

**MINUTES OF THE MEETING OF THE LICENSING SUB-COMMITTEE  
HELD ON WEDNESDAY, 4 AUGUST 2021**

**COUNCILLORS**

**PRESENT** Doug Taylor (Chair), Mahmut Aksanoglu and Jim Stevens.

**ABSENT**

**OFFICERS:** Ellie Green (Principal Licensing Officer), Charlotte Palmer (Senior Licensing Enforcement Officer), Balbinder Kaur Geddes (Legal Adviser) and Metin Halil (Democratic Services)

**Also Attending:** David Dadds (Dadd Solicitors) and Yilmaz Celik (Applicant)

**1**

**WELCOME AND APOLOGIES FOR ABSENCE**

NOTED

1. Councillor Taylor as Chair welcomed all attendees to the meeting, which was being broadcast live online. Sub-committee members confirmed their presence and that they were able to hear and see the proceedings. Officers, applicants and representative confirmed their presence. The Chair explained the order of the meeting.
2. David Dadds (Dadds Licensing Solicitors), the legal representative, requested that the LSC all be present with their camera's on rather than simply by telephone to ensure that the LSC were all present and engaged in the hearing. This was agreed by the LSC and legal adviser in the circumstances.

**2**

**DECLARATION OF INTERESTS**

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

**3**

**MONTAGUE SUPERMARKET, 171 - 173 MONTAGU ROAD, EDMONTON, N18 2NA**

RECEIVED the application made by Enfield Council's Licensing Authority for review of Premises License LN/201200258 at the premises known as and situated at Montague Supermarket, 171-173 Montagu Road, Edmonton, N18 2NA.

## LICENSING SUB-COMMITTEE - 4.8.2021

NOTED

1. The introduction by Ellie Green, Principal Licensing Officer, including:
  - a. This was a review of the Licence of Montagu Supermarket, 171 – 173 Montague Road, Edmonton, N18 2NA.
  - b. The Premises Licence held by the various premises licence holders has had a history of note as set out at page 1 of the report. This review application has been submitted by the Licencing Enforcement Team on behalf of the Licencing Authority and seeks to revoke the premises licence held by Mr Yilmaz Celik in order to support the prevention of crime and disorder licencing objective.
  - c. The review is made on the grounds that the premises has a history of selling illicit tobacco from the premises. Furthermore, breaches of licencing conditions are alleged to have been breached. Those conditions applied through a minor variation in order to prevent further illicit tobacco being sold from these premises.
  - d. The existing conditions are set out in the premises licence found in the amended report. This premises licence permits the sale of alcohol, off sales and be open from 7:00am – 11:00pm daily. Mr Yilmaz Celik is both the Premises Licence Holder (PLH) and the Designated Premises Supervisor (DPS).
  - e. The full review application can be seen at Annex 2 (from page 15) of the report. Mr Celik has not provided any written response to the review application.
  - f. If the Licensing Sub Committee is minded not to revoke the licence, the review request that the licence be modified updating the licensing conditions. The full list of conditions sought through this application can be seen in Annex 3 (page 41) of the report.
  - g. Present today is Charlotte Palmer, the Senior Licensing Enforcement Officer, representing the Licensing Authority and Mr David Dadds from Dadds Licensing Solicitors representing Mr Yilmaz Celik the PLH and DPS. Mr Celik is on a call directly with Mr Dadds but not present on the live events call.
2. The statement on behalf of the Licensing Authority by Charlotte Palmer (Senior Licensing Enforcement Officer).
  - a. This review application is to revoke the premises licence. The review is based on the prevention of crime and disorder objective and is the result of non-duty paid tobacco being found at the premises.
  - b. On the 30 March 2021, the premises were visited as part of Operation CeCe (a HMRC funded national project aimed at tackling the sale of illicit tobacco). A test purchase volunteer entered the premises and asked if they sold 'cheap' cigarettes

#### LICENSING SUB-COMMITTEE - 4.8.2021

and were sold a packet of non-duty paid Marlboro Gold for £7.50.

- c. As a result, the premises were visited again on the 29 April 2021 but this time with Trading Standards Officers, a dog handler and sniffer dog. Charlotte Palmer was notified by one of the Trading Standard Officers that the evidence had been re-counted, as part of the criminal investigation, and the number of packets of cigarettes seized was 1,138 and not 1,128 as stated in the review application. A 160 pouches of hand rolling tobacco, 50 grams each, was also seized. All were non-duty paid. The packets had foreign labelling and did not comply with the standardised packaging regulations. Photos of the items seized can be seen at pages 32 and 33 of the report.
- d. The illicit tobacco sale and illicit tobacco seizure demonstrates potential breaches of licence conditions 10, 11, 14 and 15 as set out on page 18-20 of the report.
- e. Breaching licensing conditions is a criminal offence. As can be seen at page 18 of the report, Home Office guidance states that there are certain criminal activities that should be treated particularly seriously, and the list includes the sale or storage of smuggled tobacco or alcohol. The guidance also states that the revocation of the licence, even in the first instance, should seriously be considered.
- f. This is not the first time that illicit tobacco has been found at these premises. On the 3 June 2016, a minor variation application was submitted by the licence holder at the request of the Licensing Enforcement team following the seizure of illicit spirits, hand rolling tobacco and cigarettes from the premises. The letter recommending this action be taken can be seen on pages 24 – 28 of the report. The letter included a warning that if further similar offences are committed at the premises, the Licensing Authority would take immediate action in order to have the premises licence permanently revoked.
- g. As can be seen in the review application on page 17, the premises licence annual fee was paid almost a year late and the PLH had not notified the Licensing team that he had changed his home address. These matters have since been rectified.
- h. Given the previous warning and the large volume of cigarettes and hand rolling tobacco seized, the Licensing Authority believe it is appropriate to recommend that this licence be revoked. If the Licensing Committee is not minded revoking the licence in its entirety, then the Licensing Authority would recommend that the licensing conditions be updated as shown at pages 18-20 of the report. However, these are minimal changes updating the wording of 2 existing conditions as the Licensing Authority cannot think of any other conditions to add. All the ones normally added to a licence in this situation are already on the licence.

#### LICENSING SUB-COMMITTEE - 4.8.2021

3. Charlotte Palmer (Senior Licensing Enforcement Officer) responded to questions as follows:
- a. In response to Councillor Aksanoglu's questions about the PLH's attendance for an interview in July 2021 and if the Licensing Authority had any correspondence back from the PLH in relation to the proposed amended conditions, Charlotte Palmer clarified that she had not heard anything from the PLH as to whether the slight amendments to the conditions were accepted. The Trading Standards officer would be carrying out the criminal investigation and therefore Charlotte Palmer had not been updated as to whether the interview had taken place or whether it had been re-scheduled.
  - b. In response to the Chair, the PLH was not present at the premises when the visit took place and the seizure of the illicit tobacco took place.
  - c. Mr Dadds (Dadds Licensing Solicitors) asked if Trading Standards had joined this review and if Trading Standards had finished their investigation yet. It was advised by Charlotte Palmer that all the information had come from Trading Standards and as she was not involved in the criminal investigation, she was unaware if the PLH attended the PACE interview or not.
  - d. Mr Dadds referred to the premises plan and location of the storage area outside of the licensed area that the illicit tobacco products were found. He asked if Charlotte knew the correct location of the boxes of illicit tobacco and if they were found in the storage area beyond the car park and not actually within the shop? It was advised that the boxes were found in the storage area at the back of the premises. Page 32 of the pack showed the storage area and shops stock. She had not been at the premises on the day, but it looked like there was an alley way to the storage area at the back. Mr Dadds referred to page 8 of the agenda and the premises plan stating that the boxes of illicit tobacco were not found within the licensed premises but were found in the storage area out in the back. Charlotte Palmer confirmed that the boxes were found stored at the back of the premises.
  - e. Mr Dadds advised that a packet of illicit tobacco was sold across the counter and no other products were found within the licensed premises, as shown on page 8 of the agenda. Charlotte Palmer agreed and said that as far as she was aware the boxes were all found at the storage area in the back.
  - f. Mr Dadds referred to the matter on the 3 June 2016, the quantity of tobacco that was found and that a warning was given. A member of staff had said that it was for their personal use. Was this correct, as his record stated? It was advised that the 3 June 2016 matter, the PLH were recommended, rather than face a licence review, to submit a minor variation to strengthen the

#### LICENSING SUB-COMMITTEE - 4.8.2021

licence conditions which was then submitted. In response to Mr Dadds question about the quantity of tobacco found for personal use on the 3 June 2016, Charlotte Palmer advised that this information was not on the actual review but was for background information. Mr Dadds confirmed that he would make representations to that effect.

4. The Statement of David Dadds, Solicitor, on behalf of the applicant including:
  - a. Confirmed that the PLH could hear everything Mr Dadds was saying as he was connected virtually by telephone.
  - b. The LSC would be considering revocation of the licence today.
  - c. The guidance is that the LSC should seriously consider, even at first instance, the revocation of the licence. The LSC do not have to revoke the licence and is not automatic.
  - d. Mr Dadds encouraged the LSC to adopt the conditions, as set out and agreed in full, and suspend the licence up to 3 months.
  - e. Mr Dadds was requesting that revocation ought not be considered but rather the LSC agree a three-month suspension and accept the proposed amendments to the conditions for the reasons outlined below:
    - No residents objecting to the review.
    - No Police objecting to the review.
    - No Trading Standards objecting to the review.
    - No Customs & Excise objecting to the review.
  - f. This is a review bought by the Licensing Authority and at present is still subject to an investigation. It should not be discussed today but is open for discussion. Too much detail given may prejudice the criminal investigation.
  - g. In reply to Councillor Aksanoglu question, Mr Dadds has asked for the interview to be conducted in writing and the PLH will be co-operating with the LSC hearing a position summary on that.
  - h. The illicit tobacco wasn't found in the licensed area and was found in the storage rooms in the car park area at the back and a packet was sold. A rogue staff member, on their own account, bought in their own illicit tobacco and stored it at the outbuilding in the car park area. The staff member said he was looking after the tobacco for someone but not the PLH. The PLH had no knowledge of it. Clearly, we accept that the staff member had a packet on his person and sold a packet over the counter for his own personal gain and not the PLH.
  - i. No other tobacco products were found within the licenced area or the store. How frequently the employee was doing this for his own profit is a serious matter for the PLH and breach of trust of an employee. The PLH would be working with Trading Standards and the Police Service regarding the interview and provide relevant information.
  - j. It is the PLH responsibility to supervise the shop, but he was not aware or had any knowledge of it. There is CCTV for 31 days

#### LICENSING SUB-COMMITTEE - 4.8.2021

and there are no other matters arising. The storage area had now been secured and is only accessible by the PLH/management. This improvement in CCTV and supervision will avoid this happening again.

- k. We ask the LSC to consider a suspension as a course of conduct. We accept that a packet of illicit tobacco was sold, and that illicit tobacco was stored in an area off the premises in the car park away on the other side of the shop. But is within the curtilage but not within the licenced premises.
  - l. The test purchase was passed on the 21 April 2021 along with a formal inspection passed in July 2016. Another visit on the 30 April 2018 was compliant along with several visits throughout where the premises have been compliant.
5. The applicant and representative responded to questions as follows:
- a. In response to Councillor Jim Stevens question about the storage area and licensed area, it was advised that the storage area is within the curtilage of the premises but outside of the licensed premises. No tobacco had been found within the licensed area. The picture at page 32 of the agenda pack shows the illicit tobacco found in the storage area across the car park in the outbuilding. They were able to put away the illicit tobacco without the PLH seeing it. It wasn't so obvious for the PLH as it was in the storage area. It may have been more obvious to the PLH had it been hidden within the shop.
  - b. Clarification by David Dadds, in response to the LSC concern regarding the licensed area, the exact location of the storage area where the illicit tobacco was found using the plan on page 8 of the pack. The illicit tobacco was found on the premises but was stored in the storage area outside of the licensed area and away from view of the PLH.
  - c. In response to the Chair's suggestion and question relating to 2 storage areas, one within the licensed area and one outside of that and what other goods were being stored in the storage area outside of the licensed area, photo's on from page 32 of the pack were referred to showing the external storage area. The photo's showed that some alcohol bottles were also stored alongside the illicit tobacco. This storage area was not frequented by the PLH and the illicit tobacco boxes had been hidden within that area. The PLH was unaware of this.
  - d. In response to Councillor Aksanoglu's question regarding the numerous boxes of illicit tobacco found and that the PLH had no knowledge of this, it was advised that the PLH was unaware. In addition, there can be no criminal liability put to the PLH on the basis that he says he has no knowledge. It is not for the LSC to make a finding of fact on that as it would not be correct. The law states that the PLH has accepted that the illicit tobacco was there and undermines the licensing objectives. They do not accept liability that they had knowledge of that and say that the

#### LICENSING SUB-COMMITTEE - 4.8.2021

tobacco was put there by an employee and had they known this it would have been stopped.

- e. In response to Councillor Aksanoglu's question regarding the recommended amended conditions and if the PLH accepts these in full, it was clarified that the PLH does accept the recommended conditions in full and a suspension of the licence up to 3 months.
- f. In response to the Chair's regarding the employment status of the rogue employee and confirmation that this employee had a packet of illicit tobacco for his personal use which he sold to someone who came into the shop, it was clarified that the employee had been dismissed and that he would be co-operating with Trading Standards to address that issue. The PLH and Mr Dadds did not believe the explanation the employee had given about the one packet of illicit tobacco sold. They believed that the employee was selling the illicit tobacco which he says he was storing at the back of the premises.
- g. In response to the Chair's assumption that it was likely that more than one packet of illicit tobacco had been sold due to the photo, on page 33 of the pack, showing that the boxes of tobacco were not full or used for personal consumption. It was clarified that the illicit tobacco boxes, shown in the photo, may have been delivered as seen with nothing removed. But may be likely that other packets may have been sold. There is no known evidence that we had knowledge or involvement as PLH.
- h. In response to the Chair's enquiry regarding the number of staff members working at the premises, that it was unlikely that other staff members would not be unaware that this activity was taking place and that other staff members would not have visited the external storage area because had they visited they would have seen the alcohol and illicit tobacco. It was clarified that if someone wants to do this activity discreetly, they can do so without anyone's knowledge, in Mr Dadds opinion. Mr Dadd's understanding was that the employee had carried out this activity without the knowledge of others, the illicit tobacco boxes were stored away and not apparent and 1 or 2 packets were being sold throughout the day. The PLH had no knowledge of how many packets of tobacco were within the boxes. CCTV is available to the Local Authority if required. There is no evidence that the PLH was involved of liability. The PLH is not criminally liable and is therefore not guilty. But indirectly, had the PLH acted with due diligence, he accepts that could have done more.
- i. In response to Charlotte Palmer's question regarding why alcohol was stored in the unlicensed storage area, as stated by Mr Dadds, it was clarified that it was accepted that alcohol is stored in that area and should be shown on the plan but this was a minor matter and could be regulated. This can be remedied by ensuring nothing is stored in that area unless a minor variation is

#### LICENSING SUB-COMMITTEE - 4.8.2021

undertaken. This was not a criminal offence and clarification was provided by Balbinder Kaur Geddes (Legal Representative). The legal representative clarified that the outside storage area should be on the plan. Alcohol should not be stored there and should be on the premises. There will need to be a rectification to the licence to either bring the external storage area within the Premises licence or to remove the alcohol from the storage area and bring it into the area that is licensed.

- j. In response to Charlotte Palmer's question regarding how often the PLH/DPS is at the premises, it was clarified that prior to the review the PLH would attend the premises every other day but since the review he is attending daily either in the morning or afternoon. With regards to the external storage area, the PLH only visited once a week as that area would be used by staff.
  - k. In response to Charlotte Palmer's question about the number of staff at the premises because when she delivered the review application it appeared that there were 4 members working there, it was confirmed that there are normally 2 staff present. There is a morning and afternoon shift with an exchange over. Do no more than 2 staff present at any one time.
  - l. In response to Charlotte Palmer's question regarding the new systems that the PLH has put into place for his control and if any of those systems are being offered as licence conditions, it was clarified that the external storage area would be checked frequently under the PLH control and the CCTV has been updated to view on his phone. The PLH was happy for these to be offered as licence conditions.
  - m. In response to Charlotte Palmer's question regarding an agreement, should suspension of the licence be determined, where the PLH provides a voluntary undertaking that he will thoroughly check the whole of the premises and storage areas to ensure that there is nothing that has been bought in by anyone else shouldn't be there. Would the PLH agree to sign a document to this effect? It was clarified that the PLH would be happy to do this to ensure that all goods on site are duty paid and that the area is secure.
6. The summary statement from Ellie Green, Principal Licensing Officer, that having heard from the representatives of all the parties and received all the written evidence, it was for the sub-committee to determine the appropriate steps to take. The relevant guidance and policies were highlighted.
7. The summary statement from Charlotte Palmer, Senior Licensing Enforcement Officer, that this was not the first-time smuggled goods had been found at the premises. The licence already has all the relevant conditions the Licensing Authority can think to attach to try to prevent such activity. The PLH was warned previously that should similar offences be committed at the premises; the Licensing Authority

## LICENSING SUB-COMMITTEE - 4.8.2021

would act in order to have the premises licence permanently revoked as recommended by the Home Office guidance and this doesn't appear to have deterred them. The Licensing Authority still believes it is appropriate to recommend that this licence be revoked.

8. The summary statement on behalf of the applicant that a more proportionate and appropriate approach be recommended. To impose the conditions sought, with the additional condition, that will allow the Licensing Authority to do a full inspection to their satisfaction and any steps they wish to take to make sure that all storage areas are under the PLH control. To also prevent any alien goods to be stored at the premises. In relation to the guidance, its correct in the first instance that the LSC should consider revocation but they don't have to. Its about proportionality and each case it's on its own merits. The previous issue was over 5 years ago; personal use and two recent inspections have been passed since then. There was nothing to suggest to the PLH that this rogue employee had been undertaking such activities, which goes against his business. The employee has since been dismissed. No neighbours, Councillors, Police, Trading Standards or Customs & Excise have made objections, and, on that basis, a more proportionate and appropriate approach would be to suspend the licence up to a period of 3 months with conditions. That would be a small deterrent. The Licensing Act is not about punishment, to apportion liability or blame or innocence and guilt, it is a matter for the courts. The PLH has been candid with the LSC, explained what happened and we ask for you too exercise your good judgement in a proportionate and appropriate way and to suspend the licence up to 3 months with conditions.

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 Chair made the following statement:

“The Licensing Sub-Committee having listened to and considered written and oral submissions made by the Licensing Authority and on behalf of the premises licence holder, and in particular the evidence concerning the sale and seizure of illicit tobacco including 30 March 2021 and 29 April 2021 and having due regard to the history of activity in the sale and seizure of illicit

## LICENSING SUB-COMMITTEE - 4.8.2021

cigarettes and the failure of the premises licence holder to adhere to the licence conditions on the premises licence. The Licensing Sub-Committee is aware that it is entitled to revoke the licence in such circumstances and has seriously considered doing so. However, on balance the Licensing Sub-Committee has made the decision:

1. To modify the conditions of the licence as outlined in Annex 3 of the published report; and
2. To suspend the premises licence for a period of 3 months.

The premises licence holder is required to submit the appropriate variation application to update the plan of the licensed area in Annex 4 of the premises licence, which must include the car park and all storage areas at the rear of Montague Supermarket and to include all storages area within the property.

The Licensing Sub Committee has considered the statutory guidance and the London Borough of Enfield's Policy Statement in making its decision and has made its decision in promoting the four licensing objectives and that of the Prevention of Crime and Disorder. The Licensing Sub-Committee has not considered any finding based upon criminal culpability which is a matter for the criminal process".

3. The Licensing Sub-Committee resolved to:

- (a) to modify the conditions of the licence;**
- (b) to suspend the licence for a period not exceeding three months;**

## **4 MINUTES OF PREVIOUS MEETINGS**

**AGREED** the minutes of the meetings held on Wednesday 10 March 2021 and Wednesday 19 May 2021 be adjourned until the next Licensing Sub-Committee meeting.