

London Borough of Islington

Licensing Sub-Committee C – 29 November 2012

Minutes of the meeting of Licensing Sub-Committee C held at the Town Hall, Upper Street, N1 2UD on 29 November 2012 at 7.20pm.

Present: Councillors: Raphael Andrews, Marian Spall and Claudia Webbe.

Councillor Marian Spall in the Chair

156. INTRODUCTIONS AND PROCEDURE (ITEM A1)

Councillor Spall welcomed everyone to the meeting and asked members and officers to introduce themselves. The Chair outlined the procedures for the meeting.

157. APOLOGIES FOR ABSENCE (ITEM A2)

None..

158. DECLARATION OF SUBSTITUTE MEMBERS (ITEM A3)

None.

159. DECLARATIONS OF INTEREST (ITEM A4)

None.

160. ORDER OF BUSINESS (ITEM A5)

The order of business would be as on the agenda.

161. MINUTES (Item A6)

RESOLVED

That the minutes of the meeting held on the 10 October 2012 be confirmed as an accurate record of proceedings and the Chair be authorised to sign them.

**162. ODDESSE FOOD AND WINE, 9 BARNSBURY ROAD, LONDON, N1 0GH
APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B1)**

The trading standards officer outlined the reasons this application for review had been made. It was highlighted that, in April 2012, the premises had been visited by the trading standard team and the police. Tobacco had been found hidden within another product, the tobacco was genuine but non duty paid. Spirits seized in the premises had damage to the caps, similar to the damage caused when supermarket security devices were forced off. No receipts had been supplied for the alcohol stock. It was suspected that the alcohol was stolen, although it was accepted that the evidence was circumstantial. It was noted that illicit alcohol had also been seized in September 2010 and Ibrahim and Ahmet Boyraz attended an officer panel in December 2010 where a warning and guidance was given. Additional guidance had been posted to the licensees in March and December 2011.

Rachel Kapila, counsel, supported by Ahmet Boyraz, the Company Secretary and Ibrahim Boyraz, the Designated Premises Supervisor, spoke against the review. Ms Kapila informed the Sub-Committee that the alcohol in question had been bought in a supermarket or cash and carry and a view should not be taken as to whether or not the goods had been stolen. This was a family business and it was the intention that Ahmet take over the business from Ibrahim, who had ill health following a brain haemorrhage in 2006. It was accepted that this matter had not been taken as seriously as it should have been. This was a premises that could be well run. Ms Kapila tabled amendments to the conditions on page 43 of the agenda to include reference to tobacco. These would be interleaved with the agenda papers. The Sub-Committee were invited to suspend the

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licence which would not strip the licensees of their livelihood, rather than revoke.

In response to questions from members it was noted that the licensees did not think they would need to keep the invoices from supermarket purchases. It was noted that since this review application all receipts were kept and goods were checked with a UV pen. It was admitted that this matter should have been taken more seriously in 2010. Ms Kapila considered that her clients had not been given a chance to have a formal set of conditions to comply with.

In summing up, the trading standards officer informed the Sub-Committee that one of the current conditions of the licence read 'any incidents of a criminal nature that may occur on the premises shall be reported to the Police'. The tobacco had been carefully hidden away and no information had been supplied by the licensees regarding the sellers of the alcohol or tobacco.

The police reported that this family had not considered the consequences of their actions on other family run businesses.

Ms Kapila did ask that the Sub-Committee exercise some caution as this meeting was not a criminal trial. A suspension with added conditions would serve as a deterrent whilst a revocation for a family run business would be a draconian measure.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

That, having considered all the oral and written evidence and submissions and having given consideration to the Licensing Act 2003, as amended, and its regulations, the national guidance and the Council's licensing policy, the Premises Licence in respect of **Oddesse Food and Wine, 9 Barnsbury Road, N1** be revoked.

REASONS FOR DECISION

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

The Sub-Committee noted that the review was brought following a suspicion of possession of illicit alcohol and tobacco found at the premises by the responsible authorities. The Home Office guidance at paragraphs 11.18, states that where the responsible authorities have issued warnings requiring improvement that have failed as part of their stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate and also paragraph 11.19 where the licensing authority considers that action under its statutory powers is appropriate may take various steps, which can include suspension or revocation of the licence. The Sub-Committee also considered the guidance at paragraph 11.27 namely that where there is certain criminal activity that may arise in connection with licensed premises, this should be treated particularly seriously. This included the use of the licensed premises for the sale of smuggled tobacco and alcohol. It was envisaged that 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 application was for the review of the premises licence under section 51 of Licensing Act 2003. The licensee was legally represented at the hearing.

There was no factual dispute concerning the facts set out in the supporting reasons in the application papers.

The admitted or agreed facts were as follows:-

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- On 28 September 2010, 25.3 litres of spirits and 141 bottles of wine were seized at the premises as there was no evidence of duty having been paid on this alcohol. No evidence has been provided to Trading Standards to date
- On 6 December 2010, the Licensee was issued with verbal warning, followed up in writing, stating that if smuggled goods were found in the shop again, the license would be reviewed. A copy of the Trading Standards Business Guidance on illicit alcohol and tobacco was attached.
- On 23 March 2011 and 15 December 2011, further copies of the updated Guidance on illicit alcohol and tobacco were sent to the Licensee.
- On 20 April 2012, packs of illicit cigarettes and tobacco were found on the premises. Alcohol was also seized on the premises, for which the licensee has failed to provide invoices for, despite having been asked by Trading Standards to do so.
- On 2 August 2012 at an interview with Trading Standards, Mr. IH Boyraz admitted that the shop had sold illicit tobacco, that they knew the tobacco was illicit and that it was and had been illegal to do so.
- That further alcohol was found at that at the premises with broken seals/tops for which no invoices relating to their purchase was or could be provided. That there was no proof that the alcohol was illicit.

The licensee's representative on behalf of the Licensee, admitted that the Licensee had no excuse for the illegal possession of tobacco and for the illegal trading. The Licensee's representative asked the panel to add the conditions recommended by the applicant to the existing license conditions.

The Sub-Committee in reaching the decision considered the representations by the Authority and the Licensee and particularly took into account the effect that revocation would have on the licensee.

The Sub-Committee also took into account the licensing objective to prevent crime and disorder and the facts admitted above and in particular the fact that the Licensee had committed an offence after having received verbal and written warnings from the Trading Standards Team and after being found in possession of alcohol and tobacco under suspicious circumstances in 2010.

Adding further conditions to the Licence and/or suspending the license for a brief period was considered by the Sub-Committee. The Sub-Committee decided against such a finding in light of the fact the licensee had received verbal and written warnings before. The Licensee was well aware of the potential consequences of continuing to trade with illicit tobacco and ignored these warnings.

Taking the above evidence and factors into account, the Sub-Committee found that it would be proportionate, necessary and appropriate with regard to the promotion of the Licensing Objective to revoke the Licence.

163. MYTHOPOLIS, 277 CITY ROAD, EC1V 1LA - APPLICATION FOR A PREMISES LICENCE REVIEW UNDER THE LICENSING ACT 2003 (Item B4)

The licensing officer reported that an additional paper had been tabled by the licensee. This paper would be interleaved with the agenda papers.

The noise officer reported that the licensee's representative was to propose some noise measures. The licensing manager, speaking on behalf of the licensing authority, supported the noise measures that may be agreed with the noise officer but expressed their concerns regarding the management at the premises.

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Archie Madden, barrister, supported by Mr Makis the designated premises supervisor and proprietor, agreed that the noise nuisance was an issue and set out a three stage process of noise measures to be undertaken which would ensure that the business would operate with no noise nuisance. These were:-

- 1) over the next seven days, the business would not operate noise equipment
- 2) by the 5 December:-

all monitored speakers would be removed and an in-ear system introduced, the stage floor would be isolated and deadened to reduce structural transmission, the fire exit which enters the communal hallway was to be soundproofed and there was to be the installation of a cut out limiter, set to limits in consultation with the noise team.

- 3) by the 10 January 2013:-

a detailed scheme of works to be prepared and submitted to the noise team.

A warrant was in place and equipment could be seized should any noise nuisance be substantiated prior to the measures being completed.

Mr Madden had concerns that a change in hours as suggested would change the nature of the business to a restaurant and would end the business as it currently operated. He did not consider that it was necessary to remove Mr Makis as the designated premises supervisor as the business was generally well run but agreed that Mr Makis could attend additional training courses.

The Sub-Committee had concerns that there were no time limits set out for the full scheme of works to be carried out. Due to the short time available, Mr Madden reported that a detailed scheme of works had not been possible. In response to questions it was noted that there was no need to pull back the hours of the business if the noise measures taken solved the issues. The noise officer remained concerned regarding the steps proposed and informed the Sub-Committee that customer footsteps and voices would still be heard in a nearby resident flat. This airborne noise could not be controlled by the first measures proposed.

Members of the Sub-Committee left the room to deliberate before returning to announce their decision.

RESOLVED:

a) That this item be adjourned to a future meeting of Licensing Sub Committee C, to be held in January 2013, in order to obtain written submissions from the licensee's representation setting out their proposed conditions. These submissions to be submitted to the licensing authority within 14 days from the date of this hearing. The licensing authority to provide their written response to these proposals within 28 days from the date of this hearing.

b) That all parties be notified of the date of the hearing.

c) That it be noted that a noise abatement warrant is in force should there be a noise breach before the adjourned meeting is held.

The meeting finished at 10:05pm.

CHAIR