

London Borough of Islington

Licensing Sub-Committee C – 4 August 2011

Minutes of the meeting of Licensing Sub-Committee C held at the Town Hall, Upper Street, N1 2UD on 4 August 2011 at 10.00am.

Present: **Councillors:** Raphael Andrews, Julie Horten and Marian Spall.

COUNCILLOR MARIAN SPALL IN THE CHAIR

63 INTRODUCTIONS (ITEM A1)

Councillor Spall welcomed everyone to the meeting and asked members and officers to introduce themselves.

Those present were informed that the procedure for the conduct of the meeting was detailed on page 3 of the agenda.

64 APOLOGIES FOR ABSENCE (ITEM A2)

None.

65 DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

None.

66 DECLARATIONS OF INTEREST (ITEM A4)

None.

67 CONFIRMATION OF THE MINUTES OF THE MEETING OF LICENSING SUB-COMMITTEE C HELD ON 9 JUNE 2011 (ITEM A5)

RESOLVED:

That the minutes of the meeting held on the 9 June 2011 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

68 ORDER OF BUSINESS (ITEM A6)

The Sub-Committee noted that agenda item B1 – City Supermarket, 190 – 194 Goswell Road, EC1V 7DT – premises licence review and item B2 – City Supermarket, 190 – 194 Goswell Road, EC1V 7DT – application for a premises licence transfer and DPS variation – had been postponed to the Licensing Sub-Committee to be held on 22 August 2011. Item B5 – EDA Supermarket, 504 – 506 Hornsey Road – would be heard first, to facilitate Police Officers at Hillrise Safer Neighbourhood Team, who had commitments during the afternoon.

69 EDA SUPERMARKET, 504 - 506 HORNSEY ROAD, LONDON N19 3QW – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B5)

The Sub-Committee noted the presence of Mr Alan Aylott, Dadds LLP, Mr Jun Simon and Mr Merdal Sahin, who were representing the licensee for EDA Supermarket, Mr Kalender Boyraz.

Mr Alan Aylott, the legal representative for the licensee, stated that he had been asked to seek an adjournment, as Mr Boyraz was currently away on a pre-booked holiday with his family. Mr Aylott said that Mr Boyraz accepted that he had made a mistake and had wanted to be present at the Sub-Committee meeting hearing his case to accept any sanctions and criticisms personally. He added that Mr Boyraz's daughter was receiving medical attention in Turkey to deal with a foot complaint. Mr Aylott said that the SNT Police Officers present were here for other agenda items too, but the Police Licensing Officer clarified that they were present for this case only.

The Service Manager for Trading Standards and the Police spoke against the request for an adjournment.

The Sub-Committee adjourned at 10.24am to consider this request and reconvened at 10.34am.

RESOLVED:

That the request for an adjournment be refused, in view of the fact that the applicant had had sufficient notification of this meeting, that the Sub-Committee had established that Mr Boyraz was represented at the meeting and had confirmation that his representative, Mr Aylott, was authorised to act on behalf of his client. In addition, in view of the seriousness of the breaches of the conditions of the licence, which had been admitted in the application for the adjournment and the fact that all other parties involved were present, that the meeting do proceed.

The meeting reconvened.

The Service Manager for Trading Standards outlined the details of the case and the reasons for the review, as detailed in the report. He highlighted the fact that counterfeit vodka had been seized, in addition to non-duty paid goods.

The Police Licensing Officer strongly supported revocation of the licence for the reasons stipulated in his written statement.

In response to a question from a member of the Sub-Committee, a Police Constable attached to the Hillrise Safer Neighbourhood Team described the problems associated with street drinkers in the vicinity of these premises and the general area.

Mr Aylott stated that there was no causal link between the EDA premises and the problems associated with street drinkers in the area and maintained that staff at the premises were robust in refusing to sell alcohol to street drinkers. He said that this was a one-off instance, and that Mr Boyraz had traded for 3 years at the premises and was a responsible person, who had made a serious mistake for which he had apologised. Mr Aylott drew a distinction in relation to the terminology of paragraph 11.26 of the guidance, stating that the crime prevention objective was not "being" undermined, but rather "had been" undermined. He suggested that Mr Boyraz would learn from his mistakes and that, with the additional conditions proposed by Trading Services and those offered by Mr Boyraz, his view was that the licensing objectives would be promoted.

The Licensing Officer confirmed that the additional conditions proposed by Mr Boyraz had not been seen or agreed by the Licensing Authority.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

That, having considered all of the oral and written evidence and having given consideration to the Licensing Act 2003 and its regulations, the national guidance and the Council's licensing policy, the premises licence in respect of EDA Supermarket, 504-506 Hornsey Road, N19 3QW, be revoked.

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the responsible authorities and the applicant.

The Sub-Committee noted that the review was brought, following the discovery of smuggled alcohol at the premises by the responsible authorities. The Sub-Committee considered the Home Office guidance at paragraphs 11.18, 11.21, 11.23 and 11.24 and gave particular consideration to the

guidance at paragraphs 11.26 and 11.27 which identified criminal activity which the Secretary of State considered should be treated particularly seriously. This included the sale of smuggled alcohol. It was envisaged that the licensing authorities would use the review procedures to deter such activities and crime. Where licensing authorities determined that the crime prevention objective was being undermined, it was expected that revocation of the licence should be seriously considered.

The Sub-Committee heard evidence that Trading Standards and HMRC had discovered smuggled goods at the premises, specifically 27.8 litres of spirits and 108 bottles of wine. The purchaser of the vodka would have had no way of knowing whether the vodka was illicit, thus possibly endangering public health. Fortunately, it was later ascertained that the vodka identified as counterfeit had not been harmful to human health. No evidence of legitimate purchase, in the form of an invoice, had been provided and the Sub-Committee were of the view that the poor management practices evidenced by this, together with the purchase of the goods, demonstrated that the crime prevention objective was being undermined. The Sub-Committee noted that there had been no contact from the licensee since the seizure of the goods, until shortly before this hearing, again demonstrating poor management practices and a failure to promote the licensing objectives.

In addition, the Sub-Committee heard evidence relating to street drinking in the vicinity of the premises but noted that there was limited evidence of a direct link between the problems caused by street drinkers in the area and these particular premises.

Given these considerations, the Sub-Committee decided that the revocation of the licence was a proportionate response to this review. In reaching their decision they took into particular consideration Licensing Policy 028 which required licensees to operate to the highest standards of management and Licensing Policy 039 regarding the sale of smuggled goods.

70 ISLINGTON WINES, 242 UPPER STREET, LONDON N1 1RU – APPLICATION FOR A PREMISES LICENCE VARIATION UNDER THE LICENSING ACT 2003 (Item B3)

The Sub-Committee noted the presence of Mr Keith Walmsley, Premlic Licensing Consultancy, representing the licensee, Mr Shanmugalingam, who was present with his wife.

The Service Manager for Trading Standards outlined the details of the case and the reasons for the review to the application for a premises licence variation, as detailed in the report.

The Police Licensing Officer stated that counterfeit goods had been seized from the premises and he was opposed to the application for an extension to the opening hours, as it was likely that sales of alcohol from these premises would be to persons who were already intoxicated.

Mr Walmsley stated that Mr Shanmugalingam had successfully managed the premises for 3 years and wanted to extend the opening hours of the premises in order to be able to compete with other traders in the area and to increase revenue. He said that, during the 3 years that Mr Shanmugalingam had traded, he had not received advice from Trading Standards or the Police on how to identify counterfeit goods. Mr Shanmugalingam regretted his decision to purchase alcohol from an unknown source. He drew the Sub-Committee's attention to the letter of 28 July 2011 from Mr Shanmugalingam's accountants, which supported his application to vary the premises opening hours. Mr Walmsley maintained that the representations from Trading Standards and the Police related to management issues at the premises, which could be controlled by the application of further conditions to the licence. Mr Shanmugalingam was aware that a review could be sought if there were breaches to the conditions of his licence and would not naively purchase counterfeit alcohol in the future.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

(a) That the application for a variation of the premises licence in respect of Islington Wines, 242 Upper Street, N1 1RU be refused.

(b) That the following conditions apply to the licence:

1. Conditions of the current premises licence.
2. Conditions as outlined in appendix 4 and detailed on page 87 of the agenda

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the responsible authorities and the applicant and balanced the conflicting needs of residents and the business interests of the applicant.

The Sub-Committee noted that the applicant had accepted the conditions put forward by the responsible authorities. In view of the history of recent breaches of licensing conditions at the premises, in particular the seizure of smuggled vodka and wine from the premises, the Sub-Committee were of the view that longer opening hours would make the enforcement of consumer protection laws harder and would not promote the licensing objectives.

The Sub-Committee noted that no invoices for the seized goods had been produced within the 30 day period allowed by HMRC. It was considered that this, together with the purchase of the smuggled goods, demonstrated poor standards of management at the premises and a failure to promote the licensing objectives.

In reaching their decision, the Sub-Committee took into particular consideration Licensing Policies 13 and 28 which required licensees to operate to the highest standards of management.

71 RETAIL 24, 249 UPPER STREET, LONDON N1 1RU - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B4)

The Sub-Committee noted the presence of Mr S. H. Raza, the licensee and Mr Hassan.

Mr Raza referred to a letter of 1 August 2011 from J & H Licensing Consultants, who had been instructed to act for Mr Raza at the Sub-Committee but had not had sufficient time to arrange for legal representation at the meeting. Mr Raza reiterated the request for an adjournment to enable him more time to obtain legal representation and to gather further information to bring to the Sub-Committee.

The Sub-Committee adjourned at 12.45pm to consider this request and reconvened at 1.05pm.

RESOLVED:

That the request for an adjournment be refused, in view of the seriousness of the alleged breaches of the conditions of the licence and on the basis that the licensee had been aware of the review for two months. That, in addition, it be noted that the Sub-Committee was of the view that the licensee had had sufficient notification of this meeting and had had the opportunity to arrange legal representation and to submit further evidence.

The meeting reconvened.

The Service Manager for Trading Standards outlined the details of the case and the reasons for the review, as detailed in the report. He highlighted the fact that counterfeit alcohol had been seized, in addition to non-duty paid goods.

The Police Licensing Officer stated that the premises were first visited because the licensee had not attended a meeting called by the Police and the Council's Licensing Team to discuss problems

associated with anti-social behaviour in the area, caused by young people who had consumed alcohol. The suspected illicit alcohol had been found by the visiting Police Officer, who had reported his suspicions to Trading Standards.

Mr Raza confirmed that someone had called at the shop selling the alcohol and had claimed that he represented a bona fide cash and carry company, which had later transpired not to be the case. An invoice had been produced for the purchase, which turned out to be counterfeit. Mr Raza confirmed that Mr Butt had supplied the alcohol and the invoice. He stated that he would not purchase alcohol again from casual callers to the premises.

A Member of the Sub-Committee highlighted a further instance of bad management practice when 166 bottles of suspected illicit wine had not been removed from the shelves as instructed by Trading Standards on their visit of 9 February 2011. This illicit wine, minus 3 bottles, was still on the shelves on the follow up visit of 22 February 2011. Mr Raza said that there had been a mistake but maintained that they had followed Trading Standards' instructions and the wine had not been sold.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

That the premises licence in respect of Retail 24, 249 Upper Street, N1 1RU be revoked.

REASONS FOR DECISION

The Sub-Committee considered the submissions put forward by the responsible authorities and the applicant.

The Sub-Committee noted that the review was brought following smuggled alcohol found at the premises by the responsible authorities. This was during a visit prompted by the licensee's failure to attend a meeting called by the Police and the Council Licensing Team to discuss anti-social behaviour in the area. The Home Office guidance at paragraphs 11.26 and 11.27 identified criminal activity which the Secretary of State considered should be treated particularly seriously. This included the sale of smuggled alcohol. It was envisaged that the licensing authorities would use the review procedures to deter such activities and crime. Where licensing authorities determined that the crime prevention objective was being undermined, it was expected that revocation of the licence should be seriously considered.

The Sub-Committee heard evidence that Trading Standards and HMRC had discovered smuggled goods at the premises, specifically 82.8 litres of vodka and 66 bottles of wine seized by Trading Standards on 9 February 2011. In addition, on the visit of 9 February 2011, the trader had been instructed by Trading Standards to remove another 166 bottles of suspect wine from the shelves. At the visit to the premises on 22 February 2011 to seize the 166 bottles of illicit wine, it transpired that 3 were missing, though there was no way of ascertaining if these had been sold to members of the public. 163 bottles of wine were seized by HMRC on 22 February 2011. The purchaser of the vodka would have had no way of knowing whether the vodka was illicit, thus possibly endangering public health. The Sub-Committee noted the doubt over the authenticity of the invoice eventually provided to Trading Standards. In addition, public health had been jeopardised as the licensee had not removed the 166 bottles of illicit wine as instructed by Trading Standards on 9 February 2011 and 3 of those bottles had subsequently disappeared.

The Sub-Committee were of the view that the poor management practices evidenced by this and the licensee's failure to engage with the Council, together with the purchase of the goods and the failure of the licensee to comply with the specific instructions from Trading Standards to remove 166 bottles of illicit wine from the shelves, demonstrated that the crime prevention objective was being

undermined and that the licensing objectives were not being promoted.

Given these considerations, the Sub-Committee decided that the revocation of the licence was a proportionate response to this review. In reaching their decision they took into particular consideration Licensing policy 028 which required licensees to operate to the highest standards of management and licensing policy 039 regarding the sale of smuggled goods.

72 VARIOUS MINI MART, 69 HOLLOWAY ROAD, LONDON N7 8JZ – APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B6)

The Sub-Committee noted the presence of Mr T. Munro, representing Mr Keethananthapillai, the licensee, who was also present.

The Licensing Officer stated that there had been no communication from the licensee in the time since Trading Standards had visited in March 2011, or the visit by the Licensing Team on 6 May 2011, despite the seriousness of the letter sent to the licensee on 18 May 2011, following the later visit, which threatened action against the licensee.

Mr Munro said that Mr Keethananthapillai had been poorly advised in the past. He acknowledged that there had been poor management of the premises. However, a refusals book was available, though staff had not appeared to know its location. In addition, Mr Keethananthapillai had passed the test purchase of alcohol to a young person. Mr Munro said that the current licensee had not directly purchased the illicit stock but had inherited it from the previous owner when he bought the business. Mr Keethananthapillai had no reason to believe any of the stock was counterfeit and, as had already been heard at this meeting, it was almost impossible to recognise counterfeit goods. He urged the Sub-Committee not to revoke the licence, since there were other interventions that could be deployed before this, such as amendments to the conditions of the licence.

Members of the Sub-Committee directed questions to Mr Munro as to Mr Keethananthapillai's training on the responsibilities of a licence holder. Mr Munro replied that, although Mr Keethananthapillai understood his responsibilities as a licence holder, he would have relied on other people to stress the importance of the implications of any breaches of the licence.

Members of the Sub-Committee left the room to consider their decision, together with the legal officer and the clerk.

RESOLVED:

- (a) That the premises licence in respect of Various Mini Mart, 69 Holloway Road, N7 8JZ, be suspended for a period of 4 weeks
- (b) That the following conditions be applied to the licence:
 - i) Conditions of the current premises licence
 - ii) Conditions as outlined in Appendix 5 and detailed on page 159 of the agenda.
- (c) That it be noted that the licensee had been asked to confirm his current address with the Licensing Authority, as required by condition 13 in the licence and that the Sub-Committee had recommended that the licensee attend appropriate refresher training on the duties of a licensee.

REASONS FOR DECISION:

The Sub-Committee considered the submissions put forward by the responsible authorities and the applicant.

The Sub-Committee noted that the review had been brought following the discovery of smuggled goods at the premises by the responsible authorities. The Home Office guidance at paragraphs 11.26 and 11.27 identified criminal activity which the Secretary of State considered should be treated particularly seriously. This included the sale of smuggled alcohol. It was envisaged that the

licensing authorities would use the review procedures to deter such activities and crime. Where licensing authorities determined that the crime prevention objective was being undermined, it was expected that revocation of the licence should be seriously considered.

The Sub-Committee noted that the licence had been granted in January 2011 and that a number of breaches of the licensing conditions had already been identified, as detailed in a letter of 18 May 2011 from the Licensing Team to the licensee. Trading Standards also seized goods from the shop which they believed to be illegal, namely 5 bottles of vodka and 124 packs of condoms but, in the absence of any other evidence, the Sub-Committee accepted the licensee's representative's explanation that the illegal goods had been "inherited" by the current licensee, as part of the transfer of stock from the previous owner. However, the Sub-Committee were of the view that the poor management practices evidenced by the breaches in the conditions, demonstrated that the crime prevention objective was being undermined and a failure to promote the licensing objectives.

Given these considerations, the Sub-Committee decided to suspend the licence for 4 weeks. In reaching their decision they took into particular consideration Licensing policy 35 regarding enforcement, Licensing policy 028 which required licensees to operate to the highest standards of management and licensing policy 039 regarding the sale of smuggled goods. Due to the cumulative effects of the various breaches of the licence conditions, the Sub-Committee was of the view that the decision to suspend the licence for 4 weeks was proportionate in the circumstances and was necessary to promote the licensing objective of prevention of crime and disorder.

The meeting closed at 3.30 pm.

CHAIR