

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 28 JULY 2021</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 28 JULY 2021 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Nicky Brennan in the Chair;

Councillors Mary Locke and Neil Eustace.

### **ALSO PRESENT**

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

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

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### 1/280721 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's meeting You Tube site ([www.youtube.com/channel/UCT2kT7ZRPFCXq6\\_5dnVnYlw](http://www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

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### 2/280721 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

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### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/280721 No apologies were submitted.

**MINUTES**

4/280721

That the public section of the Minutes of meeting held on the 26 May 2021 were noted.

That the Minutes of meeting held on 30 June 2021 were confirmed and signed by the Chair.

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**LICENSING ACT 2003 – REVIEW – ARK CONVENIENCE STORE, 85 TURVES GREEN, NORTHFIELD, BIRMINGHAM, B31 4AH.**

**On Behalf of the Applicant**

Martin Williams – Trading Standard

**Those Making Representations**

Mark Swallow – WMP (West Midlands Police)

**Premises Licence Holder**

Mr Surinder Singh Ark – PLH (Premises Licence Holder)

Chris Hopkins – Counsel

Mr Barring – Solicitor

Amrit Singh Ark

Mr Gill – Interpreter

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

Mr Hopkins advised that he had not been able to access the report and therefore would need some time to read the report. Further he also informed the Committee that he had sent across two statements and sought clarity as to whether the Committee had read the statements.

The chair confirmed that the Committee had received and read the documents and they would allow a short adjournment to allow the parties time to read the report. The Committee Manager ensured that the report was accessible to all parties.

The meeting was adjourned from 1013 and reconvened at 1033.

The Chairman then continued to explain the hearing procedure prior to inviting the Licensing Officer, Shaid Yasser, to outline the report.

The Chair invited the applicant to make their submissions, at which stage the representative of TS, Martin Williams made the following points: -

- a) That on 19 February 2021 (there was a typing error in the report which stated it was 2020) they received a Crimestoppers complaint that the Ark was selling Krackoff Vodka which was unfit for human consumption.
- b) Then on 24 February 2021 TS and EH (Environmental Health) carried out an inspection to follow up on the complaint they had received. The officers introduced themselves and explained why they were visiting the premises.
- c) They found three bottles of the Krackoff Vodka at head height behind the counter and they seized the bottles for examination.
- d) During the inspection they also found some good offers on a certain brand of wine, when they checked the codes they found 16 bottles were counterfeit. They also found a further 22 bottle at the rear of the shop and another 31 bottles in a store room. In total 69 bottles of counterfeit wine were found. They were all seized for examination and a receipt was given to the worker in the shop, of which he signed.
- e) On 2 March 2021 it was confirmed that all 69 bottles of wine were in fact counterfeit.

(There was a short pause in the meeting as Mr Barring lost connection and the meeting was paused to allow him to rejoin).

Martin Williams continued: -

- f) One of the bottles of Vodka was sent for testing in March 2021 and the report came back and although the product didn't contain harmful material, there was no duty paid on the product.
- g) On 24 March 2021 a new complaint was received regarding a different brand of wine, it was said that the wine was unpalatable and was a brand of wine the complainant had consumed before.
- h) They visited the premises again on 29 March to follow up the new complaint and found 7 bottles with the counterfeit codes and seized them. When they were tested, they were again found to be counterfeit.
- i) The circulation of counterfeit products was a large scale operation using organised criminal gangs to sell products to the retailer. No harmful alcohol was contained but they were non-duty paid products. There had been a huge increase in counterfeit products during the lockdown period.
- j) There was no history of complaints before the two mentioned.
- k) There was no way of knowing how many counterfeit products had been sold prior to their inspections.

- l) The licence is in the name of Mr Singh, but he thought it was Mr Singh Ark (he was referred to as Mr Ark).
- m) There was an on going criminal investigation and therefore some documents could not be placed in the public domain.

When asked by the Chair what action should be taken in terms of the licence Mr Williams said that it was a matter for the Committee and they should consider all available options.

The Chairman then invited the representative of WMP, Mark Swallow to make his case, at which point he made the following statements: -

- a) That WMP supported TS representation.
- b) Providing and selling counterfeit wine was not supporting the prevention of crime and disorder and was also not protecting the public from harm.
- c) The information from crime stoppers triggered a shop visit and inspection by TS and EH in February 2021. Goods were seized and found to be counterfeit.
- d) There were five locations in the shop where counterfeit wine was found; in total 69 bottles.
- e) Another complaint was received, and again more counterfeit wine was found. Therefore from both visits a total of 76 bottles of wine and 3 bottles of Vodka was seized.
- f) That it is sometimes said to be a victimless crime, however there were a number of victims; customers buying products thinking they were of a certain quality, brand holders who were having inferior products marketed as their own, finally, the public as there was no duty paid on the products.
- g) 76 bottles of counterfeit products were seized.
- h) That he wanted to extend his condolences to the PLH and his son. However the son still purchased a number of bottles of wine which were counterfeit. Inadequate explanations had been given and therefore WMP recommended revocation as they had no confidence in the management of the premises.

The PLH/representatives were invited to make their case and Chris Hopkins made the following points: -

- a) That it was unknown to the licence holder how the brand holder confirmed all 76 bottles were counterfeit.
- b) That the Committee had received the detailed statements from both the father and son. Mr Ark had held the licence for 9 years without issue prior to today. It was a long-established business selling alcohol, cigarettes and groceries.

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- c) He employed 2 members of staff; one full time (brother), and one part time. His son did not usually work at the premises and the PLH (father) usually did a stock check, normally very two months prior to his trip to the cash and carry where he purchased the majority of his stock. He usually purchased stock from the cash and carry or trusted suppliers.
- d) Mr Ark would never buy from a representative who wasn't from a wholesalers or supplier and no one else was authorised to buy alcohol for the premises; which has since been reinforced to staff.
- e) On 23 February 2021 Mr Ark had to fly to India at very short notice due to his parents contracting Covid-19. Therefore, he asked his son to help out in his absence.
- f) The details regarding the wine purchase was in the supporting documents. Mr Ark's son said there was a rep that visited the shop, whom he recognised. However, he could not recall who the rep worked for.
- g) The rep explained about the company and that he had good relationships with wholesalers and retailers – the man was well dressed and showed a business card.
- h) The man showed a price list of products on an iPad and seemed to be taking calls from customers regarding orders. He also made calls to the head office to check for stock updates and arrange deliveries. The son thought it all seemed very legitimate.
- i) The rep told the son which products the best sellers were and so he ordered those, totalling £275.00. The invoice was to be sent via email.
- j) The goods were unloaded into the shop and the balance was paid in cash.
- k) Some of the products were priced up and placed on shelves.
- l) Mr Ark then returned from India and went into the 10 day isolation as requested by the government due to the Covid-19 pandemic outbreak. He intended to do a stock check once he was out of isolation, however he didn't do the stock check until the 1<sup>st</sup> week of April when TS had already carried out their visits. It was only after the second visit by TS that his son told him what had happened.
- m) Clearly the PLH accepts that the products should not have been on display or in his shop.
- n) However, he had taken steps to ensure it would not happen again
- o) That the vodka may have been on the shelf a long time, but Mr Ark was unable to find the invoice.

Members asked questions and the interpreter Mr Gill gave the following responses on behalf of the PLH: -

- a) That there was appropriate normal stock in the shop before Mr Ark went to India, however he had not overstocked as he had to leave at short notice.
- b) The vodka was 5-6 years old and was a reduced price to get rid off it.
- c) The price of the vodka before it was reduced was £14.99.

In summing up Mark Swallow of WMP made the following points: -

- That they received information from Crimestoppers and the public, which when followed up by the authorities was found to be correct.
- It was true that there had been no previous issues at the premises prior to complaints.
- However on two occasions where visits were carried out there were issues identified.
- That the PLH said no one else made alcohol purchases at the premises, yet his son did.
- His son said he had sight of an ID card from the rep, yet no bills, receipts or names had been provided.
- No explanation could be provided for the vodka and it was unacceptable.
- This was not a victimless crime.

In summing up Martin Williams, TS made the following points: -

- That there were no invoices, or delivery notes provided. He did not understand why that was not provided.
- The son must have checked the stock from the seller and yet hadn't given any indication of how much was purchased, no one wanted to tell TS.
- That the vodka appeared in the last 12 months, to say it is 5-6 years old is simply not true.
- They either didn't know what stock was in the shop, or they didn't want to say.
- The statement from the rep was sent to him, yet they didn't want to produce it in the public domain.

In summing up, Chris Hopkins on behalf of the PLH made the following points: -

- The store had never been visited before however, Mr Ark said the store was visited 5 years ago and there were no issues.

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- That no weight could be attached to the Crimestoppers report as it was said the alcohol was unfit for human consumption which has since been found out not to be true.
- He invited the Committee not to engage in speculation about there possibly being more bottles, as if that was the case WMP and TS would have been searching for more.
- Although the premises sold groceries, the loss of a premises licence would result in the closure of the store. Alcohol was a key income.
- The closure would mean loss of two jobs.
- The Committee should follow the guidance under Section 182 and start with the least severe option available. Any regulatory action needed to be appropriate and proportionate.
- The Committee could modify the conditions of licence, impose further conditions that stop checks needed to be carried out periodically and written records and receipts needed to be provided. It would give a level of oversight and reassurance.
- However, if the Committee did not feel that was appropriate, they could suspend the licence for a short period, which must be proportionate.
- That the Committee had heard what would happen if the licence was revoked and therefore, he wanted to step away from that, this was the first time the premises had been before the Committee and it had operated under the current PLH for 9 years without issues. Therefore, in those circumstances revocation would not be appropriate or proportionate.

At this stage the meeting was adjourned in order for the Sub-Committee to make a decision and all parties left the meeting.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was sent out to all parties as follows;

5/280721

### **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Surinder Singh, in respect of ARK Convenience Store, 85 Turves Green, Northfield, Birmingham B31 4AH, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that:

- the Licence be revoked, and that
- Mr Surinder Singh be removed as Designated Premises Supervisor

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 on behalf of the Chief Inspector of Weights and Measures, as outlined fully in the Report. A Trading Standards officer also attended the meeting in person, and told the Sub-Committee about the bottles of counterfeit alcohol which had been discovered during an inspection of the premises carried out by Trading Standards officers.

The need for an inspection arose after a report was made via "Crimestoppers" by a member of the public, who had purchased Krackoff Vodka from ARK Convenience Store and had suspicions that it might not be a legitimate product. The Crimestoppers report was passed by West Midlands Police to the Trading Standards department of the City Council, who visited the premises. Whilst conducting an inspection of the shop, Trading Standards also seized bottles of wine (on display to customers, and also in the stockroom) which appeared not to be the legitimate product.

In due course, an investigation with HM Revenue & Customs confirmed that the vodka was non-duty paid. Some of the wine was passed to the brand manufacturer, who confirmed that it was counterfeit.

A further complaint was then made directly to Trading Standards by a member of the public, who said that he had bought a bottle of wine from ARK Convenience Store, of a brand with which he was familiar, and upon tasting it he had formed a suspicion that the bottle he had bought from ARK Convenience Store could be what he described as "fake".

Officers attended at the shop and found further bottles, of the same brand and lot number as reported by the customer, on display on the shelves. As per the last occasion, some of the seized wine was passed to the brand manufacturer, who confirmed that it was counterfeit.

Trading Standards advised the Sub-Committee that counterfeit alcohol subverts the normal supply chains of legitimate trade, as it is controlled by criminal organisations who seek to maximise profit by avoiding legitimate controls and systems. It is worse than "non-duty paid" alcohol, as it is specifically manufactured to look like genuine brands, and therefore to mislead consumers into making purchases of substandard products. (It should of course be noted that no duty will have been paid on the products either).

It was the recommendation of Trading Standards that the Sub-Committee should look at all options when making their decision, and in particular that the Sub-Committee should ensure that there was confidence that the management of the shop would not engage in, and encourage, criminal activity; criminal activity affected not only the citizens of Birmingham, but also respectable businesses and companies.



The application for review was fully endorsed by West Midlands Police. The Police advised the Sub-Committee as per their document in the Report, namely that the purchase and sale of counterfeit alcohol is often associated with organised crime. It is usually made via cash transactions - therefore with no traceability, and of course no UK duty being paid. Traders acting unscrupulously in purchasing counterfeit alcohol cannot have any idea of the provenance of such alcohol, or even if it is fit for human consumption. The Sub-Committee considered that the only intention behind such practices was to maximise profit by tricking consumers.

The Police also observed that the victim in the sale of counterfeit alcohol is not only the consumer, but the brand itself. These underground activities cause damage to brand manufacturers, destroying consumer confidence in their products and putting their business at risk in uncertain times. The Sub-Committee agreed that counterfeit products did indeed damage the reputation of successful businesses; as such the Sub-Committee took a very dim view of any premises which offered such products for sale to the people of Birmingham.

West Midlands Police made representations advising that the licence should be revoked as the licence holder had demonstrated that he and his style of operation were completely incapable of upholding the licensing objectives.

The Sub-Committee then heard from those representing the premises. Counsel for the licence holder stated that he had been unable to access the Committee Report; he was therefore given twenty minutes to read it. The solicitor for the licence holder stated that he was having technical difficulties with internet connection, but it was noted that he was able to use the 'chat' function in Microsoft Teams successfully.

The explanation given to the Sub-Committee for the discovery of counterfeit alcohol at ARK Convenience Store was that the licence holder's adult son, employed in the shop whilst the licence holder was called abroad to deal with a family matter, was the person who had purchased the illicit alcohol. This had been done without the licence holder's knowledge, and the counterfeit alcohol stock had been purchased by the son from somebody whom the son described as 'a representative'.

The Sub-Committee took the statements of the licence holder and his son into account, but looked askance at their suggestion that it was the son who had taken it upon himself to purchase alcohol from 'a representative' in the licence holder's absence; this showed a lack of professional supervision and control by the licence holder. It was said that staff training had been refreshed following the incident, but the issue of counterfeit alcohol was very serious, and the Sub-Committee considered that the fact that the incident had happened at all was unacceptable.

After hearing all the evidence, the Sub-Committee determined that the purchase and sale of counterfeit alcohol was indeed so serious that it could not be tolerated, and therefore resolved to revoke the licence, as recommended by West Midlands Police. The Sub-Committee had grave concerns about the manner in which this premises had been operating, and agreed with Trading Standards that the

operation had been managed in a way that was not merely irresponsible, but also illegal.

The Police had endorsed all the submissions made by Trading Standards. This therefore also warranted the removal of the licence holder as designated premises supervisor. The Sub-Committee had no confidence that he was capable of upholding the licensing objectives. A determination to revoke would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion.

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, as requested by counsel for the licence holder. However the Members 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.

Counsel for the licence holder reminded the Sub-Committee that their decision must be appropriate and proportionate. The context, however, was offering counterfeit alcohol for sale to the general public. This put at risk the objectives of public safety and the prevention of crime and disorder. Any licence holder in Birmingham was required as a bare minimum to ensure that his operation upheld the law; Mr Singh had failed in this regard, and the decision to revoke was therefore both reasonable and proportionate.

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 Chief Inspector of Weights & Measures and West Midlands Police, and by those representing the licence holder.

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.

**EXCLUSION OF THE PUBLIC**

6/280721

**RESOLVED:**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3

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