

ROYAL BOROUGH OF GREENWICH
LICENSING REVIEW SUB-COMMITTEE
THURSDAY, 11 FEBRUARY 2016 AT 2.30 PM

MINUTES

PRESENT:

Members:

Councillor Jackie Smith (Chair), Councillors Mick Hayes and Maureen O'Mara,

Officers

Licensing Team Manager, Licensing Officer, Senior Legal Advisor and Deputy Head of Democratic Services

Item

No.

1 Apologies for Absence

There were no apologies for absence.

2 Urgent Business

There was no urgent business.

3 Declarations of Interest

Resolved -

That the list of Councillors' memberships as Council appointed representatives on outside bodies, joint committees and school governing bodies be noted.

4 Application for Review of the Existing Premises Licence for Khyberway UK Ltd (Seeray), 2 Bannockburn Road, Plumstead, London SE18 1ES

In Attendance:

Applicant for the Review	Adrian Winters – Trading Standards
In support of the review	Wendy Elcome – Public Health
Licence Holder	Mohammad Ali and Alan Aylott (representative)

The Chair welcomed all parties and ensured that introductions were made, all papers had been received and that all parties were aware of their right to be represented.

The Sub-Committee considered an application from Adrian Winter, Lead Officer, Royal Borough of Greenwich Trading Standards, for a review of the existing Premises Licence for Khyberway UK Ltd (known as Seeray), 2 Bannockburn Road, Plumstead, London SE18 1JN.

The Licensing Officer gave an illustrated introduction to the report.

The Sub-Committee was addressed by Mr Winter, Royal Greenwich Trading Standards, who informed Members of the reason for seeking a review of the premises licence for Khyberway UK Ltd. Members were informed that in July 2014 Trading Standards had investigated an allegation that the shop was selling cigarettes to children. When visiting the premises Council Officers noticed a number of bottles of alcohol that appeared to be duty evaded and these were seized. At a subsequent visit in December 2014 Council Officers again saw duty evaded alcohol on the premises and these were removed from sale. It was stated that the December visit was preceded by one in September where Officers unsuccessfully tried to purchase cheap alcohol; and a further public complaint that the shop was selling cigarettes to minors.

The Sub-Committee was informed that the Designated Premises Supervisor (DPS) had met with Council Officers regarding the seriousness of the evading duty on alcohol and that the DPS was subsequently sent a written warning. Subsequent to the warning and as part of a Borough-wide operation the premises were visited by Trading Standards and HM Customs in January 2015. Members noted that on the inspection two bottles of duty evaded

alcohol were found and also a significant number of cigarettes with foreign health warnings. There was also an open packet of cigarettes with a foreign health warning which belonged to the DPS.

The Sub-Committee was informed that, after analysis, a number of the cigarettes were intended for the European market, others failed the industry standard RIP test and / or did not have the correct required health warnings. Officers were also concerned that the open packet of cigarettes might have been used to sell single cigarettes. Subsequently both the premises licence holder, Mr Ali, and the DPS, Mr Jan, were interviewed separately and following on from these Mr Ali was issued with a warning and Mr Jan was to be prosecuted as he was primarily responsible for the illicit cigarettes.

The Sub-Committee noted that at Bexley Magistrates Court in August 2015 Mr Jan, the DPS, pleaded guilty to four offences and was fined £1,000 and ordered to pay costs. Members also noted that there had been a further allegation of the shop selling single cigarettes and selling cigarettes to children.

In conclusion the Sub-Committee was asked to consider all the options available to it and if Members were minded to not revoke the licence to consider imposing additional conditions to ensure that the licensing objectives were met.

The Sub-Committee was addressed by a representative of Public Health who spoke in support of the review. Concern was expressed that the premises had been selling duty evaded alcohol; and also cigarettes that were destined for the European market and which failed UK safety checks. The Sub-Committee was also reminded that a number of complaints had been received of the shop either selling cigarettes to children or selling single cigarettes.

The Sub-Committee noted that the Greenwich Licensing Police were unable to attend the hearing due to a clash with other duties.

The Sub-Committee was addressed by the licence holder's legal representative who questioned the allegations regarding the premises selling single cigarettes or cigarettes to children. It was stated that although a number of allegations had been made there was no evidence that the premises had undertaken such activities and the shop had also been subject of test purchasing exercises. The legal representative also questioned the validity of the contribution from Public Health in support of the review as the comments made were regarding general health issues and were not specific to the premises.

A number of additional documents on behalf of the licence holder were circulated at the meeting. The Sub-Committee adjourned at 3.12 p.m. and reconvened at 3.27 p.m.

The legal representative drew the Sub-Committee's attention to a recent Freedom of Information request that showed that there had been two test purchases between January 2015 and January 2016 and on both occasions the sale was refused; and the complaints that had been received between July 2015 and January 2016. Attention was also drawn to the local crime figures for the period January 2015 to December 2015.

The Sub-Committee was informed that the DPS was initially issued with a warning in relation to the duty evaded alcohol in July 2014 and it was not until January 2015 that a further issue was noticed. It was questioned why there was a delay between the January 2015 HMRC inspection and the decision by Trading Standards to initiate the review. The Sub-Committee were reminded of the Premises Licence Holder's personal circumstances and that the problems arose from his trust of his DPS, Mr Jan, and leaving him responsible for the premises. It was stated that the HMRC prosecution had been against Mr Jan, the DPS, and not Mr Ali, the Licence Holder. The revocation of the licence in the circumstances would be disproportionate.

The legal representative stated that Mr Jan had now been removed as the DPS and replaced by the Licence Holder, Mr Ali and that Mr Jan no longer had any involvement with the premises. The Licensing Officer confirmed that an application to change the DPS had been received by the Council. Members were informed that since February 2015 Mr Ali had been able to dedicate more time to the premises and there had no further incidents and that local residents supported the shop.

The legal representative stated that he accepted the proposed conditions put forward by Trading Standards, however, there were concerns regarding a number of the conditions proposed by the Greenwich Licensing Police. It was stated that whilst a number could be accepted there were particular concerns regarding the proposal to limit the maximum strength of alcohol; and the requirement for the DPS or personal licence holder to present whenever alcohol is sold. Members were reminded that any decision needed to be proportionate, in line with the Guidance and evidence based.

In conclusion the legal representative stated that it would not be appropriate to revoke the licence and the Sub-Committee should consider additional conditions to ensure compliance with the licensing objectives.

In response to questions the legal representative stated that the licence holder, Mr Ali, was unaware of the actions of Mr Jan as he was out of the country for significant periods; that Mr Jan's association with the premises ended on 10 February 2015. The licence holder, Mr Ali, clarified that Mr Jan was an old friend and that he had trusted him with his business. Mr Ali confirmed that he had undertaken relevant training to enable him to take over as the DPS as soon as practicable. Members were informed that there had been a delay in changing the DPS as Mr Ali had not realised the potential seriousness of the situation and that he may lose his licence; also there had been problems in identifying a suitable replacement.

All parties, with the exception of the Legal Advisor and Committee Officer, withdrew to allow the Sub-Committee to deliberate at 4.07 pm. All parties returned at 4.22 pm.

The Chair read out the decision.

In reaching its decision the Sub Committee considered the Council's statement of Licensing Policy, the Licensing Act 2003, the Regulations made there under and the Guidance issued by the Secretary of State under S.182 of that Act. In discharging its functions the Sub Committee did so with a view to promoting the licensing objectives of the prevention of crime and disorder, public safety and the protection of children from harm.

The Sub Committee reviewed the premises licence of the Khyberway UK Ltd (Seeray), 2 Bannockburn Road, Plumstead, London SE18 1ES and having considered all the evidence put before it the Sub Committee **Resolved** to:-

- Modify the conditions of the Premises Licence;

as follows

That the following conditions be imposed on the licence:

- The Challenge 25/Think 25 proof of age scheme shall be operated at the premises. All customers who appear under the age of 25 will be challenged to prove that they are over 18 when attempting to purchase alcohol. Acceptable forms of ID include a photo driving licence, passport, or home office approved identity card bearing the holographic 'PASS' mark. If the person seeking alcohol is unable to produce an acceptable form of identification, no sale or supply of alcohol shall be made to or for that person.

- All staff shall be trained in the law about the sale of alcohol. Such training will include challenging every individual who appears to be under 25 years of age and to refuse service where individuals cannot produce acceptable means of identification, acceptable forms of ID and using the refusal register. Such training (including any refresher training) will be logged and provided not less than every twelve months. The training log will be made available for inspection by Police and authorised persons.

- A refusals log must be kept at the premises, and made immediately available on request to the police or an authorised person. The refusals log is to be inspected on a monthly basis by the DPS and noted in the log and a record made in the log of any actions that appear to be needed to protect young people from harm. The log must record all refused sales of alcohol and include the following:
 - a) the identity of the member of staff who refused the sale
 - b) the date and time of the refusal
 - c) the alcohol requested and reason for refusal
 - d) description of the person refused alcohol

- The following posters shall be displayed conspicuously on the premises in customer facing areas:
 - ‘Think 25’ to advise potential purchasers that suitable proof of age will be required for all purchasers who appear to be under 25.
 - ‘It’s A Crime’ intended to warn adults not to buy alcohol for those under 18 years-of-age.

- The Premises Licence Holder will ensure that legible copies of the receipts for all alcohol goods purchased will be retained on the premises for at least 6 months and be made immediately available on request to the police or an authorised person. The documents must include the following details:
 - Seller’s name and geographical address
 - Seller’s company details, if applicable
 - Seller’s VAT details, if applicable
 - Vehicle registration detail, if applicable

- The Premises Licence Holder shall not purchase any alcohol goods from door-to-door sellers.
- A CCTV recording system shall be installed that is compliant with, and capable of, capturing an image of evidential standards. The system shall continually record whilst the venue is open for licensable activity and/or when customers are present on the premises. All CCTV recordings shall be time- & date-stamped and maintained for a minimum of thirty-one (31) days. Cameras shall be installed so as to cover both internal and external areas of the premises. At least one camera shall cover ingress/egress points.
- Staff shall be fully trained in the operation of the CCTV system and there shall be at least one member of staff on duty during trading hours who is able to provide copies of CCTV recordings to the Police and authorised officers of the Local Authority. Such copies shall, in any event, be provided within forty-eight (48) hours.
- Notices shall be displayed advising that CCTV is in operation.
- When CCTV is not operating, no supply of alcohol shall be made on the premises.
- The Designated Premises Supervisor or a personal licence holder duly authorised shall be present on the premises at all times alcohol is being sold. In their absence, sales of alcohol shall be suspended.
- Each and every individual item of alcohol shall be clearly marked with labels uniquely identifying the premises.
- Alcohol shall not be sold in an open container or consumed in the licensed premises.
- There shall be no self-service of spirits. All spirits shall be displayed for sale behind the counter.
- No more than 25% of the available display space at the premises shall be given over to the display of alcohol.
- No beer, lager or cider with an ABV of above 6.5% shall be sold at the premises, except for 'premium' product lines pre-agreed in writing with the Police and an RBG Licensing Officer in advance of such product

being stocked. Copies of the written permission issued for the agreed 'premium' lines shall be kept at the premises and made available on request to the police and other officers of responsible authorities.

- Alcohol shall only be displayed in areas of the shop that are directly visible from the counter, or where covered by a CCTV camera via a monitor at the counter.
- The area immediately outside the premises shall be monitored to ensure that any litter generated by the premises and/or its customers is regularly cleared.
- Signage requesting customers to respect local residents and leave the premises quietly shall be displayed at each exit.
- Only two school age children will be allowed in the store during the time that alcohol is on sale unless accompanied by a responsible adult.

The Sub Committee's decision was based on issues raised concerning licensing objectives of Prevention of Crime & Disorder, Public Safety and Protection of Children from Harm.

The Sub Committee considered the written and oral evidence from Trading Standards detailing the reason for the review and the failure of the licence holder to exhibit a high standard of management at the business that would adequately promote the licensing objective, in particular the prevention of crime and disorder licensing objective. Furthermore, concerns were raised regarding issues relating to the Protection of Children from Harm objective relating to the sale of cigarettes to children

The Sub-Committee was informed that on two separate occasions, 17 July 2014 and 10 December 2014, illicit or counterfeit alcohol was found on the premises. The Sub-Committee noted that Officers had subsequently met with the licence holder, Mr Ali, and the Designated Premises Supervisor, Mr Jan, regarding this and that a written warning had been issued to Mr Ali. The Sub-Committee was of the view that the reasons given by the DPS for the presence of the illicit and counterfeit alcohol lacked plausibility. It was also noted that the issuing of a written warning should have been sufficient notice for the licence holder to take appropriate action in relation to the management of his business, including reviewing the DPS.

Members were also informed that as a result of action taken by HM Revenue and Customs and Trading Standards in January 2015 tobacco was seized on the premises which included cigarettes which were for the non-UK market and for which duty had not been paid; or were counterfeit; or had the incorrect health warnings. Also there was also an open packet of non-UK cigarettes on the shop's counter that belonged to the DPS. The Sub-Committee noted that as a result of the find both the licence holder, Mr Ali, and the DPS, Mr Jan, were interviewed in March 2015 by Trading Standards. Consequently Mr Ali received a written warning and a decision was taken to prosecute Mr Jan for four offences relating to the illicit cigarettes. In August 2015 Mr Jan pleaded guilty at Bexley Magistrates Court in relation to the illicit cigarettes. The Sub-Committee noted that subsequent to his prosecution Mr Jan continued as the DPS for the shop.

In relation to the allegations of the selling of cigarettes to children, the Sub-Committee noted that complaints had been received from separate sources. At the hearing the Sub-Committee was informed by the licence holder's legal representative of a recent Freedom of Information request that showed that the premises had been subject to a number of test purchases which it had passed. It was noted that the Responsible Authorities had undertaken a number of test purchases and the shop had passed these. The Sub-Committee whilst very concerned that the premises was attracting allegations of this nature found that there was no evidence to substantiate the claims that there were sales of cigarettes to children or of single cigarettes being sold.

The Sub-Committee was also informed by the legal representative that the review was initiated in effect by events in July 2014 with the seizure of duty evaded alcohol and the further find in December 2014. The Sub-Committee noted that whilst potentially a criminal offence instead the licence holder was issued with a written warning. The Sub-Committee noted that the issuing of the written warning in December 2015 was as a result of the relatively small amounts of alcohol seized but found that this should have resulted in the licence holder paying greater attention to the management of his business.

The legal representative also stated that the Review itself was triggered by the seizure in January 2015 of illicit cigarettes and that the matter of the illicit alcohol had previously been addressed by the written warning to the licence holder Mr Ali. The Sub-Committee noted that Mr Jan had pleaded guilty in August 2015 for the possession of illicit cigarettes and that no criminal charges had been brought against Mr Ali. The Sub-Committee noted that there had been no subsequent issues since Mr Ali had returned to full time management of the shop. However, the Sub-Committee found that the

licence holder, whilst not prosecuted for the illicit cigarettes, should have paid greater attention to the management of the shop and the actions of his DPS.

The Sub-Committee noted the licence holder during the period had had a number of family issues which also included spending time out of the country. During this time he had left the day to day management of the shop the DPS, Mr Jan, who had been his friend for fifteen years. It was also noted that on 10 February 2016 the licence holder, Mr Ali, had removed Mr Jan as the premises' DPS and was now undertaking this role himself. It was explained that the delay had been caused as Mr Ali had been unable to identify a suitable replacement DPS and had only received his registration number on 10 February 2016. The Sub-Committee was concerned regarding the delay in the licence holder replacing Mr Jan as the DPS especially given his guilty plea to the possession of illicit cigarettes in August 2015 and the earlier written warning. It was found that the lack of action could be interpreted as the licence holder not appreciating the seriousness of the situation.

The Sub-Committee found that the application for review was in line with Section 11.10 of the Guidance but regretted the delay between August 2015 and December 2015 for the licence to be reviewed given the prosecution of the DPS.

In relation to the Conditions proposed by Trading Standards and the Police the Sub-Committee noted that they had been accepted, with some reservations, by the licence holder and that it was the licence holder's legal representative view that the revocation of the licence would be disproportionate.

The Sub-Committee noted the recent removal of the DPS but felt that the licence holder should have acted more quickly in this regard. The Sub-Committee agreed that the Conditions proposed by Trading Standards and the Police, which had been accepted by the licence holder, were appropriate and proportionate to address the issues raised by the applicant. Furthermore, the imposition of the Conditions would satisfy the promotion of the licensing objectives of prevention of crime and disorder; public safety; and the protection of children from harm

The Chair stated that no decision made by the Council will have effect during the time period within which an appeal may be brought and until such time that any appeal has been determined or abandoned.

The Chair stated that the applicant for review, holder of the Premises Licence, or any other person who made relevant representations to the application may appeal against the Council's decision to the Magistrates Court. Such an appeal must be submitted to the Magistrates Court within 21 days of receipt of the Notice of Decision. Furthermore, all parties will be deemed to have received the Decision Notice, four days after the date on the accompanying letter, which will be posted by 2nd class mail.

The meeting closed at 4.23 pm

Chair