

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 21 JANUARY 2015**

COUNCILLORS

PRESENT (Chair) Derek Levy, Nesimi Erbil and Dogan Delman

ABSENT

OFFICERS: Ellie Green (Principal Trading Standards Officer), PC Martyn Fisher (Police Licensing Officer), Charlotte Palmer (Licensing Enforcement Officer), Catriona McFarlane (Legal Services Representative), Jane Creer (Democratic Services)

Also Attending: Graham Hopkins and Linda Potter (G.T. Consultants – Agent for Ordnance Supermarket), Ibrahim Korkmaz (Premises Licence Holder), and four observers

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WELCOME AND APOLOGIES FOR ABSENCE

The Chair welcomed all those present and explained the order of the meeting.

There were no apologies for absence.

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DECLARATION OF INTERESTS

NOTED that there were no declarations of interest in respect of items on the agenda.

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ORDNANCE SUPERMARKET, 115 ORDNANCE ROAD, ENFIELD, EN3 6AF (REPORT NO. 151)

RECEIVED the application made by the Licensing Authority for the review of the Premises Licence held by Mr Baris Salman and Mr Ibrahim Korkmaz at the premises known as and situated at Ordnance Supermarket, 115 Ordnance Road, Enfield, EN3.

NOTED

1. The opening statement of Ellie Green, Principal Trading Standards Officer, on behalf of the Principal Licensing Officer, including the following points:
 - a. This was an application to review the Premises Licence of Ordnance Supermarket.

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- b. The review was requested by the Licensing Authority, supported by the Metropolitan Police.
 - c. The Licensing Authority considers that it is appropriate to revoke the Premises Licence, in order to support the prevention of crime and disorder licensing objective.
 - d. Representations had been received from residents. No residents were present at this meeting, but consideration should be given to the written representations.
2. The opening statement of Charlotte Palmer, Licensing Enforcement Officer, on behalf of the Licensing Authority, including the following points:
- a. The Licensing Authority were requesting revocation of the Premises Licence of Ordnance Supermarket.
 - b. Representations received from the Police included details of relevant intelligence reports from July and August 2014 regarding sale of illegal cigarettes and tobacco.
 - c. The premises was visited as part of a joint HMRC and Trading Standards operation to check for counterfeit / non duty paid alcohol and tobacco on 15/10/14. HMRC seized 21 bottles of wine and 39 bottles of spirit. Trading Standards also seized three bottles of vodka.
 - d. Selling of these items undermined the licensing objective of the prevention of crime and disorder.
 - e. The Secretary of State believes that the sale of smuggled alcohol should be treated particularly seriously and that where licence reviews are submitted and the licensing authority determines that the crime prevention objective is being undermined revocation of the licence, even in the first instance should be seriously considered.
 - f. This was not the first instance at this premises. In 2011 an application for a minor variation was granted following a visit by Enfield Trading Standards when some counterfeit wine was discovered for sale, and a letter was sent as a warning to their future conduct. Conditions had been added to strengthen the licence as a result of that discovery.
 - g. In May 2014 a letter in respect of new mandatory conditions attached to the licence was sent to the premises from the Licensing Team.
 - h. On 24/10/14 a full licence inspection was carried out. Breaches of four licensing conditions were recorded and four more bottles of spirit were on display of the same type as those previously seized by HMRC. The licence holders had therefore been warned twice, the last time only ten days previously, yet had more of the same alcohol on display.
 - i. The Licensing Authority had no confidence in those running this premises and they had no choice but the apply for the licence to be revoked.
3. The statement by PC Martyn Fisher, on behalf of Metropolitan Police Service, including the following points:

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- a. As a result of intelligence reports to the Police, visits were conducted by HMRC and there were non duty paid goods.
 - b. The Police supported the application by the Licensing Authority for revocation of the licence.
4. Questions were invited on the opening statements:
- a. PC Fisher and Charlotte Palmer responded to a question from the Chair about the letters of support sent by residents, four of which stated 'I have never seen them sell alcohol or cigarettes to underage children', and whether that was a matter of contention. Officers advised that the letters were almost identical, but none referred to the specific offences that this review had been brought for. There was no issue about selling to underage children and the review did not relate to that.
 - b. Charlotte Palmer responded to a question from Councillor Erbil in relation to the letter sent from the Licensing Authority on 28/05/14 and whether action had been taken in response. Charlotte Palmer advised that a standard letter was sent to all premises with a Premises Licence in the borough to advise that new Mandatory Conditions had been attached to the licence by Parliament. This standard letter also included additional paragraphs setting out relevant Trading Standards advice.
 - c. Councillor Delman asked for clarification about the back labels on spirits. Charlotte Palmer confirmed that, on investigation, it was the labels which were seen to be counterfeit, to avoid the duty. The vodka was not counterfeit. Such labels were attached to cover up something manufactured in a different country and to look like it was duty paid, but they were not the correct labels. She did not know who had put on these labels, but would guess it was by somebody who had then supplied the bottles to the premises.
 - d. The Chair asked if during the inspection, any receipts had been brought up which related to the items seized. Charlotte Palmer confirmed that none had been submitted as part of the representation. One receipt had been provided for Glens vodka. No evidence had been provided on the vodka with foreign labels seized by HMRC and the same brands found by officers on 24/10/14.
 - e. In response to the Chair's question whether counterfeit goods could have the potential to harm the public, Charlotte Palmer advised that counterfeit products could be dangerous as the ingredients were unknown and could cause harm.
 - f. In response to the question from the licence holders' representative, PC Fisher confirmed that no duty evaded tobacco had been found at the premises.
5. The statement of Graham Hopkins, Agent, GT Consultants on behalf of the licence holders, including the following points:
- a. He was accompanied by a colleague and the Premises Licence Holder, Ibrahim Korkmaz.
 - b. He had submitted a number of documents to the Licensing Authority following conversations with the Principal Licensing Officer, including

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sample copies of invoices. He had also brought copies if the panel wished to see them and had receipts with him. (The Chair received confirmation from the Licensing Authority they were still seeking revocation of the licence, and that they had no objection to this paperwork being discussed, and the Chair confirmed that he was happy for these to be referred to in representations, but did not wish them to be tabled.)

c. The business was a small convenience / grocery store run by two partners and had operated for 13 years.

d. There were duty evaded alcohol products on the premises on 15/10/14, and Trading Standards officers found residual stock on 24/10/14. There was no duty evaded tobacco. The licence holders apologised that these products were found: the panel could be assured they had deepest regret. They had taken steps to ensure this did not recur.

e. The three bottles of vodka referred to had been purchased from a local cash and carry three years previously. They were bought for £4 a bottle and sold for £5. Products seized on 15/10/14 were old stock. The spirits were Polish and had been in the shop for over three years.

f. His client did not realise that the products were unlawful and had thought he was able to sell them. There had been no effort to conceal the products: they were on open display. The licence holders were not trying to be dishonest. He would suggest that nobody would be so stupid to have products on display if they were known to be unlawful.

g. He believed the same type of products were found by officers on 24/10/14. Mr Korkmaz was adamant they did not buy more stock: this was stock that they already had. The licence holders did not check the stock before putting it out. They accepted in hindsight that they should have checked the stock. He believed this was credible and in the absence of contrary evidence.

h. References to cigarettes were allegations, and were not proven.

i. It was accepted that breaches of the licence had taken place. A refusals book had now been put in place. It had not been considered a necessity as this was a local shop which had been operating for a long time, the local youngsters were known and once turned away they did not go back. Test purchases by the Licensing Authority had been passed over the years.

j. He believed this was the first time the licence had been brought for review, besides the variation application in 2011.

k. The licence holder now checks labels on supplies, and does understand the conditions and what needs to be done. He would continue as licensing agent to support his client.

l. A list of suppliers where products were purchased was given. Alcohol was also purchased from a Turkish company with a roundsman who takes orders and delivers. This was believed to be legitimate. It was definitely not a 'white van man'. The licence holder would be happy to take further advice from officers.

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m. His clients were willing to attend a training course. He had been in discussion with Charlotte Palmer as a specific course regarding counterfeit goods was difficult to source. He had now found a consultancy which was willing to provide training for retailers and would cover checks of labels, packaging, etc. This was felt to be an appropriate measure. There had not been time to organise a date for the training before this hearing due to other commitments.

n. He wished to suggest additional conditions for the sub-committee to consider adding to the licence. He would offer that staff involved in purchasing stock must receive that training, and that only trained staff be allowed to do purchasing. He would propose an incident book to be kept at the premises to detail any irregularities. As the client went to the wholesaler every two or three days, he would also suggest that receipts were kept in separate piles for each day and that anything suspicious was kept separate and not on the shop floor. He asked that four to six weeks be allowed for the training to be arranged.

o. In summary, he would accept that duty diverted alcohol was present, but the licence holders were not trying to be dishonest and they would not have been so stupid as to buy more of the same goods. No counterfeit tobacco was found at the premises. Additional measures had been offered. The licence holders asked that they were please given another chance, or subjected to a limited short suspension of the licence, for example two weeks.

6. Questions were invited on the representation:
- a. The Chair questioned how the licence holder had thought the goods were lawful and why it was suggested that training needed to be introduced now, given that they had held the licence since 2005, and they had operated the licence for six years before the first offence. In May 2014 they had been sent the letter with advice about how to purchase goods, yet within five months non duty paid and counterfeit goods were found on the shelves. Graham Hopkins advised that this was a specific batch of Polish originated goods. His client advised he had been supplied by a wholesaler and had invoices, and thought that as goods were from a wholesaler they could be sold in the shop. He was now fully aware of the rules and accepted he had been wrong. Training would reinforce his knowledge. From his experience he believed his client was genuine.
 - b. The Chair questioned why receipts could not have been submitted before this week, given that the seizure took place on 15/10/14. Graham Hopkins confirmed that he had brought evidence that his client was now buying from reputable wholesalers. A receipt for the vodka was sent to officers.
 - c. The Chair further questioned why the licence holders had not known better after the 2011 episode and the 15/10/14 seizure than to still have such stock on the shelves. Graham Hopkins advised that his client had thought that the seizure had taken all the stock and did not make

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further checks, but accepts that he should have checked the shelves and residual stock.

d. Charlotte Palmer clarified that, having been present during the HMRC visit, there had been a gap left on shelves where a considerable amount of wine and vodka were seized. When she returned for the visit on 24/10/14 there were new bottles of wine and vodka, with one of each brand previously taken, in that gap. She suggested that the shelves had been refilled. Officers had taken all the stock they could see on the shop floor and in the stock room. The stock refilling the shelves must therefore have been brought from somewhere unseen. She clarified that a receipt had been provided to the Licensing Authority for Glens vodka. Receipts were not provided for the more significant numbers of bottles of wine or the Polish vodka. Graham Hopkins advised that he had brought invoices for similar products which were more current invoices from the same wholesalers. The licence holders had been keeping invoices for three months then sending them to their accountants.

e. The Chair suggested that, given the time period since the seizure, the licence holder would have had time to resecure receipts and submit them as mitigation and questioned why this was not done. Graham Hopkins confirmed that receipts should have been produced, but he had only been involved with his client for a few weeks and had brought everything they had available. They would now keep the receipts for 12 months in the shop.

f. Charlotte Palmer raised conflict between explanations provided to officers previously and reasons for counterfeit wine being sold given at the hearing and questioned why they were different. Graham Hopkins advised that he could only act on the information which his client gave. The Chair noted that it would be inappropriate for new information to be given at the hearing, but noted that officers had received different information.

7. The closing statement of Ellie Green, Principal Trading Standards Officer, including the following points:
 - a. The Premises Licence already had all appropriate conditions, as recommended by the Licensing Authority following the minor variation application in 2011. It was now appropriate to consider a revocation application in respect of non duty paid alcohol.
 - b. Section 10.3 of the Council's Licensing Policy and Home Office Guidance s. 11.24, 11.27 and 11.28 were highlighted for Members' attention.

8. The closing statement of Charlotte Palmer, Licensing Enforcement Officer, including the following points:
 - a. She still believed that the licence should be revoked.
 - b. The licence included suitable conditions already.
 - c. The licence holder had advised that there were receipts for the stock, but they were with the accountants. It was inconceivable such

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receipts were not provided in mitigation in the light of potential revocation and HMRC investigation. She did not believe that receipts existed.

d. Representations from residents related to matters such as underage sales. These were not matters which were being heard at this meeting. She did not believe the residents' representations were relevant to this review.

e. Invoices had been produced for goods bought since the seizure. These seemed irrelevant to the review.

f. She questioned how many more chances or warnings should be given to the premises. They had already been warned twice and conditions had been suitably strengthened.

g. Less than ten days after the HMRC visit and seizure, more of the same products were found on the premises.

h. The licence holders had shown they could comply with the conditions: there was no need for extra time to be given for them to comply.

i. Other options had already been tried and failed. The only option remaining was revocation of the licence.

9. The closing statement of PC Martyn Fisher, on behalf of Metropolitan Police Service, reiterating support of the Licensing Authority's application for revocation of the Premises Licence.
10. The closing statement of Graham Hopkins, Agent, GT Consultants on behalf of the licence holders, including the following points:
 - a. All matters had been covered in his earlier statement.
 - b. He had copies of proposed additional conditions offered if the panel wished to receive them.
 - c. He would still ask the panel to consider imposition of additional conditions and a short suspension rather than revocation.

RESOLVED that

1. In accordance with the principles of Section 100(a) of the Local Government Act 1972 to exclude the press and public from the meeting for this item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 7 of Part 1 of Schedule 12A to the Act.

The Panel retired, with the legal representative and committee administrator, to consider the application further and then the meeting reconvened in public.

2. The Chairman made the following statement:

"Having read and listened attentively to the written and oral representations of all parties, the Licensing Sub-Committee has

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resolved that the appropriate step to be taken to support the promotion of the licensing objectives is to revoke the licence of the Ordnance Supermarket.

The Licensing Sub-Committee believes that in particular the offences as raised not just go against the prevention of crime and disorder, but also run the risk of compromising public safety and that the Licensing Authority has made its case in full.

Although we've heard that additional conditions have been offered by the licence holder and the promise to attend training, the Licensing Sub-Committee was not satisfied that this would be sufficient and that existing conditions address all of the issues proposed by the Premises Licence Holder in making this offer.

We have further considered the representations made in support of the premises, but they fail to address the wrongdoing discovered.

The Licensing Sub-Committee has given weight to both the Council's Licensing Policy and DCMS guidance (especially sections 11.24, 11.26 and 11.27) whereby the matter of selling counterfeit and non-duty paid goods should be treated seriously, even as a first offence. In this case, the Premises Licence Holder has been discovered on three occasions – initially in 2011, and more recently both on the day of the seizure of items as presented (15/10/14) but also within ten days of that same seizure, whereby goods displaying the same labels as seized were witnessed upon replenished shelves.

The Licensing Sub-Committee was concerned that the Premises Licence Holder had failed to act upon the advice given at the time of the first offence, and more recently on the guidance letter sent in May 2014.

The focus of our deliberations was the absence of any receipts to validate that the goods were purchased from a reputable supplier. This represents a breach of existing mandatory Conditions 6 and 7 of the licence, further spelt out in the guidance letter of May 2014.

The failure to produce such receipts to the Licensing Service either at the time of seizure, in the aftermath of that seizure, or at any time between the subsequent visit (24/10/14) and the hearing of the case today and the explanations provided by the Premises Licence Holder, informed the decision taken by the Licensing Sub-Committee.

Furthermore, we were not persuaded by the arguments given by the Premises Licence Holder as regards to how and why stock identically labelled to that which was seized on 15/10/14 happened to plug the gaps on the shelves following the seizure.

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The Licensing Sub-Committee view the fact that the licence holders have held a licence for more than ten years as an aggravating factor.

To avoid confusion, the Licensing Sub-Committee makes clear it did not consider any allegations relating to counterfeit tobacco products.”

3. The Licensing Sub-Committee resolved to revoke the licence.

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MINUTES OF PREVIOUS MEETING HELD ON 15 OCTOBER 2014

RECEIVED the minutes of the meeting held on 15 October 2014.

AGREED that the minutes of the meeting held on 15 October 2014 be confirmed and signed as a correct record.