

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE
HELD ON WEDNESDAY, 1 APRIL 2015**

COUNCILLORS

PRESENT (Chair) Derek Levy, Peter Fallart and George Savva MBE

ABSENT

OFFICERS: Ellie Green (Principal Licensing Officer), Charlotte Palmer (Licensing Enforcement Officer), PC Martyn Fisher (Metropolitan Police Service), Catriona McFarlane (Legal Services Representative), Metin Halil (Democratic Services)

Also Attending: Mr Kanagasabapathy Sivasubramaniam (applicant)
Graham Hopkins (agent)
Mr Sezayi Aydemir & Mrs Aydemir (applicants)
Mr Alan Aylott (agent)

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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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**RK SUPERMARKET, 1 EMPIRE PARADE, GREAT CAMBRIDGE ROAD,
EDMONTON, N18 1AA (REPORT NO. 209)**

RECEIVED the application made by the Licensing Authority for the review of the Premises Licence held by Mr Kanagasabapathy Sivasubramaniam at the premises known as and situated at RK Supermarket, 1 Empire Parade, Great Cambridge Road, Edmonton, N18 1AA.

NOTED

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

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- b. The review was brought by the Licensing Authority.
 - c. There had been 2 occasions in 2014 where non-duty paid tobacco and alcohol was found on the premises. On 9 December 2014 non-duty paid tobacco and non-duty paid alcohol were again found on the premises.
 - d. 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.
 - e. The application was supported by the Metropolitan Police Service, who also considered that it was appropriate to seek revocation of the licence.
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 RK Supermarket.
 - b. Non-duty paid tobacco and non-duty paid alcohol had been found on the premises twice within 4 months.
 - c. Representations received from the Police included details of relevant intelligence reports from May 2014 to January 2015 regarding sale of illegal cigarettes/tobacco and alcohol.
 - d. The premises were visited on 15 August 2014 by a fair trading officer who was sold non-duty paid cigarettes.
 - e. The premises was also visited on 22 August 2014 as part of a multi-agency inspection (involving Trading Standards, a brand representative and tobacco detection dogs) whereby 8 non-duty paid x High Commissioner Whisky, was seized.
 - f. On the 26 November 2014 a Licensing Enforcement Officer visited the premises to speak to the PLH as a minor variation application to strengthen the license had not been submitted.
 - g. The premises was visited as part of a joint HMRC, Trading Standards, a brand representative and tobacco detection dogs on 9 December 2014, 13 days after a Licensing Enforcement Officer had visited the premises. Further non-duty paid tobacco and alcohol were seized by HMRC.
 - h. The minor variation application to the licence was issued on 12 December 2014.
 - i. On 9/01/25 a full licence inspection was carried out. Breaches of six licensing conditions were recorded.
 - j. The Licensing Authority had no confidence in those running this premises and they had no choice but to apply for the licence to be revoked.
3. The statement by PC Martyn Fisher, on behalf of Metropolitan Police Service, including the following points:
- a. The Police supported the application by the Licensing Authority for revocation of the licence and had nothing further to add.

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4. Questions were invited on the introductory statements:
 - a. The Chair asked about the alcohol that was seized by HMRC on the 22 August 2014 and the fact that officers thought they were counterfeit. Charlotte Palmer responded that the bottles had suspicious labelling and were for export only. They were proved to be non-duty paid.
 - b. Charlotte Palmer responded to a question by the Chair that following the multi-agency inspection of the premises on 9/01/15 and after the minor variations to the licence were issued, 6 licensing conditions were still not being complied with. Conditions C10 (no receipts for alcohol) and C11 (no UV light available) were added to the licence as part of the minor variation and had not been complied with for one month.
 - c. Graham Hopkins directed a question to Charlotte Palmer, regarding the location of the non-duty paid alcohol (12 bottles of Glens Vodka) and where it was found on the premises on 9 December 2014.
 - d. Charlotte Palmer responded that she did not have that information and didn't believe it was in her report.

5. The statement of Graham Hopkins, Agent, GT Consultants, on behalf of the licence holder, including the following points:
 - a. He was accompanied by a colleague and the Premises Licence Holder, Mr Kanagasabapathy Sivasubramaniam.
 - b. He enquired about the multi-agency visit on 9/12/14 and where the non-duty paid alcohol (12 bottles of Vodka) was found by officers within the premises. Charlotte Palmer stated that she did not have that information.
 - c. Mr Kanagasabapathy Sivasubramaniam was the owner and the Designated Premises Supervisor (DPS) of the supermarket. The shop is a convenience store and he worked there on a full time basis with two part-time employees.
 - d. Mr Sivasubramaniam had acquired the business in December 2012 and had previously owned a petrol station in N17.
 - e. Mr Sivasubramaniam had also bought the stock within the shop when he acquired the business. The non-duty paid alcohol that had been found by HMRC was part of that stock was acquired when he had purchased the business. He accepted that the stock that was found was unacceptable and he apologised for this. When the multi-agency inspection seized the (non-duty paid) 8 x bottles of High Commissioner Whisky on 22/08/14, he was unaware that the bottles were suspicious. The multi-agency inspection of the premises on 9 December. 2014 found 12 bottles of non-duty paid Vodka and tobacco. Mr Sivasubramaniam said that the non-duty alcohol and tobacco were found in a store room within the premises which he had removed from shelves and were not intended for sale. Mr Sivasubramaniam understood that this was a serious issue which he

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- fully understands but that the alcohol was residue stock which had been left over. It was not a deliberate attempt to cover anything up.
- f. The non-duty paid cigarettes were bought in August 2014 from a customer, not known to him. He had never seen the Marlboro Gold packet of cigarettes, sold to a trading standards officer on 22 September 2014. The first he knew of foreign duty cigarettes being sold from his business was on 22 August 2014 when an officer informed him. He claimed that the cigarettes were sold by an employee without his consent or knowledge and that this employee had since been dismissed. The 340 cigarettes found during an inspection of the premises on 9 December 2014 were from a regular customer and came from a visit to his country. He did an exchange with Mr Siva. Exchanging cigarettes was illegal as well as selling on the premises.
 - g. There was very little guidance and no readily available training to newcomers to the off licence business relating to counterfeit goods. There was training available for under age sales.
 - h. Mr Siva had now attended a course, from a retailers point of view, provided by a former trading standards officer, who now ran his own business. Mr Sivasubramaniam had attended this course on the 19 April 2014. Areas covered included excise duty, alcohol rates, minimum pricing, revenue stamps, identifying false and fake stamps, counterfeit & bogus alcohol, how to avoid buying illegal alcohol and the risks of counterfeit alcohol. He had also provided Mr Sivasubramaniam with a follow up course last week to re-inforce the points, clarify any questions he had and to ensure that he and his staff now know how to check for counterfeit alcohol. He also knows not to buy from door to door sellers.
 - i. He had now explained to Mr Sivasubramaniam the procedure for getting invoices, ensuring they have a VAT number and details of what officers would require. Mr Sivasubramaniam also knew how to check labels using a UV light, which he now had. He also apologised for the breach of conditions relating to previous stock invoices. It was clear that Mr Sivasubramaniam had admitted stock was on the premises with no invoice, because he had bought it from the previous owner of the premises and had been consistent with that, with officers.
 - j. He was proposing some additional conditions to re-inforce what has already been agreed. The other measures include; a refusals book, updated training logs, notice on the front door and that his cousin, a personal licence holder (PLH) would be coming to work with him. Mr Siva was also aware that an incident book has to be kept which showed that a PLH was in attendance. CCTV could then be checked, on a given time, to see that a PLH was on the premises.
 - k. He proposed a further condition that all staff, are to be trained on the premises. A year's contract had just been signed for Mr Hopkins to provide training for all new staff and refresher training every quarter.

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Together with a condition for checking of stock and any suspect products to be removed and reported, to Trading Standards.

- I. Mr Siva visited the wholesalers three times a week. Each stock of alcohol purchased, would have to be placed in a unique pile with a copy of the invoice placed on top, in addition to a filed copy so that it is clearly identified. The incidents that covered under age sales would also be included in the additional conditions. Any problems with the CCTV and the attendance of the PLH/DPS would need to be reported. He had now covered all the points that were missing from the 9 January 2015 inspection.
 - m. This was not a case of deliberate criminality but a case of extreme stupidity. They did not make light of this and was a serious matter. The non-duty paid goods were not excessive as regards the quantities involved.
 - n. Mr Sivasubramaniam now understood the law and legal position. Mr Hopkins asked that revocation of the licence would be disproportionate and maybe the short suspension of the licence for 4 weeks and removal of the DPS, would be a better alternative.
6. Questions were invited on the representation:
 - a. Councillor Fallart questioned how the licence holder had been caught once with non-duty paid goods and these were still on the premises on a second inspection of the premises. Why was that? Graham Hopkins advised that these goods were the 12 bottles of Glens Vodka. The licence holder had put the 12 bottles in a store room at the back of the premises so they were not on the shop floor. They were in a sealed box at the back of the shop's store room. This was stupidity.
 - b. Councillor Savva enquired how long the licence holder had been in business for? Graham Hopkins clarified that his client had been in business at the premises for 18 months. Prior to this he worked at a filling station. Councillor Savva further stated that through his submission, the licence holder knew where those bottles came from suggesting to him that there was some kind of control at the shop. Councillor Savva, himself would not know if a bottle was genuine or not, but surely someone with 18 months experience would know if a bottle was genuine or not. Graham Hopkins clarified that his client had bought the stock from the previous owners in December 2012 and didn't check the stock. If he were to buy them today he would check.
 - c. The Chair questioned that in order to buy the business, Mr Sivasubramaniam obviously had a personal licence. He found it hard to believe that, someone who has a personal licence and becomes a DPS is not aware of counterfeit goods. The Chair found it hard to believe that there wasn't much training around for this and that a personal licence holder did not know certain indications of counterfeit goods. Graham Hopkins clarified that he took his personal licence in 2006 and counterfeit goods were not mentioned then or in 2010.

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- d. The Chair didn't know how many advice sessions Mr Sivasubramaniam had had, but he did get a letter on the 28 May 14, from which it was made very explicit that the situation had pertained to stock control and purchase. Would that not have been an opportunity for any licence holder to do a stock take and stock control, especially since it was 18 months or more since the purchase of the business. If there was any concern then a stock check should have been done. There was no reaction to the 28 May 2014 letter. Why was that? Graham Hopkins clarified that Mr Siva's concern was buying from the supplier and not checking the goods. If the licence holder bought stock now he would check it, but that it was a case of buying stock from the previous owner.
- e. The Chair further stated that the point was that having the licence from day one conveyed responsibility and one could accept naivety in the early stages, but the letter of 28 May 2014 was very explicit. It seemed to him that the advice in the letter was not acted upon. So what confidence could the committee have that the advice Mr Hopkins had given Mr Sivasubramaniam will be acted upon because the advice from Trading Standards was not acted upon. Graham Hopkins clarified that the trading contract had now been signed with Mr Sivasubramaniam and he would be visiting the premises every 3 months and part of that would involve stock taking. Mr Sivasubramaniam was more concerned about the stock he was buying from suppliers last year and not about the stock he already had. He had now checked all the stock he had now. This had been done last week when Mr Hopkins visited the premises.
- f. The Chair referred to one of the representations on page 30 of the bundle referring to additional information. It talked about the 12 September 2014 when Trading Standards visited the premises with a view to see the CCTV footage. It turned out that the owner was unable to operate the CCTV system, even after 2 years of running the business. As an owner and DPS, he found it hard to believe that the licence holder did not know how to operate a CCTV system and that this wasn't the first time. Mr Sivasubramaniam advised that the system was faulty and he didn't know how to deal with it. He had called a support line but it was not available. CCTV support came to the premises and fixed it the following week.
- g. The Chair further questioned the breach of conditions found to be non-compliant after two episodes of seizures and after eventually putting in the minor variations. The minor variations were originally requested in early November 2014 and was chased up on 26 November 2014 so as to accelerate. Why was the submission of the minor variation delayed? How was it possible, with the advice & guidance given, with 2 letters including the letter of 28 May 2014, to delay having brand new conditions fundamental to the operation of the licence? Mr Sivasubramaniam advised that he was trying to add someone else onto the personal licence.

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The Chair questioned that if that was the case, did Mr Sivasubramaniam communicate this to the Licensing Authority? Between the 4 November 2014, when the first letter was sent, and 26 November 2014 when enforcement officers visited the premises to say that a minor variation had not been submitted, this was a difference of 22 days whereby the minor variation was not submitted. Mr Sivasubramaniam clarified that he was not aware of the full procedure when trading standards visited and explained the procedure. He had filled the form in and was ready to send it, when trading standards visited.

h. The Chair questioned whether Mr Sivasubramaniam was out of his depth, managing a premises licence. It had been over 2 years since he had bought the business and had experienced seizure of goods. He had found himself out of compliance and did not act on advice. Did Mr Sivasubramaniam feel that he was a fit and proper person to operate a personal licence?

Mr Sivasubramaniam advised that he has now had further training and had taken steps to get the experience and knowledge to operate the licence. The Chair further questioned why he took a review, having had 2 seizures of goods and changes to his licence, which were breached. Why did he take so long submitting a minor variation and how many further incidents have to happen before he felt he was able to operate a licenced premises. Graham Hopkins felt that the additional training Mr Sivasubramaniam had now received and the on-going support he would provide to him, he felt Mr Sivasubramaniam would make a good licensee. The Chair further asked if Mr Sivasubramaniam possessed the capacity to accept and implement the training, so as to run a licenced premises. Graham Hopkins responded that Mr Sivasubramaniam would have to now contend with him as well as trading standards and that the premises would be monitored every 3 months by him.

i. The Chair advised that this was criminality. The first alleged offence took place 15 August 2014 regarding non-duty paid goods and again on the 22 August 2014. A further criminal offence under licensing law, also recorded 4 months later on the 9 December 2014. Graham Hopkins response that it had been a massive shake up call for Mr Sivasubramaniam. Graham Hopkins agreed that the offences did happen and that he wasn't trying to deliberately run the premises with duty free goods. This was at the lower end and he shouldn't have had the non-duty paid goods at the shop for a second time. With hindsight, Mr Sivasubramaniam would have taken the goods home for disposal.

j. The Chair enquired whether Mr Sivasubramaniam had anyone in mind who could be an alternative DPS. Graham Hopkins advised that Mr Sivasubramaniam's friend, who is a personal licence holder, could be an alternative DPS.

k. Councillor Savva, asked Graham Hopkins how he interpreted stupidity, on this occasion. Graham Hopkins clarified that on the second

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inspection of the premises, the non-duty paid goods were in the store room and not on display. He questioned why somebody would jeopardise their business and livelihood for the sake of having 12 bottles of non-duty paid goods which were not for sale. That was stupid.

Councillor Fallart questioned why the 12 bottles of non-duty paid goods were not removed from the premises after the first inspection. Graham Hopkins response, that they were removed from the shop and put in the store room. He accepted that they should have been removed from the premises.

l. The legal representative asked, what share of the profits were from the sale of alcohol and cigarettes, so as to establish the kind of business Mr Sivasubramaniam had. Mr Sivasubramaniam advised that the share of profits from the sale of alcohol was 20%, the share of profits from the sale of alcohol was 20% and therefore the business profits largely came from groceries at 60%. He visited the wholesalers 3 times a week to stock up on everything, including alcohol and cigarettes. The legal representative stated that for some reason the premises did not sell much alcohol, in the sense of whiskey & vodka, because the alcohol Mr Sivasubramaniam had in the shop hadn't sold for over 2 years. Mr Siva responded that he did not sell a lot of High Commissioner Whiskey or Glens Vodka, maybe a case of vodka every 3 months. He had around 6 cases of vodka when he first opened the business.

m. PC Martyn Fisher had been on a number of inspections with trading standards and HMRC. From the first visit to the premises on 22 August 2014, 8 bottles of High Commissioner whiskey were seized. Officers do a very thorough search and he found it hard to believe that on the follow up inspection on 9 December 2014, 12 bottles of Glens Vodka were found, which would never have been missed on the first inspection. Seventeen packs of Marlboro cigarettes were also found, hidden in a freezer. Mr Sivasubramaniam confirmed that the 12 bottles were missed on the first inspection by HMRC.

7. The closing statement of Ellie Green, Principal Licensing Officer, including the following points:
 - a. The Home Office Guidance s. 11.24, 11.27 and 11.28 were highlighted for Members' attention, as set out in paragraphs 4.6 to 4.8 of his report.
 - b. This was not the first instance of criminal activities.
 - c. The Licensing Sub-Committee must take such steps as considered appropriate for promotion of the licensing objectives and to consider if it is appropriate for the premises licence to be revoked after non-duty paid alcohol and tobacco were found on the premises on two occasions.

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8. The closing statement of Charlotte Palmer, Licensing Enforcement Officer, including the following points:
 - a. The PLH blamed an ex member of staff for the original sale of non-duty paid tobacco. However, further non-duty paid alcohol & tobacco were found at the premises after that employee had been sacked and the PLH had been interviewed by trading standards officers.
 - b. Charlotte Palmer always welcomed additional training, however, the PLH already knew it was wrong to sell non-duty paid products and these goods were still found on the premises even after the PACE (Police and Criminal Act Evidence) interviews.
 - c. Given the first seizure, she doubted that anyone would leave suspect alcohol or place large amounts of personal non-duty tobacco in their licenced premises.
 - d. In terms of the additional conditions, having found further non-duty paid alcohol and tobacco on the premises, this already suggests that condition 9 of the licence had been breached, which is that goods won't be bought from door to door sellers. Therefore she was not confident adding new conditions and that those conditions would be complied with and that illegal activity would continue.
 - e. The Premises Licence Holder had already been given a second chance and the licence strengthened so that it had included suitable conditions already for some time.
 - f. The licence holder had a history of breaching conditions.
 - g. The Licensing Authority considered that the appropriate action 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, on behalf of the licence holder, including the following points:
 - a. He maintained what he had said on behalf of his client and that this was stupidity at the lower end of the scale. He would urge the Committee to consider steps and sanctions other 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.

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2. The Chairman made the following statement:

“Having considered the written and oral submissions from all parties, the Licensing Sub-Committee (LSC) has determined that revocation of the licence is the appropriate step to take.

Statutory guidance is very clear that where the crime prevention objective is being undermined (which includes the sale and storage of non-duty paid goods) and even in the first instance, revocation should be seriously considered.

In this matter, we were told of three separate occasions on which non-duty paid tobacco and alcohol were found on the premises. The assertion that these goods were residual stock from the initial purchase of the premises in September 2012 stretches the credibility of the LSC. The LSC accepts the case made by the applicant that the Premises Licence Holder (PLH) provides no confidence in his ability to operate the licence, despite very recent attempts to undergo relevant training. The LSC is not confident, based on the history of these premises, in the capacity of the licence holder to totally assume the responsibilities involved in managing licenced premises.

The licence holder was given clear advice and guidance in writing from the Licensing team on the 28th May 2014 in terms of the reputation of goods been supplied. And yet, within two and a half months, non-duty paid goods were found in the premises on both 15th and 22nd August 2014.

As a consequence of this, the licence holder was further advised as to the seriousness of the situation and the potential consequence, and on 4th November 2014 was invited to submit a minor variation application by way of enhanced and strengthened conditions. But again, the PLH did not act on this immediately and required an additional visit to the premises on the 26th November 2014 to spur him into action.

With this in mind, the LSC was concerned then to be told that within just 13 days of the application been submitted, still more non-duty paid goods were found on the premises. The panel was not persuaded that this stock formed part of the original holding, or was missed by HMRC in previous visits, or indeed that any such products had not been sold in over two years of trading especially when the LSC was given the knowledge that the PLH replenished all other stock on a three times a week basis.

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The seriousness of the criminality involved here, and on more than one occasion, is sufficient in itself to inform the decision to revoke the licence

But as an aggravating factor, the fact that the new conditions agreed by the PLH under the minor variation, had not being complied with, within a month of them taking effect, is further evidence of sluggish compliance with the Licensing regime”.

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

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**SHEELPA EXPRESS, 389 ORDNANCE ROAD, ENFIELD, EN3 6HN
(REPORT NO. 210)**

RECEIVED the application made by the Licensing Authority for the review of the Premises Licence held by Cilana Limited at the premises known as and situated at Sheelpa Express, 389 Ordnance Road, Enfield, EN3 6HN.

NOTED

1. The opening statement of Ellie Green, Principal Licensing Officer, including the following points:
 - a. This was an application to review the Premises Licence of Sheelpa Express.
 - b. The review was brought by the Licensing Authority.
 - 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. In December 2014, non-duty paid tobacco was found at the premises and in addition the premises were found to be operating in breach of their conditions, in two separate occasions. This was the third review application, in total, made by the licensing authority for a review of the premises licence.
 - e. The previously reviewed application was made for the sale of alcohol to under age persons in 2008 and again in January 2014. The application previously sought to modify the conditions and more recent reviews to remove the DPS.
 - f. The PLH is Ciliana Ltd and the Company Secretary is Mr Aydemir and the director is Miss Aydemir who is also the DPS. Ciliana Ltd is being represented by Mr Alan Aylott of Dadds Licensing Solicitors.
 - g. The application was supported by the Metropolitan Police Service, who also considered that it was appropriate to seek revocation of the licence.

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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 Sheelpa Express. The review is based on the prevention of Crime and Disorder Licensing objective and was a result of non-duty paid tobacco being found on the premises in December 2014.
 - b. The joint visit carried out in December 2014 was the result of an allegation received in October 2014, stating that the premises were selling illegal cigarettes and this proved to be true.
 - c. The Secretary of State thinks that the sale of smuggled tobacco and alcohol should be taken particularly seriously and that revocation of a licence, even a first instance, should be considered. However, this was not the first time that non-duty paid products had been found at these premises and this was the third time that the licence of these premises has had to be reviewed.
 - d. The licence was reviewed to strengthen the licence conditions following an under-age tobacco sale in 2008. The PLH was also given opportunities to submit a minor variation to further strengthen the conditions as a result of the significant amount of non-duty paid alcohol and some counterfeit alcohol being found at the premises in 2011. At this time the licence holder was warned in writing that if similar offences were committed at these premises then trading standards would take action in order to have the premises licence revoked. The review to revoke the licence was submitted in 2013, following a further under age alcohol sale, several licence breaches and incidents of anti-social behaviour.
 - e. She had read the additional bundle submitted by Mr Alan Aylott and believed it would have been useful if the premises had been in breach of most of their current licence conditions. However, it failed to address the issue that has led to this particular application regarding the selling of non-duty paid products for the second time. The document did not refer to any new procedures, training or signage that had been introduced to ensure that this did not re-occur. Neither did it mention the issues that occurred in 2011.
 - f. There are already conditions attached to the licence which are designed to try and prevent such activity taking place. Given the history of the premises, the PLH and the DPS were fully aware that it is illegal to sell non-duty paid products, yet they still chose to do so.
 - g. The repeated offences show a total dis-regard for the law and undermine the crime and prevention licensing objective. The Local Authority no longer has any confidence in those running the premises and recommend that this licence is revoked.
3. The statement by PC Martyn Fisher, on behalf of Metropolitan Police Service, including the following points:
 - a. The Police supported the application by the Licensing Authority for revocation of the licence.

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4. Questions were invited on the introductory statements:
 - a. Councillor Savva asked how many times did the shop continue to sell non-duty paid products after the first warning was given? Charlotte Palmer responded that the premises were visited initially in 2008 for under age sales. In relation to the counterfeit goods, the premises were visited and acknowledged in 2011. They were given the opportunity to submit a minor variation application to add conditions to strengthen the licence in the hope that these conditions would prevent further sales. The letter informing them that they could add these conditions included a warning that they would be reviewed if they chose not to add any conditions or that if it happened again, after a minor variation, then they would be looked into with a view to revoke the licence at that point.
 - b. The Chair clarified that there were significant issues back in 2008 and 2011, on two occasions, particularly on the 1 February 2011. The Chair questioned if between April 2011 and December 2014, there had been any other occasions whereby non-duty paid products had been sold on the premises. Charlotte Palmer replied that she was not aware of other visits, unless it was in her report. If there were any further visits or incidents, she would have mentioned it in her report.
 - c. The Chair clarified that in the trading standards report, it is stated that fundamentally this particular matter has been brought to the licensing sub-committee because it is an additional offence, specifically of non-duty paid tobacco being found on the premises. Through your submission, the committee are being informed that in other matters of operating the licence, trading standards had cause for concern, such as the review that came to committee in January 2014. Charlotte Palmer's response that this review had happened because the premises had had a warning in relation non-duty paid items being found at the premises previously. They failed to comply and since, further non-duty paid goods had been found. She believed all the history for these premises was relevant because although some of the other reviews had brought other issues. These were still things which undermined the licensing crime and disorder objectives and they are still issues in their own right which had led to reviews in the past. Therefore, it shows a pattern that led trading standards to a lack of confidence in those running the premises, whether it's under age sales or the previous breaches of the licence, now compliant, where it had taken a while to get them compliant.
 - d. The Chair further clarified that Charlotte Palmers submission was the bigger picture, but the specific factor for the committee was that on 9 December 2014, non-duty paid tobacco was again found at the premises and that was the prompt for trading standards to call this review for revocation.
 - e. Alan Aylott asked whether in 2011, when the option was given, to the PLH, for either a review or submission of a minor variation, was a minor variation submitted? Charlotte Palmer responded that it had been

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submitted and that was why the additional conditions were on the licence relating to this kind of issue, like checking stock and invoices. This was why those issues were added.

f. Alan Aylott said that this was a warning previously given by trading standards 3 and a half years ago and that this was a trigger in that item regarding the sale of non-duty paid tobacco and that this was the trigger event. This was confirmed by the Chair.

g. Alan Aylott requested that Charlotte Palmer tell the committee if there had been any under-age tests done at the premises since the 2013 review. Charlotte Palmer believed there had been some more recently, but was not aware of any issues at these premises regarding under age sale from recent test purchases, otherwise it would have been in her report. Alan Aylott clarified that the only issue then for this review was the lack of compliance and the fact that non-duty paid tobacco and cigarettes were found at the premises. Was this correct? Charlotte Palmer confirmed that this was correct.

h. Alan Aylott asked Charlotte Palmer when she last visited the premises? Charlotte Palmer advised that a Licence inspection was made on 7 January 2015 and that she had not been back personally. Alan Aylott had visited the premises on 19 March 2015 and further asked Charlotte Palmer if she agreed the premises are fully compliant with their conditions. Charlotte's response was that when she visited there was only one issue which was the CCTV. The breach of conditions was not what she raised as her concerns today.

Alan Aylott questioned if there had been any prosecutions in respect of the seizures by HMRC or Trading Standards? Charlotte Palmer replied that that was a matter for HMRC, she was not aware if they would or would not be prosecuting in this case. Trading Standards would not prosecute for non-duty paid products as it was not in their remit to do so. As far as she was aware there were no prosecutions pending. The Chair clarified that HMRC had up to 12 months to prosecute or not. Alan Aylott was trying to establish whether or not Trading Standards considered it in the public interest to prosecute or not as it had been reported that this was a criminal offence.

The legal representative clarified that as it had been less than a year these offences had taken place, there was a possibility that the DPS may be prosecuted. No decision had yet been made at this time.

i. The Chair further clarified that the question of pending prosecutions could not be answered. This was within the remit of HMRC. We were within the 12 month window for HMRC to make a decision if there was a case to prosecute.

The legal representative's response that Charlotte Palmer could not answer if the premises are compliant or not as she can't answer beyond the times she had visited. He could mention in his submission, the question of compliance and his visit to the premises on 19 March 2015.

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The Chair also responded that the issues here were that non-duty paid tobacco were found on the premises and not for the first time. This is what should be focussed on.

j. Alan Aylott enquired if there had been any PACE (Police & Crime Evidence Act 1984) interviews, in respect of the review? Charlotte Palmer responded that no, not as far as she is aware.

5. The statement of Alan Aylott, on behalf of the licence holder, including the following points:
 - a. Mr Aydemir was the Company Secretary and his wife was the DPS of the family run premises. He had been in the licenced trade for 17 years, 14 of which at the premises.
 - b. He would mention the previous reviews , but only as the guidance suggested at 11-12, which was quite clear about repetitious reviews. He quoted the guidance:
“ a repetitious ground is identical or substantially similar to the ground for review specified in an earlier application for review, made in relation to the same premises licence or certificate which had already been determined”. He was not suggesting that the committee did not look at review history, but that the previous reviews had been dealt with at that time. The Licensing Act was all about moving forward and to look at where we were today rather than the past.
 - c. His instructions regarding the non-duty paid tobacco & cigarettes was that Mr Aydemir did do this. There was a high demand from his customers and that he had bought the goods from a Polish customer in order that he sold them to his customers. This was the first time non-duty paid tobacco & cigarettes triggered a review at the premises, the previous review was regarding non-duty paid alcohol.
 - d. Mr Aydemir had made a mistake. However, there had been no prosecutions by HMRC. It had been 4 months since the event and HMRC had not made it clear whether they would prosecute or not. His experience of working with HMRC suggested that they would not prosecute for such a small amount of non-duty paid goods.
 - e. The object of the review was to determine whether the Licensing objectives had been undermined, which they had, and whether the Licensing objectives could be promoted and met so the committee could be confident that this would not happen again. The Chair asked if he was saying that history was irrelevant and that everything was about going forward. That history was irrelevant and immaterial to this case? Mr Aylott responded that the history had to be taken into account, to learn from it and to then move forward.
 - f. From his visit to the premises on 19 March, 2015, Mr Aylott stated that the premises were fully compliant.
 - g. He had submitted two documents which had been issued by the Council. The Chair confirmed that as they should have been received within the 5 days, since the agenda was published.

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The notices, from Trading Standards, received following refusals to a test purchase volunteer. The first one was dated 23 May 2014 and the second dated 23 May 2014. Therefore, as a matter of the previous reviews, these dealt with under age sales and other matters. These were the reviews in 2008 and 2013 based on under age sales, breaches of conditions and incidents of anti-social behaviour. There was now no problems with under age sales.

h. The Police did not bring the review and were only supporting it. Trading Standards were entitled to bring the review on crime & disorder, however, the Police are the main source of information for this, in terms of providing the committee with information. Under normal circumstances one would expect a review for crime & disorder to be brought by the Police but this was not done.

i. The Police representative had stated that he had checked the crime & disorder figures for the last year but with a negative result for the premises. Mr Aylott's statement mentioned that there was no crime & disorder in this case. This incident was a criminal offence but had not been registered on the Police website. This was a one off incident as the police submission only included the one incident.

j. Mr Aylott referred to the guidance again. He referred to 9.12 of the guidance where the Police should be the Licensing authorities main source of advice on matters relating to the promotion of the Crime and Disorder Licensing objectives. Further to 9.12, he quoted that it remained incumbent on Police to ensure that their representations can withstand the scrutiny to which they would be subject at the hearing. Mr Aylott said that the Police did not bring the review and that the Chair didn't allow him to ask the Police Officer any questions. If this part of the guidance, therefore, referred to Trading Standards officers, they would still need to show that it remains incumbent on them to ensure that their representations can withstand scrutiny.

k. At 9.15 of the guidance it states that it doesn't necessarily mean that the Police should bring a review. Mr Aylott was making sure that the Committee were aware of all the guidance, for completeness and clarity.

l. 11.20 of the guidance stated that the Committee had to identify the cause or causes of concern and respond to that with measures that were appropriate and proportionate and that in deciding which of their powers they should invoke. Removal of the DPS, suspension of the licence, revocation of the licence or no action could be taken by the Committee.

m. 11.23 of the guidance stated that the temporary changes or suspension of the licence, for up to 3 months, could impact on the business. This was a family business and it could impact on the business financially. It would only be expected to be pursued as an appropriate means of promoting the licensing objectives. The licence could be suspended for a weekend, as a slap on the wrist.

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- n. He was not suggesting that no action be taken, but that the Committee should consider the financial impact on the premises when they take their decision.
- o. Mr Aylott quoted 11.24 and 11.27 of the guidance as a matter of completeness.
- p. Lastly, Mr Aylott quoted 11.28 of the guidance where in the first instance, revocation should be seriously considered. Whatever the Committee decided, they should be proportionate and appropriate to the instance that had been heard.
- q. Mr Aylott had submitted by e-mail two additional conditions, which had not been included in the supplementary agenda. The Chair confirmed that the Committee had seen them.
- r. Mr Aylott asked the Committee to consider suspension as a means of preserving the licence. The owners had been at the premises for a number of years and this was about non-duty paid tobacco and not alcohol. If the licence was revoked the premises could still sell tobacco. This was a one off and didn't warrant revocation. No other responsible authority had joined the review including no residents. Mr Aydemir had nothing further to add to Mr Aylott's submission.
6. Questions were invited on the representation:
- a. The Chair mentioned that this was a family run business and that all the family were present at the hearing. Who was running the business this morning? Mr Aylott replied that there were other members of his family who ran the business. His immediate family were present today.
- b. Councillor Savva enquired how much of the business is derived from the sale of alcohol and tobacco? Mr Aylott consulted his client and said that 50% of the business catered for alcohol sales with the remainder (40%) comprising groceries and tobacco & cigarette sales. The Chair asked if Mr Aydemir could be more specific with the estimate for tobacco & cigarette sales within the quoted 50%. Mr Aylott responded that alcohol sales were more than 50% and that Mr Aydemir could not be more specific. This question was based on the fact Mr Aylott had quoted 11.23 of the guidance, that any actions could impact on the business. The Committee were trying to understand the impact of the business relative to tobacco & alcohol sales. Some shops were grocery or general stores, where alcohol may be a relatively small proportion. So what we have here is a general store where alcohol is a quite significant proportion and tobacco relatively minor. Mr Aylott agreed.
- c. Councillor Savva stated that Mr Aydemir had 17 years experience, in the licensing trade and had admitted that the licensing objectives had been undermined. How then, can support be given in cases such as these where the people running the premises have vast experience but still bought illegal tobacco from a polish customer. Mr Aylott responded that it was a foolish mistake and irresponsible action. Councillor Fallart clarified that customer demand was high for the non-duty paid tobacco and that's why Mr Aydemir bought them. Was Mr

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Aylott trying to say that this was the justification for that? Mr Aylott replied that it was a mistake.

d. The Chair reiterated the statement of the Sub-Committee. The Committee did not have power to judge the criminality or otherwise of the issue. The Sub-Committee's role was to ensure the promotion of the crime and prevention objective. The Chair questioned that by the sale or stocking of non-duty paid goods the crime and prevention objective had been undermined? He asked if Mr Aylott had said that. Mr Aylott agreed.

e. The Chair questioned if the crime and prevention objective had been undermined on the 1 February 2011, when 162 litres of wine and 22.5 litres of spirit were seized by Trading Standards? Was it undermined on that occasion? Mr Aylott replied Yes.

f. The Chair further questioned if the crime and dis-order objective was undermined on the 1 April 2011, when 7 litres of non-duty paid Glen's Vodka were seized by Trading Standards. Was the crime and disorder objective undermined on that occasion? Mr Aylott clarified that he did not know the circumstances of the review on 1 April 2011 or if there had been any prosecutions. If they were non-duty paid goods, then there was an undermining of the licensing objectives.

g. The Chair further questioned that on 9 December 2014, non-duty paid tobacco was found on the premises. Does that action constitute the undermining of the crime and disorder licensing objective? Mr Aylott felt that he could not provide a yes or no answer. In answering this question Mr Aylott replied that the review was brought and the review had dealt with those matters and in going forward the Committee was satisfied that the licensing objectives had been met and promoted. The Chair accepted his answer, but asked if the licensing objectives had been compromised on those two separate occasions? Mr Aylott replied yes.

h. The Chair referred to guidance at 11.28 – where the reviews arise in respect of any review and this is a review in respect of formal activities and believe that the crime and prevention objectives are being undermined. That revocation, even in the first instance should be seriously considered.

The committee had now heard evidence that on three separate occasions on which non-duty paid goods had been found on these premises. Mr Aylott had not denied that history was irrelevant in this case. This was not the first instance. The instance from 9 December 2014, where non-duty paid goods were found on the premises. Was this correct? Mr Aylott replied that this was correct, but that this was the first time for tobacco.

i. The Chair questioned why Mr Aydemir was foolish enough to allow the undermining of the licensing objectives on the 9 December 2014, 1 February 2011 and 1 April 2011, especially as he was an experienced and responsible licence holder? Mr Aylott replied that on the 9 December 2014, Mr Aydemir had reacted to pressure from his customers and he bought non-duty paid tobacco and cigarettes but

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not alcohol. The last review was called in November 2013, a gap of 14 months and that the premises were fully compliant with their conditions. This review was hinging on this one incident on the 9 December 2014. The premises were not compliant on the 9 December 2014 but that they were compliant now, going forward.

j. The Chair asked Mr Aylott, to justify to the committee, why he considered past history of the premises as immaterial to this review? This was not the first occasion, under Mr Aydemir's holding of the licence, from which non-duty paid goods were found on the premises. Mr Aylott responded that with previous reviews, once the review has been dealt with, a line should be drawn under it, but the past and history should be referred to. The committee would have to take that into consideration. The Licensing Act had been set up in order that the public, responsible authorities and the Committee work together so as to be satisfied and confident that going forward the licensing object won't be undermined. Mr Aydemir, the DPS and his family regret what happened on the 9 December 2014 and want the committee to be confident that it won't happen again.

k. The Chair commented that Mr Aylott could not guarantee that this won't happen again, looking at the past.

l. Mr Aylott asked that committee not to invoke their powers for revocation but, as a deterrent, to suspend the licence.

m. Councillor Fallart stated that perhaps a temporary suspension may or may not help the situation, especially as Mr Aydemir is an experienced retailer and licence holder.

n. Mr Aylott commented that suspension of the licence would impact hard on the premises. The alcohol sales were substantial and the tobacco & cigarette sales were included in the remaining 50% of sales. This would be a deterrent for the premises because of the financial impact to his client.

7. The closing statement of Ellie Green, Principal Licensing Officer, including the following points:
 - a. Having heard these representations, it was time for the committee to consider whether it is appropriate for the premises licence at Sheelpa Express to be revoked for the issues heard, namely non-duty paid tobacco found at the premises.
 - b. The Committee should refer to the Council's Licensing Policy at 10.3 in their decision making. The Home Office guidance had already been referred to at s. 11.24, 11.27 and 11.28 and were highlighted for Members' attention, as set out in paragraphs 4.6 to 4.8 of her report.
 - c. The criminal activity, such as smuggled contraband tobacco should be treated particularly seriously and revocation should be considered even in the first instance.

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8. The closing statement of Charlotte Palmer, Licensing Enforcement Officer, including the following points:
 - a. The premises had a significant history and had been reviewed many times.
 - b. The Premises Licence Holder had admitted selling non-duty paid tobacco.
 - c. This was not a mistake, the PLH knew the consequences and the history of the premises showed a pattern of illegal activity.
 - d. Further non-duty paid goods had been seized by Trading Standards which showed a total disregard for the law despite receiving several warnings.
 - e. The Licensing Authority considered that the appropriate action 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.
 - a. There had been a pattern of offences that had been brought in front of the committee over a number of years, which quite clearly show that the Premises Licence Holder and the DPS were not up to the job of running a licenced premises.
 - b. In answer to Mr Aylott's earlier enquiry, there were no current prosecutions in place for the premises and there hadn't been any in the past 12 months.

10. The closing statement of Mr Alan Aylott, on behalf of the licence holder, including the following points:
 - a. This review had been triggered by the sale of non-duty paid tobacco on the 9 December 2014. From this date, the premises were now fully compliant and there had been no repeat of the sale of non-duty paid tobacco.
 - b. Mr Aydemir was now fully aware of the law and that the premises licence was in danger.
 - c. The Committee had other powers to revoke a licence i.e. suspension.
 - d. The DPS was Mr Aydemir's wife and she could be removed as a further option.
 - e. This was a strong wake up call for Mr Aydemir and his family.

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.

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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 all the written and oral representations, the Licensing Sub-Committee (LSC) has resolved that the appropriate step to be taken to support the promotion of the licensing objectives is to revoke the licence of Sheelpa Express.

By his own admission, Mr Aydemir (the Company Secretary of Cilana Limited) conceded that the crime and disorder licensing objectives had been undermined by his actions in buying non-duty paid tobacco from a Polish customer, in response to what he asserts was pressure from other customers to sell cheap cigarettes.

Mr Aylott (representative for the PLH) has suggested that the amount of non-duty paid tobacco was not significant but was in fact ‘at the low end of the scale’.

He also pointed out that the Police Service is usually the main source of advice regarding the crime and disorder objective. However, the LSC noticed in this case that the Metropolitan Police Service (MPS) role was limited to supporting the representations of Trading Standards as the Applicant.

Mr Aylott sought to persuade the sub-committee that guidance with regard to what he contended had been repetitious reviews was a material factor in this case; however, each review has been brought against the company on different facts of wrong doing. As a result, the LSC has not given too much weight to the matters that founded the previous reviews, except as mitigating/aggravating factors.

The panel noted that there had been two previous occasions, back in 2011, in which non-duty paid products, on those occasions alcohol of varying kinds, had been found – and on 1st February 2011, in particularly large volumes and of significant proportions.

On those occasions, Trading Standards adopted a “softly-softly” approach and allowed the business to continue trading, but advised the PLH to submit a minor variation to strengthen the conditions of the licence.

In the same letter (14 July 2011), the PLH was warned as to future conduct in respect to similar offences.

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At today's hearing, the PLH did not deny that those two incidences of alcohol seizures had both undermined the crime and disorder licensing objective.

Section 11.28 of the statutory guidance suggests that revocation can be seriously considered, even as a first offence. Mr Aydemir has shown a pattern of behaviour of committing criminal offences of various types until compelled by the actions of the authorities to stop doing so.

All of these offences have occurred at the current premises, for which Mr Aydemir has been responsible for fourteen years; and the LSC was additionally informed that he has been a licence holder for seventeen years in total. Therefore, as an experienced licence holder, he has had ample opportunity to demonstrate his capacity to operate his licences effectively and appropriately.

The Sub-Committee noted that despite all advice and guidance provided, and specific warnings issued (especially after the earlier occasions of non-duty paid goods being found on the premises), the strengthening of conditions as a result, as well as changing the DPS, across the years in which this business operating from these premises has come to the attention of different sub-committees and that despite all this activity, the latest offence, which has triggered the current review, still occurred.

Having considered all the written submissions and listened attentively to the oral presentations at the hearing, the LSC has determined that the appropriate step to take for the promotion of the Licensing objectives is to revoke the licence”.

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

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MINUTES OF PREVIOUS MEETING HELD ON 11 FEBRUARY 2015

RECEIVED the minutes of the meeting held on 11 February 2015.

AGREED that the minutes of the meeting held on 11 February 2015 be confirmed and signed as a correct record.

526

MINUTES OF PREVIOUS MEETING HELD ON 25 FEBRUARY 2015

RECEIVED the minutes of the meeting held on 25 February 2015.

AGREED that the minutes of the meeting held on 25 February 2015 be confirmed and signed as a correct record.

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