised criminal activities, involving various premises to trade counterfeit and illicit products .On this basis the Sub-Committee was well in their grounds to revoke this licence.

Summing up, the Chief Constable of Weights and Measures stated that the supply of alcohol to premises is a privilege and not a right. The Licence Holder at these premises does not hold any real regard for the law. The Licence Holder was seen as not being a fit and proper person to sell alcohol. Therefore, the premises licence should be revoked.

At 1214 hours, the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1324 hours and the decision of the Sub-Committee was announced as follows:-

04/240117 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Najibullah Asakzai, in respect of International Supermarket, 117 Villa Road, Birmingham, B19 1NH upon the application of the Chief Inspector of Weights & Measures, this Sub-Committee hereby determines that the licence be **revoked**, in order to promote the prevention of crime and disorder, the protection of children from harm, public safety and the prevention of public nuisance objectives in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by the Chief Inspector of Weights and Measures, who told the Members about the discovery of illicit and counterfeit cigarettes on the premises. They had been kept either in the ceiling cavity or in a hidden area underneath the counter, for sale to customers. An explanation that they were the property of someone else was not accepted. Information had also been received that

cigarettes had been sold to children, alcohol had been sold to persons who were already drunk, single cigarettes were on sale, the premises was suspected of being involved in the selling/ buying of stolen goods, and so on.

These issues were in direct contravention of the Licensing Objectives. To have a large quantity of illicit and counterfeit tobacco on the premises undermined the prevention of crime and disorder. In addition there were obvious safety concerns about the use of such products by customers. Regarding nuisance, Trading Standards officers who had intended to enter the premises noted that a crowd of drunks was outside, and that the premises attracts drunks. Regarding the protection of children from harm, information was received that the premises was selling cigarettes to children. A planned Test Purchase exercise to investigate this could not go ahead for safety reasons (due to the presence of a crowd of drunks outside the premises).

The Sub-Committee then heard from West Midlands Police who observed that the links between the current Premises Licence Holder and the previous Premises Licence Holder, which had become apparent, proved that there had been no real change between the old and new operation. Had the Police been aware of this link at the time, they would have taken issue with it. The Police observed that it was likely that the recent transfer application, to transfer the Premises Licence to a third party, would probably involve another person linked to former Premises Licence Holders. Describing the premises as “a blight on the area” due to the undermining of the prevention of crime and disorder, and public safety, objectives, West Midlands Police recommended revocation as the only correct course.

Representations were then made on behalf of other persons. The other persons agreed that the current and proposed Premises Licence Holders were linked. Details were also given about other premises in Dudley with which the current Premises Licence Holder has been involved, and where large quantities of illicit tobacco were also found. A current member of staff at the International Supermarket is the former PLH of the Dudley premises. The Members were presented with details of the sale of illicit cigarettes at the International Supermarket - namely that they are taken from an area underneath the till, and not from the normal cigarette gantry. Members were very concerned that the Premises Licence Holder should employ in his shop someone whose premises elsewhere had had its Licence revoked.

After hearing all the evidence, Members determined that the sale of illicit and counterfeit tobacco was so serious that it could not be tolerated. They were also concerned to hear of the links between the PLH and others who had already demonstrated that they would not uphold the Licensing Objectives. In view of the undermining of the crime and disorder objective, and also in particular the undermining of the protection of children from harm objective, Members felt that the only sensible course was revocation. The evidence showed illicit activity over a lengthy period, which had become an entrenched activity, and was conducted by a group of individuals who appeared to be closely linked.

Ordinarily the Members would have questioned the Premises Licence Holder directly, but he did not attend the hearing, despite a written invitation and a recent verbal reminder from the Chief Inspector of Weights and Measures; in addition,

reasonable attempts were made to contact him by telephone on the morning of the hearing, but they were unsuccessful. The Sub-Committee delayed the start of the hearing in order to give the Premises Licence Holder every opportunity to attend.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, remove the Designated Premises Supervisor or suspend the licence for a specified period of not more than 3 months, but was not satisfied given the evidence submitted that the licensing objectives would be properly promoted following any such determination.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the Chief Inspector of Weights & Measures, Trading Standards, West Midlands Police, and also by those representing other persons.

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.

05/240117 **OTHER URGENT BUSINESS**

There was no urgent business

The meeting ended at 1330 hours.

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CHAIRMAN