



Leicester
City Council

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

Held: TUESDAY, 9 NOVEMBER 2021 at 10:00 am

P R E S E N T:

Councillor Singh Johal (Chair)

Councillor Cank

Councillor Shelton

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1. APPOINTMENT OF CHAIR

Councillor Singh Johal was appointed as Chair for the meeting.

The Chair led on introductions and the procedure for the meeting.

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

There were no declarations of interest made.

4. MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting held on 21 September 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 any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

B1) – Application for a Review of an Existing Premises Licence.

B2) – Application for a Review of an Existing Premises Licence

6. APPLICATION FOR A REVIEW OF AN EXISTING PREMISES LICENCE

The Director of Neighbourhood and Environmental Services submitted a report on an application for the review of an existing premises licence.

The Premises Licence Holder (PLH) / Designated Premises Supervisor (DPS) was present, accompanied by his wife and a translator provided by Leicester City Council. Mr David Braithwaite, Deputy Licensing Manager for Leicestershire Police was present accompanied by Ms Minaxi Patel, Trading Standards Officer, Neighbourhood and Environmental Services. Also present was the Licensing Team Manager (Policy and Applications) and the Legal Adviser to the Sub-Committee.

The Licensing Team Manager (Policy and Applications) presented the report. It was noted a review application was received on 15 September 2021 from Leicestershire Police on the grounds of the prevention of crime and disorder, public safety and the protection of children from harm. It was further noted that representations from 18 patrons of the store were received between 19-28 September 2021 in support of the premises.

Mr Braithwaite was given the opportunity to outline the details of the Police representation and answered questions from Members.

Ms Patel was given the opportunity to outline the details of the report from Trading Standards in support of the Police representation and answered questions from Members.

The PLH/DPS through the translator and his wife was given the opportunity to address the Sub-Committee and answered questions from the Police, Trading Standards Officer and Members.

The meeting was adjourned at 11.24am for a five-minute comfort break.

On reconvening, all parties present 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 and were advised of the options available to them in making their decision. The Sub-Committee were also advised of the relevant policy and statutory guidance that needed to be taken into account when making their decision.

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 accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

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

The Chair then informed the meeting that all but the Democratic Support Officers should withdraw from the room. 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 premises licence be REVOKED.

In reaching their decision, Members of the Sub-Committee carefully considered the committee report presented by the Licensing Team Manager (Policy and Applications), all representations made by Leicestershire Police in support of the Application for a Review, the report from the Trading Standards Officer, the representation made by the PLH/DPS and the legal advice given during the hearing.

The Sub-Committee had been asked to determine an application for the review of the premises licence. When considering the application, the licensing objectives were of paramount concern. The Sub-Committee considered the review application on its own merits and in accordance with the licensing authority's Statement of Licensing Policy and statutory guidance issued under S.182 of the Licensing Act 2003.

The current licensable activities which were the subject of the review were set out in paragraph 5.2 of Licensing report presented to the Sub-Committee.

Members were informed Leicestershire Police made an application to review the premises licence on the basis that the PLH/DPS had failed to promote the licensing objectives of the prevention of crime and disorder, public safety and the protection of children from harm due to:

- Illegal cigarettes and tobacco being found on the premises on 2nd May 2020, 22nd May 2020 and over a year later a large amount being found on

17th August 2021

- Boxes of Nitrous Oxide being found on the premises on the same dates 2nd May 2020, 22nd May 2020 and 17th August 2021
- In addition, on 17th August 2021 49 unlicensed Sildenafil Citrate tablets were found at the premises

The Sub-Committee was informed that the police visit to the premises on 17th August 2021 was prompted following intelligence received on 9th July 2021 which stated that the owner of the premises was selling alcohol and cigarettes to children. It was also noted that some of the cigarettes being sold were illegal.

The Sub-Committee was further informed that following the discovery of the illegal cigarettes and tobacco at the premises, the Police visited the PLH/DPS's other licensed premises where they found 205 boxes of illegal cigarettes and tobacco.

The review application was supported by three witness statements from Police Officers, a witness statement from the Council's Trading Standards officer and two statements from the Medicines and Healthcare products Regulatory Agency (MHRA).

The PLH/DPS attended the hearing together with his wife. An interpreter had been arranged for the hearing however the PLH/DPS preferred to make his representation through his wife and the interpreter was subsequently discharged.

The Sub-Committee heard the PLH/DPS opposed the grounds for review. He had not disputed the presence of illegal cigarettes and tobacco at both licensed premises nor did he dispute the presence of the boxes of Nitrous Oxide or the 49 unlicensed tablets of Sildenafil Citrate. During the hearing he stated that all of the cigarettes and tobacco found at both premises were for his personal use and that he kept them under the counter at both premises because he had limited storage space. He stated that he could not store them at home as his wife did not want them there and they got into arguments about his smoking.

The PLH/DPS repeatedly denied knowing that the cigarettes and tobacco he had purchased from a man visiting his shop were illegal despite the packaging being completely different from UK packaging and despite the packages being marked with stickers such as 'only for sale in Ghana'. The PLH/DPS did not think it strange that he was paying £1 to £2 per box when the UK price was upwards of £10, and this was despite the PLH/DPS going to wholesalers on a weekly basis to buy cigarettes which were compliant with UK regulations.

In relation to the boxes of Nitrous Oxide, the PLH/DPS stated that these were for legitimate catering purposes and that he required customers to sign a disclaimer to this effect on each occasion a purchase was made. He also stated that the Police had not removed all of boxes of Nitrous Oxide and that their presence on subsequent visits was from the original order. The Sub-Committee were further informed the Sildenafil Citrate tablets belonged to a friend who had left them in his premises.

The Sub-Committee heard that letters in support of the PLH/DPS had been submitted from 18 customers, many of whom vouched for the level of service provided by the PLH/DPS and the support he provided to the local community. Three letters from customers referred to the strict procedures adopted by the PLH/DPS to prevent underage sales of alcohol and cigarettes. Customers also referred to the PLH/DPS suffering hardship through burglaries and loss of money.

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 carefully considered each of the options available to them as outlined during the hearing.

As a result of what the Sub-Committee heard, it was satisfied that the representations by the Police engaged three of the four licensing objectives and it concluded that it was appropriate and proportionate in light of licensing objectives to REVOKE the licence

REASONS FOR THE DECISION

1. The Sub-Committee believed that the cause or causes of the concerns which gave rise to the application for review was the discovery of illegal cigarettes and tobacco, Nitrous Oxide cannisters and unlicensed Sildenafil Citrate tablets.
2. The Sub-Committee accepted the evidence of the Trading Standards Officer to the effect that cigarettes and tobacco found at both premises were illegal due to UK duty not being paid and due to the products not complying with the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015. The Sub-Committee acknowledged the impact of counterfeit cigarettes and tobacco on public health and to the involvement of organised crime in its supply.
3. The Sub-Committee had taken note of the intelligence report dated 9th July 2021 stating that alcohol and cigarettes were being sold to children and that illegal cigarettes were being sold. The Sub-Committee found no direct evidence regarding sale of those items to those underage and noted the information from three customers stating that they had witnessed the PLH/DPS adopting strict procedures to prevent underage sales of alcohol and cigarettes. However, the intelligence report regarding illegal cigarettes was proved true when the police visited the premises on 17th August 2021 and the PLH/DPS's other premises on 14th September 2021.
4. The Sub-Committee did not believe the PLH/DPS when he stated that he did not know that the cigarettes and tobacco which he purchased from a man coming to his shop were illegal. The Sub-Committee found that illegal cigarettes and tobacco were being stored at both premises.

5. The Sub-Committee did not accept that 7246 cigarettes comprising 30 different brands could have been for the PLH/DPS's personal use.
6. Having carefully evaluated all of the information and evidence before it, the Sub-Committee accepted the representations put forward by the Police that that the PLH/DPS had failed to uphold the licensing objectives particularly that relating to the prevention of crime and disorder.
7. The Sub-Committee reminded itself of the statutory guidance relating to a review which urged it 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. However, where criminal activity was alleged, as was the case, wider public policy considerations came into play and the furtherance of the licensing objective engaged included the prevention of crime. In those circumstances, deterrence by way of a revocation, was an appropriate objective and one contemplated by the guidance issued by the Secretary of State.
8. The Sub-Committee considered the statutory guidance at Paragraph 11.27 which stated that there was certain criminal activity that might arise in connection with licensed premises which should be treated particularly seriously. The examples cited included the use of the licensed premises for the sale or storage of smuggled tobacco and alcohol.
9. The sub-committee had considered the other measures, short of revocation, available to them and concluded that, in the public interest and furtherance of the licensing objectives that it was appropriate and proportionate to revoke the licence.

The PLH/DPS would be advised of the right to appeal within 21 days of being notified of the decision to the Magistrates Court.

7. APPLICATION FOR A REVIEW OF AN EXISTING PREMISES LICENCE

The Chair led on introductions.

The Director of Neighbourhood and Environmental Services submitted a report on an application for the review of an existing premises licence.

The Premises Licence Holder (PLH) / Designated Premises Supervisor (DPS) was present, accompanied by his wife. Mr David Braithwaite, Deputy Licensing Manager for Leicestershire Police was present accompanied by PC Ben Hill, and Ms Minaxi Patel, Trading Standards Officer, Neighbourhood and Environmental Services. Also present was the Licensing Team Manager (Policy and Applications) and the Legal Adviser to the Sub-Committee.

The Licensing Team Manager (Policy and Applications) presented the report. It was noted a review application was received on 15 September 2021 from Leicestershire Police on the grounds of the prevention of crime and disorder and public safety.

Mr Braithwaite was given the opportunity to outline the details of the Police representation.

PC Hill was given the opportunity to present his witness report and answered questions from Members.

Ms Patel was given the opportunity to outline the details of the report from Trading Standards in support of the Police representation.

The PLH/DPS through his wife was given the opportunity to address the Sub-Committee and answered questions from the Police, Members, and the Legal Adviser to the Sub-Committee.

All parties present 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 and were advised of the options available to them in making their decision. The Sub-Committee were also advised of the relevant policy and statutory guidance that needed to be taken into account when making their decision.

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 accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

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

The Chair then informed the meeting that all but the Democratic Support Officers should withdraw from the room. 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 premises licence be REVOKED.

Members of the Sub-Committee were asked to determine an application for the review of an existing premises licence.

In reaching their decision, Members of the Sub-Committee carefully considered

the committee report presented by the Licensing Team Manager (Policy and Applications), all representations made by Leicestershire Police in support of the Application for a Review, the report from the Trading Standards Officer, the representation made by the PLH/DPS and the legal advice given during the hearing.

The Sub-Committee had been asked to determine an application for the review of the premises licence. When considering the application, the licensing objectives were of paramount concern. The Sub-Committee considered the review application on its own merits and in accordance with the licensing authority's Statement of Licensing Policy and statutory guidance issued under S.182 of the Licensing Act 2003.

The current licensable activities which were the subject of the review were set out in paragraph 5.2 of Licensing report presented to the Sub-Committee.

Members were informed Leicestershire Police made an application to review the premises licence on the basis that the PLH/DPS had failed to promote the licensing objectives of the prevention of crime and disorder and public safety due to illegal cigarettes and tobacco totally 205 boxes being found on 14th September 2021.

Additionally the Police supported their representations by submitting evidence in respect of the PLH/DPS's other premises where:

- Illegal cigarettes and tobacco were found at the premises on 2nd May 2020, 22nd May 2020 and on 17th August 2021
- Boxes of Nitrous Oxide found on the premises on the same dates 2nd May 2020, 22nd May 2020 and 17th August 2021
- A small amount of unlicensed Sildenafil Citrate tablets being found on 17th August 2021.

The Sub-Committee was informed that the Police visit on 17th August 2021 was prompted following intelligence received on 9th July 2021 which stated that the owner of the premises was selling alcohol and cigarettes to children. It was also noted that some of the cigarettes being sold were illegal.

Members noted the application for a review was supported by witness statements made by Police Officer PC Hill and from the Council's Trading Standards officer. Both witnesses attended the hearing and gave direct evidence to the Sub-Committee.

PC Hill had set out the circumstances in which 205 boxes of illegal cigarettes and tobacco were found at the premises. PC Hill informed the Sub-Committee that whilst he was in the premises a customer had arrived and asked for a £5 packet of cigarettes. On being informed of the correct price for a legal box of cigarettes, the customer left the shop without purchasing any cigarettes.

The Council's Trading Standards Officer had informed the Sub-Committee the cigarettes and tobacco did not comply with UK regulations and UK duty had not been paid. The officer also informed Members of the impact on public health

from illegal cigarettes and tobacco and the connection of its supply to organised crime.

The PLH/DPS attended the hearing together with his wife. An interpreter had been arranged for the hearing however the PLH/DPS preferred to make his representation through his wife and the interpreter had been discharged.

The Sub-Committee heard the PLH/DPS opposed the grounds for review. He had not disputed the presence of illegal cigarettes and tobacco at both licensed premises nor did he dispute the presence of the boxes of Nitrous Oxide and the 49 unlicensed tablets of Sildenafil Citrate at the other premises. During the hearing he stated that all of the cigarettes and tobacco found at both premises were for his personal use and that he kept them under the counter at both premises because he had limited storage space. He stated that he could not store them at home as his wife did not want them there and they got into arguments about his smoking.

The PLH/DPS repeatedly denied knowing that the cigarettes and tobacco he had purchased from a man visiting his shop were illegal despite the packaging being completely different from UK packaging and despite the packages being marked with stickers such as 'only for sale in Ghana'. The PLH/DPS did not think it strange that he was paying £1 to £2 per box when the UK price was upwards of £10, and this was despite the PLH/DPS going to wholesalers on a weekly basis to buy cigarettes which were compliant with UK regulations.

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 carefully considered each of the options available to them as outlined during the hearing.

As a result of what the Sub-Committee heard, it was satisfied that the representations by the Police engaged two of the four licensing objectives and it concluded that it was appropriate and proportionate in light of licensing objectives to REVOKE the licence

REASONS FOR THE DECISION

1. The Sub-Committee believed that the cause or causes of the concerns which gave rise to the application for review was the discovery of illegal cigarettes and tobacco. Added to those concerns was the presence of boxes of Nitrous Oxide cannisters and unlicensed Sildenafil Citrate tablets at the PLH/DPS's other premises.
2. The Sub-Committee accepted the evidence of Trading Standards Officer to the effect that cigarettes and tobacco found at both premises were illegal due to UK duty not being paid and due to the products not complying with the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015. The Sub-Committee acknowledged the impact of counterfeit cigarettes and tobacco on public health and to the involvement of organised crime in its supply.

3. The Sub-Committee had taken note of the intelligence report dated 9th July 2021 stating that alcohol and cigarettes were being sold to children and that illegal cigarettes were being sold. It found no direct evidence regarding sale of those items to those under age. However, the intelligence report regarding illegal cigarettes was proved true when the Police visited the PLH/DPS's the premises on 17th August 2021 and other premises on 14th September 2021.
4. The Sub-Committee did not believe the PLH/DPS when he stated that he did not know that the cigarettes and tobacco which he purchased from a man coming to his shop were illegal. The Sub-Committee found that illegal cigarettes and tobacco were being stored at both premises.
5. The Sub-Committee did not accept that 7246 cigarettes comprising 30 different brands could have been for the PLH/DPS's personal use.
6. Having carefully evaluated all of the information and evidence before it, the Sub-Committee accepted the representations put forward by the Police that that the PLH/DPS had failed to uphold the licensing objectives particularly that relating to the prevention of crime and disorder.
7. The Sub-Committee reminded itself of the statutory guidance relating to a review which urged it 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. However, where criminal activity was alleged, as was the case, wider public policy considerations came into play and the furtherance of the licensing objective engaged included the prevention of crime. In those circumstances, deterrence by way of a revocation, was an appropriate objective and one contemplated by the guidance issued by the Secretary of State.
8. The Sub-Committee considered the statutory guidance at Paragraph 11.27 which stated that there was certain criminal activity that might arise in connection with licensed premises which should be treated particularly seriously. The examples cited included the use of the licensed premises for the sale or storage of smuggled tobacco and alcohol.
9. The sub-committee had considered the other measures, short of revocation, available to them and concluded that, in the public interest and furtherance of the licensing objectives that it was appropriate and proportionate to revoke the licence.

The PLH/DPS would be advised of the right to appeal within 21 days of being notified of the decision to the Magistrates Court.

8. ANY OTHER URGENT BUSINESS

There being no other items of urgent business, the meeting closed at 1.07pm.

