



Leicester  
City Council

Notes of the  
HEARING UNDER THE LICENSING ACT 2003

Held: WEDNESDAY, 16 APRIL 2014 at 9:30am

P R E S E N T:

Councillor Clarke – Chair

Councillor Dr Barton

Councillor Westley

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**1. APPOINTMENT OF CHAIR**

Councillor Clarke was appointed as Chair for the meeting.

**2. APOLOGIES FOR ABSENCE**

There were no apologies.

**3. DECLARATIONS OF INTEREST**

Members were asked to declare any disclosable pecuniary or other interests they may have in the business on the agenda.

Councillor Dr. Barton declared an interest Appendix A on the agenda, as she was a member of the Combined Fire Authority, and equalities of the fire authority, and approached the application with an open mind.

Councillor Clarke declared an interest Appendix B on the agenda, as he had had an informal discussion away from the premises with an enforcement officer for HMRC regarding alcohol sales, though he could not be sure it was about Twoj Smak. Councillor Clarke said he approached the application with an open mind.

In accordance with the Council's Code of Conduct, Members did not consider that the interests were so significant that it was likely to prejudice their judgement of the public interest. Councillors Dr. Barton and Clarke were, therefore, did not consider they were required to withdraw from the meeting.

**4. APPLICATION FOR A REVIEW OF AN EXISTING PREMISES LICENCE: F BAR, 95 WALNUT STREET, LEICESTER, LE2 7LA**

The Director, Environmental Services, submitted a report that required

Members to determine an application for a review of an existing premises licence for F Bar, 95 Walnut Street, Leicester, LE2 7LA.

Members noted that a representation had been received in respect of the application which necessitated that the application for a new premises licence had to be considered by Members.

Mr Jotinder Singh, representing the Premises Licence Holder (PLH), was present at the meeting. Mr Cyril Abadie and Mr Richard Wesson, Fire Safety Inspecting Officers, Leicestershire Fire and Rescue Services were present. The Licensing Team Manager and Solicitor to the hearing panel were also present.

The Licensing Team Manager presented the report. It was noted that the review application had been made by the fire authority on 26<sup>th</sup> February 2014 on the grounds of public safety. Colour photographs of the exterior of the premises were circulated at the meeting.

The Fire Safety Inspecting Officers outlined the reasons for the review application and answered questions from Members:

- A fire safety visit in August 2013 had found safety measures at the premises unsatisfactory, and the PLH had failed to comply as competent person with his duties under the current fire safety legislation, namely The Regulatory Reform (Fire Safety) Order 2005 (RRO).
- An Action Plan with a deadline was served on the PLH, informing him what measures he needed to undertake to comply with the issues outlined in the report. A person issued with an Action Plan should sign it and return it to the fire authority.
- The deadline had passed, and the fire authority had received no contact from the PLH, and therefore, did not know if the action plan had been complied with. The action plan was upgraded to an Enforcement Notice, which had legal bearing.
- The deadline given for the Enforcement Notice passed, and numerous attempts were made by the fire authority to contact the PLH with no success.
- Fire Safety Inspecting Officers consulted with their line manager, and a decision was reached to make an application for a review of the premises licence.
- With the agreement of the PLH, copies of correspondence from the fire authority to the PLH was circulated to the PLH firstly, and then to Members.

Mr Singh was then given the opportunity to present his submission during which he made the following points:

- He accepted what the Fire Safety Inspectors had said.
- When the fire safety visit was undertaken in August 2013, he had not been prepared.
- Copies of completed documentation showing compliance with the Action Plan were returned in October 2013 and again in January 2014, he had done all that was required of him. He could not understand why the fire

- authority had not received the documents.
- He had been unable to respond to telephone calls, as he did not open the premises until after 5.00pm each day, after office hours.
  - He had been unable to reply to emails. He apologised and said he should have made more effort to contact the fire authority to meet fire officers, and avoid the review hearing.
  - Melton Security had repaired the fire alarm and emergency lighting. He had no recollection of the fire system being faulty and it had not been brought to his attention.
  - Four core points in the premises were tested on a rotational basis every week, and this was documented.
  - A risk assessment had been undertaken by Mr Singh three days after the fire authority had visited, and no significant findings had been found. Fire escape routes were established and checked every day. There was no combustible waste, no naked flames and no sources of ignition in the premises, and the detection and alarm system was sufficient.
  - Emergency Plan training had been given to staff members on what to do in the event of a fire. Fire drills had not been undertaken but had been talked through.
  - He took very seriously the licensing objective of public safety, and steps had been taken to deal with issues quickly.
  - The premises were the first the PLH had owned and managed.
  - In answer to a question from the Fire Safety Inspecting Officers, Mr Singh said electrical equipment portable appliance testing (PAT) had not been undertaken.

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

The Fire Safety Inspecting Officers said they were concerned they were not able to verify work or documentation, as established in the Action Plan and later Enforcement Notice.

Mr Singh said a new meeting could be arranged between Fire Safety Inspecting Officers and himself so they would see what had been undertaken, and any action required. He accepted the review hearing would not have been necessary if he had made contact with the fire authority.

Prior to deliberation, the Solicitor to the hearing panel advised Members of options available to them in making a 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.

The Fire Safety Inspecting Officers, Licensing Team Manager, Solicitor to the hearing panel, and Mr Singh then withdrew from the meeting.

The Members then gave the application full and detailed consideration.

The Solicitor to the hearing panel was recalled to give advice to Members on the wording of their decision.

The Fire Safety Inspecting Officers, Licensing Team Manager, and Mr Singh then returned to the meeting.

The Chair informed all persons present that they had recalled the Solicitor to the hearing panel for advice on the wording of their decision.

RESOLVED:

that following the application for a review of an existing premises licence for F Bar, 95 Walnut Street, Leicester, LE2 7LA, the licence be suspended until such time that the fire authority (Leicestershire Fire and Rescue Service) was satisfied that the licence holder was compliant with the Fire Authority's regulations, and that Fire Authority compliance had been confirmed to the licensing authority in writing.

The Committee informed Mr Singh that the licence could not be suspended for more than three months, but it would be open for the fire authority and licensing authority to bring the premises back for a review.

The Committee said that based on the evidence they had heard, and that which had been presented to the Committee beforehand, Members needed further reassurances to be certain public safety would not be compromised in future.

The Committee Members considered all options put to them. They wished to make a decision which would put the onus on the premises licence holder to communicate with the fire authority, and believed they had done so. They said that whilst revocation of the licence was open to them, in light of what the licence holder had said he had done, they decided on this occasion to allow the opportunity for the fire authority to look again at the premises.

However, Members were very concerned about the complete absence of communication from the premises licence holder towards the fire authority, which in itself could be a reason to give the Committee concern, and required considerable improvement on the part of the licence holder.

Mr Singh was warned the decision was a 'line in the sand', and the Members expected full compliance from him with the fire authority.

Mr Singh was informed of the 21-day right of appeal period before the decision would come into effect.

**5. APPLICATION FOR A NEW PREMISES LICENCE WITHIN A CUMULATIVE IMPACT ZONE: TWOJ SMAK, 23 NARBOROUGH ROAD, LEICESTER, LE3 0LE**

The Director, Environmental Services, submitted a report that required

Members to determine an application for a new premises licence within a Cumulative Impact Zone for Twoj Smak, 23 Narborough Road, Leicester, LE3 0LE.

Members noted that a representation had been received in respect of the application, which necessitated that the application for a new premises licence had to be considered by Members.

The applicant Mr Kasraw Said was present with a representative, Mr Dean Carr, (Licensing Consultant for the applicant). Also present was PC Jon Webb from Leicestershire Police, Ms Justine Denton and Mr Ron Ruddock (Trading Standards) who had made representations. Also present were the Licensing Team Manager and Solicitor to the hearing panel.

The Licensing Team Manager presented the report. Colour photographs of the exterior of the premises were circulated to all those present at the meeting. It was noted that the representation from Leicestershire Police was made on the grounds of the prevention of crime and disorder and the prevention of public nuisance. The representation referred to the Local Policy on Cumulative Impact for the Braunstone Gate area, introduced by Leicester City Council in February 2011, which created a rebuttable presumption that an application for a new licence would be refused. It was also noted that the representation from Trading Standards was made on the grounds of the prevention of crime and disorder.

PC Webb on behalf of the Police outlined the reasons for the representation and answered questions from Members:

- The representation attached to the report was referred to.
- The area of the Braunstone Gate Cumulative Impact Zone (CIZ) was outlined, and included the location of the applicant's premises.
- No reference had been made in the application regarding the CIZ, even though a professional licensing company had been employed to submit the application.
- The applicant needed to demonstrate he had an understanding of the CIZ, and the premises would not have an impact on the CIZ.
- The applicant had a conviction for possessing tobacco products which did not carry written and pictorial health warnings.
- It was acknowledged the application was for two hours less opening time that was preferred by the applicant, and would close at .21.00 hours each day.
- Near to the premises on Narborough Road, there were 13 shops and more than 20 restaurants and bars that sold alcohol, and the figures did not include premises on the nearby Braunstone Gate and Hinckley Road.
- If the Committee were minded to grant the application, the police had requested conditions be attached to the licence, and were listed in the representation.
- The police asked the application be refused in line with the previous application.

Mr Ruddock and Ms Denton were then asked to outline the reasons for the representation from Trading Standards:

- A copy of the representation was attached to the report, and contained details of dates visits were made by HM Revenue and Customs and Trading Standards, to two premises owned by Mr Said
- Warnings for selling tobacco products which did not have the correct safety warnings were given to Mr Said.
- Mr Said had signed a Senior Officers Formal Warning in November 2011. An interpreter had been present, so Mr Said had been in no doubt over what was said.
- Further incidents of the possession of illicit tobacco products took place.
- On 17<sup>th</sup> January 2014, Mr Said received a conviction for possessing illicit cigarettes, and received a fine of £400 with £300 costs, and £40 victim surcharge.
- Only one seizure of alcohol had been made, the others were for cigarettes.
- If Mr Said had made an application for a premises licence not in a CIZ, Trading Standards would still have made a representation.

Mr Carr for Mr Said was then given the opportunity to respond to the points made;

- Paragraph 4 of Trading Standards representation was disputed by Mr Said, as he had had confiscated wine returned to him, as he had a valid invoice.
- The applicant had been caught with illicit tobacco, but it was not an offence under the Licensing Act. The Chair pointed out that failure to pay duty on goods did fall under licensing law.
- The applicant had applied for a licence previously and had been refused. The first application had not demonstrated the applicant's understanding of the CIZ.
- Training had been delivered to Mr Said and his staff. Mr Said now understood how licensing objectives operated.
- The Baltic Store owned by the applicant was approximately 300 yards away from the new premises. Only two English products were stocked, and nothing associated with street drinkers. Products in this store were aimed at the Eastern European community in general.
- 95% of the stock in the new premises would be targeted towards the Polish community.
- The applicant had consulted with police, and had reduced the applied for hours by two hours, and agreed to the requested police conditions.
- It was believed that with the requested hours for the sale of alcohol, there would be minimal or no impact on the CIZ in what was an already saturated area.
- A refusals register would be kept on the premises.
- Staff would receive six-monthly training on licensing law.
- Trading Standards had not brought the applicant's other premises for a review, as he had not dealt with illicit alcohol.

- The applicant asked that a licence be granted for the new premises, and licensing objectives would be upheld.
- There would be space in the premises for the sale of cigarettes, and a 1.5 metre fridge for the sale of alcohol. 90% of the goods in the store would be groceries, with a butchers section at the back of the shop.
- The application names a proposed designated premises supervisor (DPS), though it was suggested that Mr Said might take on the role of DPS.
- There would be four part-time members of staff, who would all be trained in basic licensing law, and the identification of customers under Challenge 25. A record of training would be kept.
- Past illicit incidents had been due to ignorance on the applicant's part.
- During the last incident, the applicant was not in the country, and the dates on an air ticket could confirm this.
- It was a member of staff selling the illicit cigarettes, who had since been dismissed. The applicant was a responsible business man who wanted to move forward with his business.
- The applicant understood that further incidents could mean the loss of his licence.
- It was confirmed that Mr Said had signed a statement when questioned, in the presence of an interpreter.

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

The Police said the application was for premises in a CIZ. There were 13 current alcohol licences in the small area, not including licences on the streets adjacent to the CIZ, and it was the panel's decision as to whether they believed another licence in the area would have impact on the saturation area. The police added that the representation related to the prevention of crime and disorder and the prevention of public nuisance, and they believed the applicant's past conviction was relevant to the application.

Mr Ruddock supported the Police and had concerns the licensing objectives would not be complied with. Trading Standards asked for a refusal of the application.

Mr Carr for Mr Said informed the meeting there was a premises in the CIZ that was already licensed but had never opened. Mr Said wanted to prove he was a responsible retailer, and move on with the applied for licence.

The Licensing Team Manager said there was a potential change of DPS to the premises, but any changes would go through the appropriate procedure and could be objected to.

Prior to deliberation, the Solicitor to the hearing panel advised Members of options available to them in making a decision. Members were also advised of the relevant policy and statutory guidance that needed to be taken into account when making their decisions.

The Licensing Team Manager, the Solicitor to the hearing panel, Mr Said, Mr

Carr, Mr Ruddock, Ms Denton and PC Webb then withdrew from the meeting.

Members gave the application full and detailed consideration.

The Solicitor to the hearing panel was re-called to advise the Members on the wording of their decision.

The Licensing Team Manager, the Solicitor to the hearing panel, Mr Said, Mr Carr, Mr Ruddock, Ms Denton and PC Webb then returned to the meeting.

Members gave the application full and detailed consideration.

The Chair informed everyone present that the Solicitor to the hearing panel had been re-called to advise the Members on the wording of their decision.

**RESOLVED:**

that the application for a new premises licence within Cumulative Impact Zone (CIZ) be refused.

The Committee said they were not convinced that the application would not contribute to the saturation of premises within the CIZ, particularly in relation to the Licensing objectives of Public Nuisance, and Crime and Disorder.

Whilst the Committee appreciated that steps had been taken recently, there were still concerns about Mr Said's knowledge of the responsibilities placed upon him by the Licensing Act, and in particular what would be required to operate within a CIZ.

The Committee were concerned that Mr Said did not understand that, as the proprietor, he had a responsibility to ensure his staff acted responsibly, and that being on holiday was not an excuse to act irresponsibly. The Committee took considerable time considering conditions that would satisfy them that the premises staff would act responsibly, but there were none open to them.

The Committee discounted the disputed information regarding whether wine had been returned to Mr Said. The Committee appreciated Mr Said wished to run a reputable off-licence from the premises, but they had concerns about his ability to do so.

The Committee noted Mr Carr's assurances, however, they said he was clearly not the applicant and would not be involved in the day-to-day running of the premises.

## **6. CLOSE OF MEETING**

The meeting closed at 12.50pm.