



Leicester
City Council

Minutes of the Meeting of the
LICENSING (HEARINGS) SUB-COMMITTEE

Held: MONDAY, 26 APRIL 2021 at 10:00 am

P R E S E N T:

Councillor Pickering (Vice Chair in the Chair)

Councillor Gee

Councillor Dr Moore

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1. APPOINTMENT OF CHAIR

Councillor Pickering was appointed as Chair for the meeting.

It was noted that the hearing of the applications were held virtually in accordance with the Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales)(Regulations) 2020 (the 2020 Regulations) and in accordance with the Council's own Remote Procedure Rules.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting of the Licensing (Hearings) Sub-Committee held on 29 March 2021 be confirmed as a correct record.

5. PRIVATE SESSION

RESOLVED:

That the press and public be excluded during consideration of the following reports in accordance with the provisions of Section 100A(4) of the Local Government Act 1972, as amended, because it involves the likely disclosure of 'exempt' information, as defined in the Paragraphs detailed below of Part 1 of Schedule 12A of the Act, and taking all the circumstances into account, it is considered that the public interest in maintaining the information as exempt outweighs the public interest in disclosing the information.

Paragraph 1

Information relating to an individual.

Paragraph 2

Information which is likely to reveal the identity of an individual.

Paragraph 7

Information relating to the any action taken or to be taken in connection with the prevention, investigation, or prosecution of crime.

- B1) Application for the review of an existing Premises Licence, Abhinay Stores, 74-76 Catherine Street, Leicester, LE4 6EL.
- B2) Application to transfer an existing Premises Licence Holder and vary the DPS, Sunny Express (known as Abhinay Express) 76-78 Catherine Street, Leicester, LE4 6EL.

Prior to the determination of the applications, the Chair informed the parties that the Committee was minded to hear both applications and make separate determinations after both applications had been heard. The Chair invited the parties to make representations in this regard. The Premise Licence Holder and the Police agreed with the Committee's proposal for determining the applications.

6. APPLICATION FOR A REVIEW OF AN EXISTING PREMISES LICENCE, ABHINAY STORES, 74-76 CATHERINE STREET, LEICESTER, LE4 6EL

Introductions were made and the procedure for the meeting was outlined.

The Chair confirmed with Sub-Committee Members that reports for the meeting had been read.

The Director of Neighbourhood and Environmental Services submitted a report on an application for a review of an Existing Premises Licence for Abhinay Stores, 74-76 Catherine Street, Leicester, LE4 6EL.

The applicant was present. Mr Dave Braithwaite (Deputy Licensing Manager, Leicestershire Police) PC Martin Rawlings (Leicestershire Police), Mrs Elaine Watterson (Trading Standards), Licensing Team Manager (Policy and Applications) and the Legal Adviser to the Sub-Committee were also present.

The Licensing Team Manager (Policy and Applications) presented the report and outlined the details of the application. Members noted that an application was received on 11 March 2021 for the review of an existing Premises Licence.

Mr Braithwaite, PC Rawlings, and Mrs Elaine Watterson were given the opportunity to outline the reasons for the application for the review and answer questions from Members.

The applicant was given the opportunity to present his case and answer questions from Members, Officers, and Police.

All parties were given the opportunity to sum up their positions and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present. In reaching their decision, the Sub-Committee felt they should deliberate in private on the basis that this was in the public interest and as such outweighed the public interest of their deliberation taking place with the parties represented present, in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

The Chair announced that the Members would deliberate in private at the end of the hearing.

The Chair asked then asked all but the Members of the Sub-Committee, Democratic Support Officers, Licensing Team Manager (Policy and Applications) and Legal Adviser to the Sub-Committee to disconnect from the meeting.

During private deliberation, the Legal Adviser to the Sub-Committee was called back to the meeting to give advice on the wording of the decision.

RESOLVED:

That the Premises Licence for Abhinay Stores, 74-76 Catherine Street, Leicester, LE4 6EL be REVOKED.

In reaching their decision, Members had carefully considered the committee report presented by the Licensing Manager (Policy and Applications), all representations made by Leicestershire Police in support of the application for review, the representations made on behalf the Licence Holder and the legal advice given during the hearing.

The Sub-Committee had been asked to determine an application for a review of an Existing Premises Licence held at 76-78 Catherine Street, Leicester. When considering the application, the licensing objectives were of paramount concern. Members considered the application on its own merits and in accordance with the Licensing Authority's statement of licensing policy and guidance issued under S.182 of the Licensing Act 2003.

Members heard that Leicestershire Police had made an application to review the Premises Licence on the basis that the Premises Licence Holder (PLH) had failed to promote licensing objectives of the Prevention of Crime and Disorder and Public Safety due to:

- Illegal cigarettes and tobacco being found on the premises on 15th January 2021
- Breaches of the Covid regulations – failure to wear face mask by staff and customers
- Allegations relating to customers being allowed to consume alcohol within the premises – in the rear of the premises

The application for review was supported by witness statements from two Police officers, a statement from Trading Standards Officer Elaine Watterson and Licensing Enforcement Officer Nicola Marsh.

In response, the PLH opposed the grounds for review. In relation to illegal cigarettes and tobacco found at the premises, the PLH stated that the offence relating to non-payment of duty was withdrawn by the Crown Prosecution Service (CPS) and costs were awarded to him from central funds. The PLH further accepted there had been a few breaches of the Covid-19 regulations but expressed the belief that he was being singled out by the Police and had collected evidence of breaches being committed by other businesses and stated that no action was being taken against them. The PLH further stated he had put in place substantial measures to ensure compliance of the Covid-19 regulations, including staff training, signage in 4 different languages, provision of free masks etc. the PLH totally refuted the allegation relating to customers consuming alcohol on the premises, and Police confirmed that they had never seen such incidents themselves. The PLH had produced a petition containing 200 signatures in support of him and his business. A number of representations from customers objecting to the review had been received by the Sub-Committee

Members confirmed that they had not taken anything put before them on face value and had spent a great deal of time scrutinising the evidence in detail and with due rigour. Members had considered each of the options available to them.

As a result of what Members had heard, they were satisfied that the representations by the Police engaged two of the four licensing objectives, namely the Prevention of Crime and Disorder and Public Nuisance, and concluded that it was appropriate and proportionate in light of Licensing

objectives to REVOKE the premises licence.

REASON FOR THE DECISION

1. Members believed that the cause or cause of the concerns which gave rise to the application for the review of the premises licence was the discovery of illegal cigarettes and tobacco at the premises on 15th January 2021 and the poor management of the premises which resulted in staff and customers failing to wear face coverings in breach of Covid-19 Regulations
2. Members accepted the evidence of Trading Standards Officer Elaine Watterson to the effect that the cigarettes and tobacco found at the premises were illegal due to the failure to pay UK duty and due to the products not complying with the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of tobacco Regulations 2015. As a Sub-Committee, Members were aware of the impact counterfeit cigarettes and tobacco could have on public health and to the involvement of organised crime in its supply.
3. Members acknowledged that the one criminal charge relating to non-payment of duty for the cigarettes and tobacco was not pursued by the CPS and costs were awarded in the PLH's favour. However, both before Members and in his written representation the PLH had failed to address the central question of how the illegal cigarettes and tobacco came to be at the premises. During the hearing, the PLH initially stated that he was not at the premises when the Police carried out a search on 15th January and that he was not often at the premises and in his absence the staff ran the premises. However, the Police confirmed that the PLH had attended the premises whilst they were there and that he was cautioned whilst at the premises. The PLH had subsequently refused to answer any questions relating to the illegal cigarettes and tobacco. The PLH claimed that as it was a family run business, he was not the only one in control and that often salespeople would come to the premises when he was not there, and staff had authority to purchase items. The Sub-Committee Members' view was that the PLH was in overall control and even on his own version of events he could not have failed to notice the cigarettes and tobacco stored behind the serving counter at the front of the shop.
4. Members accepted that there was no evidence to support the allegation of customers drinking on the premises and Members accepted what the PLH had said with regard to providing CCTV to the Police when requested.
5. By his own admission the PLH accepted that on a few occasions Covid-19 Regulations relating to face coverings were breached. Members noted that the contents of the statement of Licensing Officer Nicola Marsh and noted that breaches had occurred after a warning letter had been issued to the PLH on 26th February 2021.
6. Having carefully evaluated all of the information and evidence put before

them, Members accepted the submission put forward by the Police that the PLH was unable to uphold the licensing objectives.

7. Members reminded themselves of the guidance which urged to as far as possible, seek to establish the cause or causes of the concerns identified by the Police's representation and that having done that any remedial action should be directed at those causes and should always be no more than an appropriate and proportionate response to address the causes. The Statutory guidance at Paragraph 11.27 stated that "there was certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises including for the sale or storage of smuggled tobacco and alcohol".

8. Members had considered all the measures available to them and concluded that the most appropriate course of action was to revoke the licence given the seriousness of the incident. Members deemed that the other measures available were insufficient to deal with the causes for the concerns which gave rise to this review.

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The Premises Licence Holder would be advised of his right to appeal within 21 days to the Magistrate's Court.

7. APPLICATION TO TRANSFER AN EXISTING PREMISES LICENCE HOLDER AND VARY THE DPS, SUNNY EXPRESS (KNOWN AS ABHINAY EXPRESS) 76-78 CATHERINE STREET, LEICESTER, LE4 6EL

Introductions were made and the procedure for the meeting was outlined.

The Chair confirmed with Sub-Committee Members that reports for the meeting had been read.

The Director of Neighbourhood and Environmental Services submitted a report on an application to transfer an existing Premises Licence Holder and vary the DPS for Sunny Express (known as Abhinay Express) 76-78 Catherine Street, Leicester. LE4 6EL.

The applicant was present. The current PLH and DPS, Mr Dave Braithwaite (Deputy Licensing Manager, Leicestershire Police), Licensing Team Manager (Policy and Applications) and the Legal Adviser to the Sub-Committee were also present.

The Licensing Team Manager (Policy and Applications) presented the report and outlined details of the application. Members noted that a representation was received from Leicestershire Police on 31 March 2021 in relation to the prevention of crime and disorder. Leicestershire Police were concerned that the applicant was connected to the current premises licence holder who was under

investigation for offences committed at the premises.

The applicant was given the opportunity to present his case and answer questions from Members, Officers, and Police.

Mr Braithwaite was given the opportunity to outline the reasons for the representation and answer any questions from Members, Officers, and the applicant.

All parties were then given the opportunity to sum up their positions and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced in writing within five working days. The Chair informed the meeting the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officers to disconnect from the meeting. The Sub-Committee then deliberated in private to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the application to transfer an existing Premises Licence Holder and vary the DPS, Sunny Express (known as Abhinay Express), 76-78 Catherine Street, Leicester, LE4 6EL be **REJECTED**.

Members had been asked to determine an application made under the Licensing Act 2003, for a transfer of the premises licence and to vary the DPS.. In reaching their decision the Sub-Committee Members had carefully considered the Committee report presented by the Licensing Team Manager (Policy and Applications) and the representation made by Leicestershire Police. The Members had also considered the representation made by the applicant and their representative and the legal advice given to them during the hearing.

The Sub-Committee Members considered the licensing objectives to be of paramount concern and had considered the application on its own merits and in accordance with the licensing authority's Statement of Licensing Policy and guidance issued under Section 182 of the Licensing Act 2003.

Leicestershire Police objected to the application to transfer the premises licences on the basis that any transfer would undermine the crime prevention objective and that the circumstances of the case were exceptional. They believed that the applicant and current Premises Licence Holder (PLH) were connected and that the application was an attempt by the PLH to avoid revocation of the premises licence following the discovery of illegal cigarettes and tobacco at 76-78 Catherine Street.

The applicant stated that his application was genuine and that he and the PLH were childhood friends. He stated that he agreed to buy the business but would withdraw if the PLH's Premises Licence was revoked.

The Sub-Committee had considered carefully the representations made by the applicant and the objector. Members had not taken anything presented to them at face value and they confirmed that they had scrutinised the information put before them by all parties.

The Sub-Committee had considered each of the options available to them. As a result of what they had heard, Members were satisfied that that it was appropriate and proportionate considering the crime prevention objective and having regard to the Police's representation, to reject the application.

REASONS FOR THE DECISION

Members accepted the evidence presented by the Police. Members stated they had no confidence that it was a genuine application and accepted the evidence from the Police that the application was an attempt to avoid the decision of the Sub-Committee with regard to the Police's application for a Review. The Members further accepted the evidence from the Police that the applicant and current PLH were connected and that the involvement by both with regards to Gainsborough mini store provided further grounds for believing that the any transfer of the current premises licence would be in name only.

The Sub-Committee concluded that the granting of the application would not promote the Prevention of Crime and Disorder licensing objective.

The Premises Licence Holder would be informed that an appeal against the decision must be made within 21 days to the Magistrates Court.

8. ANY OTHER URGENT BUSINESS

There being no further business, the meeting closed at 1.21pm.