

**MINUTES OF A MEETING OF THE LICENSING SUB COMMITTEE C
TUESDAY, 7TH AUGUST, 2018**

Councillors Present: **Cllr James Peters in the Chair**
Cllr Caroline Selman and Cllr Sam Pallis

Officers in Attendance: Channing Riviere (Principal Licensing Officer), Butta Singh (Legal Officer), Robin Jones (Trading Standards), David Tuitt (Licensing), Amanda Nauth and Anisah Hilali (Legal Services) and Rabiya Khatun (Governance Services Officer)

Also in Attendance: **Kingsland Food and Wine**
Mr Abdul Wahid - Licensee
Mr S Wahid – Licensee’s son
Mr Jeremy Phillips – Legal Representative
PC Giles - Metropolitan Police Service

1 Election of Chair

1.1 Councillor Peters was duly elected as the Chair.

2 Apologies for Absence

2.1 There were no apologies for absence.

3 Declarations of Interest - Members to declare as appropriate

3.1 There were no declarations of interest.

4 Licensing Sub-Committee Hearing Procedure

4.1 The Sub-Committee noted the hearing procedure.

5 Review of Premises Licence: Kingsland Food and Wine, 77 Kingsland High Street, E8 2PB

5.1 NOTED the additional information circulated at the meeting and CCTV footage.

5.2 Channing Riviere, Principal Licensing Officer, outlined the application for a review of the premises licence for Kingsland Food and Wine store and stated that representations had been received from Environmental Enforcement, Licensing and Police. Mr Riviere referred to the written representation received from Public Health on 7th August 2018 and stated that following legal advice the late representation had been withdrawn as it did not comply with licensing regulations.

Tuesday, 7th August, 2018

5.3 Robin Jones, Trading Standards presented the case for the review of the premises licence for Kingsland Food and Wine on the following grounds: the prevention of crime and disorder, protection of children from harm and the use of the premises for the sale or storage of smuggled tobacco and illegal sale of alcohol to a minor under Section 182 Part 11.27 of the Licensing Act 2003.

5.4 Mr Jones outlined the incidents leading to the review and requested revocation of the premises licence. The premises had been used for the sale and storage of smuggled tobacco and during a joint operation on 5 December, 2017 HMRC seized 4,260 king-sized cigarettes and 1.9 kilograms of hand rolling tobacco believed to be duty avoided. In addition, 19,967 individual cigarettes and 687.5g of hand rolling tobacco were seized in non-standardised packaging contrary to the Standardised Packaging of Tobacco Products Regulation 2015 and duty avoided foreign labelled tobacco was found under the counter and in a covert hiding place above the staff toilets. On 16 March 2018 the Metropolitan Police Child Sexual Exploitation Team carried out a test purchase proxy sale of alcohol with an undercover police officer buying alcohol for a minor. Finally, on 15 June 2018 during a test purchase one single can of alcohol was sold to an officer breaching condition 16 of the licence.

5.5 In response to a question, it was clarified that Mr S Wahid, the licensee's son had sold alcohol to the undercover officer on 16 March 2018

5.6 Mr Tuitt, Licensing, supported the review of the licence on the grounds of prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm. Mr Tuitt stated that the Licensing Sub-Committee on 22 April 2014 had revoked the premises licence for Kingsland Food and Wine store following breaches of its licensing conditions including after hours sales and following an appeal the existing licence had been modified. Concern was expressed at the ongoing risks of the licensing objectives being undermined based on the history of breaches and poor management of the premises.

5.7 5.9 PC Giles played CCTV footage of the proxy sale conducted on 16 March 2018.

5.8 PC Giles, Police, supported the review on the grounds of prevention of crime and disorder, public safety and protection of children from harm. PC Giles emphasised that the licensee was not a responsible operator based on the history of the premises and consistent breaches of the licence including a review of the premises licence following out of hours sales in March 2014, sale and storage of illegal goods on 5 December 2017, unauthorised sale of alcohol to an adult on behalf of minor on 16 March 2018, sale of one single can of alcohol during a test purchase on 15 June 2018 that breached licensing condition 16 and failure to provide the police with a full copy of the premises licence on 27 June 2018. The management's policy of purchasing a minimum of two cans of alcohol was deemed irresponsible due the premises being located within Dalston special policy area (SPA) and the issues of street drinking and anti-social behaviour especially around Gillett Square. The licensee was not a responsible operator and capable of running a well-managed licensed premises based on previous and more recent breaches of the licensing conditions.

5.9 In response to questions from the Chair seeking further clarification, PC Giles stated that during a visit she had recognised and witnessed three street drinkers from Gillett Square buying two cans of alcohol at the store. The police cadet conducting the test purchase on 16 March 2018 had been 14 years old and was carrying a child oyster

card clearly identifying herself as a child. In the scenario presented at the shop the undercover officer had made it clear the alcohol was being purchased for a minor and had asked the cadet what alcoholic drink she wanted. It was emphasised that the purpose of the Child Sexual Exploitation Team's operation had been to identify the scale of child exploitation and test purchases had been undertaken at many licensed premises and hotels.

5.10 Jeremy Phillips, legal representative for the licensee, made the following points responding to the issues raised by the responsible authorities and against the revocation of the premises licence:

- The application for the review had been on the basis of the incident on 5 December 2017 relating to the sale or storage of illegal tobacco and further incidents since December 2017 had been incorporated into the review
- Mr Abdul Wahid had made a loss of £11k from the goods seized by HMRC. Over 90% of the cigarettes seized had been duty paid but were not in the standardised packages in compliance with the new rules.
- The licensee had been storing the cigarettes to swap the non- standardised packages when a tobacco representatives visited the store and denied the allegation that he had covertly stored them above the toilet door. It was explained that some tobacco representatives had been unable to swap all old stock due to insufficient packs and were expected to return with more replacement stock. Mr A Wahid had contacted the manufacturers on many occasions since the introduction of the legislation regarding the remainder swap stock. Mr Wahid accepted that he should not have stored the non-standardised packets on the premises but there was no evidence of the cigarettes being sold.
- Swap order receipts from Philip Morris Ltd and Gallaher Ltd were submitted to demonstrate that the licensee intended to swap these cigarettes and paid duty on the seized cigarettes.
- In relation to the duty-avoided stock, Mr Wahid explained that his competitors had been undercutting him by selling duty avoided illicit tobacco and he had made a commercial decision to buy some cigarettes from an individual who visited the shop. He acknowledged that he had made an error in judgement and regretted his actions. With regard to 16 March 2018, Mr S Wahid had sold the alcoholic beverage believing it would be consumed by an adult. The alcohol display area was not clearly visible from the till point where Mr S Wahid had been busy serving customers when the scenario was played.
- The licensee proposed to reconfigure the shop as outlined in the submitted plan, which included a reduction of approximately 36% of the alcohol display area and in direct line of sight from the till point. In addition, all tobacco products not stored in the dedicated cabinet in the retail area would be kept in a lockable cage shown on the plan hatched red.
- In relation to the test purchase on 15 June 2018 it was highlighted that PC Hunwick was a regular customer at the store and the licensee had assumed there would be no issues selling a single can to his colleague PC Greet. It was argued that using a known police officer for a test purchase was bad practice and did not comply with police procedures. Mr A Wahid had refused to sell a single can of alcohol to PC Greet. on 22 June 2018
- Mr A Wahid believed he had been acting as a responsible operator by introducing a 'minimum two cans' policy however, this policy did not breach any licensing conditions or legislation and believed the criticism was unfair.
- In relation to the visit on 27 June 2018, it was clarified that the full premises licence had been at the store but the licensee had been unable to locate it when requested by the Police.

Tuesday, 7th August, 2018

- Letters from Tobacco Retail and Camelot were submitted to demonstrate that the licensee was a responsible operator operating a well-managed premises.
- Mr Wahid had agreed additional conditions with Environmental Enforcement relating to waste and believed that its representation had been withdrawn.

5.11 Mr Butterworth a consultant and former police officer at Greater Manchester Police gave a brief background of his experience and stated that he had undertaken a visit on Saturday 21 July 2018 from 17.00 until 23.45 hours. He had visited six licensed premises within the vicinity of this premises: M&S, Kingsland Food & Wine, Nisa Local, Best Supermarket, Tesco Express and Akin Supermarket which all had later open hours. M&S and Tesco Express were open until midnight and Akin Supermarket was open past midnight. He had observed street drinkers congregating in Gillett Square with the numbers growing from 30 to 100 at its peak and down to approximately 50 to 70 drinkers by midnight. Street drinkers were buying alcohol from all the licensed premises in the area and a further two licensed premises in Gillet Square. The issues in the area were not solely related to this premises as the area was saturated with licensed premises and no police patrols were seen enforcing the Controlled Drinking Zone order in the Square.

5.12 Mr Butterworth stated that the test purchase on 15 June 2018 should not be considered as part of the review as it was not good practice for a police officer known to the licensee to conduct test purchases. Furthermore, the website used in the sample to obtain an industry average ABV of 5.5% was unreliable as this website focused on the calorie contents of alcoholic beverages and did not contain high alcohol content products.

5.13 In response to questions from Members, Mr Butterworth stated that he had no evidence that the Controlled Drinking Zone order was not being enforced and that the licensee should not be adversely affected by the 'minimum two cans' policy, which applied uniquely to this premises.

5.14 Mr S Wahid clarified that on 16 March 2018 he and his uncle had been behind the counter during a busy day at the store. The lottery stand had obscured their view of the undercover officer buying alcohol for a cadet and the noise from outside had made it difficult to hear the conversation played within the scenarios. It was emphasised he had not sold the alcohol intentionally or deliberately for consumption by a minor and no sale would have occurred if he had been aware of the minor. He stated that many customers came into the store with their children or sister and it was a challenge to distinguish an exploited child from a close relative.

5.15 Members sought further clarification regarding the incident on 16 March 2018. Mr S Wahid confirmed that both he and his uncle had not seen or heard any of the scenarios played. He clarified that his uncle had been fixing the shelving system at the till counter and his back was towards customers, and he had been busy serving customers and the lottery stand obscured his view. There was no recording of the till counter as the CCTV system had been configured to record the inside and front of the premises only. Mr Abdul Wahid confirmed that a small quantity of Marlboro hand rolling tobacco stored for a swap had been seized.

5.16 Mr Jones confirmed that there had been a one year grace period for owners to swap non-standardised cigarette packets after new rules came into force on 20 May 2016 but this had expired in May 2017.

5.17 Mr Phillips argued that the police's representation was based on hearsay evidence as the officer involved in the operation on 16 March 2018 was not present at the meeting. Furthermore, the Sub-Committee should be satisfied from the evidence submitted that the licensee's son had intentionally sold alcohol to be consumed by a minor to meet the requirements of a proxy sale. It was emphasised that Mr S Wahid denied selling alcohol for consumption by a minor. Mr Singh responded that the evidence was not hearsay and referred to the written statement within the pack which had submitted by the police officer involved in the operation.

5.18 The Chair referred to the proposed conditions at pages 14 and 15 of the pack. Mr Phillips agreed to all the conditions except conditions 4 and 5 and requested that condition 4 be amended to include the words at the end of the sentence 'except for deliveries of bread, milk and magazines.' due to these items being delivered prior to 07.00 hours. Further, proposed condition 5 be deleted as there was no evidence or justification to support the reduction of ABV from 6.5 to 5.5 for beers, lagers or ciders. Mr Phillips added that the 'Get drunk not fat' website concentrated on calorie content and that the sample products used to obtain 5.5% ABV was flawed. This proposed condition was inappropriate and did not apply to other licensed premises within area and would adversely impact on Mr Wahid's business.

5.19 Conversely, Mr Jones argued that proposed condition 5 should remain as the premises are located within the Dalston special policy area and this area already suffered from negative cumulative impact from a high concentration of premises licence and public nuisance. He explained the process in obtaining the industry average ABV 5.5% and that the sample compared over 100 products in the marketplace. This information had been sent to the licensee prior to the hearing. Mr Jones confirmed most of the products used to obtain the average ABV had been taken from the website 'Get drunk not fat'.

5.20 In response to a question from a Member, Mr Jones confirmed that the operation undertaken in December 2017 had been based on intelligence received about illicit tobacco being sold at the shop.

5.21 Mr Jones in his closing remark reiterated that the history of the premises and consistent breaches undermined the licensing objectives of the prevention of crime and disorder and the protection of children from harm and requested that the licence should be revoked.

5.22 Mr Tuitt summarised that the licence should be revoked based on the history of poor management of the premises, the quantity of illegal tobacco seized and the nature of the local area. However, if the Sub-Committee were minded not to revoke the licence it was requested that the condition 1 be amended to remove the sale of 50ml miniature bottles of spirit.

5.23 PC Giles summarised that no evidence had been submitted of the proxy sale and there had been no prosecution. Concern was expressed regarding the history of the premises, potential sale of alcohol to an exploited child and two reviews of the premises within four years. However, if the Sub-Committee were minded not to revoke the licence it was requested that the existing CCTV system be extended to cover the till area.

5.24 Mr Phillips agreed to delete the sale of 50ml miniature bottles from condition 1 and proposed a condition in relation to extending CCTV coverage 'Sale of alcohol shall

not take place within the premises until the CCTV (and monitor within the system) is configured to the reasonable satisfaction of the Metropolitan Police.'

5.25 Mr Phillips summed up that the breaches relating to the sales after opening hours were minor licensing breaches and no further breaches had occurred since the review held in 2014. The issues of public nuisance experienced in the area could not be solely attributed to this premises as many licensed premises within the vicinity were open past 23.00 hours. The licensee had not been criminally charged for the proxy sale on 16 March 2018 and he came from a culture that did not challenge the police especially regarding the incident on 15 June 2018. The licensee would implement measures including reconfiguring the store in particular the alcohol display area and have a secure area to store tobacco. Mr Wahid acknowledged his error in judgement, which had resulted in his financial loss. His family and extended family were dependent on the business for their livelihood and offered to replace the DPS. It was emphasised that a revocation of the licence would be inappropriate in the circumstances but if the Sub-Committee were minded to suspend the licence for six weeks that would allow the licensee to reconfigure the premises and submit a variation application.

The decision

The Sub-Committee in considering this decision from the information presented to it within the report and at the hearing today have determined that having regard to the promotion of all the licensing objectives:

- The prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- The protection of children from harm

that the premises licence for Kingsland Food and Wines, 77 Kingsland High Street, E8 2PB is suspended for a period of six (6) weeks, this suspension being effective from 19th August 2018 (as agreed with the Licensee and his legal representation) and that the current premises licence be modified to include the conditions as detailed in paragraph 9.1 of the report, subject to the following modifications: -

- Condition 1 - be amended to read 'No 50ml miniatures bottles of spirit to be sold.'
- Condition 4 - to add the following words at the end of the sentence 'except for deliveries of bread, milk and magazines.'
- Condition 5 be deleted (with the following existing conditions on the licence to remain, condition 16, as to no single sales and condition 17, relating to no sales of beer, lager or cider with an alcohol content above ABV of 6.5%)

Along with the following additional conditions or amendments to the existing conditions outlined either before the hearing by the applicant or agreed at the hearing;

- The shelving and chiller cabinets given over to the display of alcohol in the shop will be reduced from the current 17.05 linear metres to 11.08 linear metres. A reduction of approximately 36%.
- All alcohol will henceforth be displayed in a position where it is in a direct line of sight from the till point.
- The alcohol display, existing and as it will be after the adoption of this condition is shown on the attached plan.

Tuesday, 7th August, 2018

- Other than those tobacco products contained in the dedicated cabinet in the retail area, all tobacco products will only be stored in the area shown on the attached plan hatched red. This area for the storage of tobacco products will be surrounded by a lockable cage.
- Sale of alcohol shall not take place within the premises until the CCTV (and monitor within the system) is configured to the reasonable satisfaction of the Metropolitan Police.
- Condition 5 within the existing licence be amended to read 'All public areas and all entry and exit points'
- Condition 7 within the existing licence be amended to include (as f to i);
 1. lost property
 2. All ejections of customers
 3. Any complaints received
 4. Any seizure of drugs or offensive weapons
- Condition 17 be amended to include lager, so that it reads; 'There shall be no sales of beer, lager or cider with alcohol content above 6.5% save for such products as may be specifically agreed in writing by the licensing authority following consultation with the police. This approval can be withdrawn in writing by the licensing authority if concerns arise around the operation of the premises.
- Notices will be prominently displayed by the entry I exit door and point of sale advising customers of the following:
 - a) That CCTV and challenge 25 are in operation
 - b) Advising customers of the provisions of the licensing Act regarding underage and proxy sales
 - c) Of the permitted hours for licensable activities and the opening times of the premises
 - d) Not to drink in the street
 - e) To respect residents leave quietly, not to litter outside the premises or in the vicinity and to dispose of litter legally
 - f) It is a criminal offence for a person under 18 years to purchase or attempt to purchase alcohol and that it is also an offence to purchase alcohol on behalf of a person under the age of 18 years

Reasons for the decision

The Sub-Committee, having heard representations from the licensee, Trading Standards and other Responsible Authorities, are satisfied that the suspension of six weeks together with the additional conditions are both necessary and appropriate to ensure that the licensing objectives are not undermined.

The suspension imposed serves not only as a punishment to the licensee for having undermined the licensing objectives, but is also to allow adequate and sufficient time for the Licensee to reconfigure the premises in accordance with the additional conditions. This should ensure that the Licensee and staff does not undermine the licensing objectives in their future operation.

In making this decision the Sub-Committee were extremely concerned by what they heard, as outlined in the representations, particularly given the previous breach of

Tuesday, 7th August, 2018

conditions of the premises licence, dating back to February 2014, when the licence holder was previously referred to a Licensing Sub-Committee for a Review.

The Sub-Committee having had regard to the recent concerns raised and the history of the premises felt that the licensing objectives had been undermined, given that those responsible for the management of the premises had not taken the effective steps to uphold the licensing objectives, especially that of the protection of children from harm.

It was also felt that the licence holder did not consider the seriousness of the previous Review and the decision of the Sub-Committee in 2014, relating to the unauthorised sales on the premises. The failure to take his responsibility seriously, was demonstrated by the repeated breaches which has resulted in the licensing objectives being undermined.

These recent breaches of the licence, coupled with the history, was so serious that the Sub-Committee considered revocation of the licence as a suitable and appropriate option given that the Licensing Authority's primary consideration is to look after the interests of the wider community and in particular to promote the Licensing Objectives.

However, the Sub-Committee have decided to give the licence holder one final opportunity to diligently comply with the conditions of their licence and to work with the Licensing Authority and the Police to improve the management of the premises so as to ensure that they do not undermine the licensing objectives going forward.

The Sub-Committee in reaching their decision had regard to the Council's Licensing Policy and the guidance issued under Section 182 of the Licensing Act 2003.

6 Review of Premises Licence: Best American Pizza, 16a, Pitfield Street, N1 6EY

6.1 This application was deferred to a future meeting.

7 Temporary Event Notices - Standing Item

7.1 There were no temporary event notices.

Duration of the meeting: 7.00 - 10.40 pm

Signed

.....

Chair of Committee

Contact:

Governance Services Officer:

Tel 020 8356 8407