

LICENSING SUB-COMMITTEE

Wednesday, 20th August, 2014

In a Conference Room, Council House, Walsall

Present

Councillor Anson
Councillor Clarke
Councillor Sarohi

In attendance

Mr Mohammed Jamal Ali – Premises Licence Holder
Mr Shram Muhamad Ali – Designated Premises Supervisor
Mr Heath Thomas – Solicitor (Harrison Clark Rickerbys Ltd)
Ms Lorraine Boothman – Chief Inspector of Weights & Measures
Mr Steven Doyle – Trading Standards
PC Gardiner – West Midlands Police
Mr Steven Knapper – Principal Licensing Officer
Mr David Hancock – Clerk to the Sub-Committee
Ms Emma Oliver – Legal Advisor

Appointment of Chairman

Resolved

That Councillor Clarke be appointed to the position of Chairman for this meeting.

Councillor Clarke in the Chair

Apology

An apology for non attendance was submitted on behalf of Councillor Sears.

Declarations of Interest

There were no declarations of interest submitted.

Licensing Hearing – Vina Mini Market

A report and additional information was submitted.

(see annexed)

The Chair welcomed all parties and invited everyone present to introduce themselves.

The Chair explained the order of proceedings and sought agreement from all parties as to its adoption. All parties agreed to the adoption of the procedure to be used.

The Chair sought assurance from all parties that they had received a copy of all relevant paperwork pertaining to the case. Everyone present confirmed that they had received a copy of all relevant paperwork.

Mr Thomas sought assurance that his additional documents consisting of witness statements and a petition had been received and circulated to all parties. It was confirmed that the additional paperwork had been circulated.

The Chair invited the Principal Licensing Officer to present the report.

The Principal Licensing Officer presented the report and highlighted the salient points contained therein.

Members had no questions.

The Responsible Authority representatives had no questions.

The Premises Licence Holder (PLH) and his representative had no questions.

The Chair invited the representative from Trading Standards to address the Sub-Committee.

Mr Doyle advised the Sub-Committee that the Council had a responsibility for enforcing the legislation which targeted illicit products including alcohol and tobacco as well as selling to underage persons.

It was well known that illicit products could cause serious health issues for users. Cigarettes and tobacco of such a nature, had been found to contain many hazardous substances which could be harmful to people. Such products were also often smuggled to evade tax duty and this was often undertaken by organised crime gangs of which funding obtained by selling these products self perpetuated the crime gangs.

Mr Doyle continued, advising that the premises in question had had a long history of selling illicit products. Since July 2010, there had been eight separate allegations in respect of underage sales and the sale of counterfeit and duty free products. Furthermore, there had also been four seizures of tobacco and spirits by HMRC and Trading Standards as well as a successful test purchase of illicit tobacco. In particular, Trading Standards alone had seized over 50,000 cigarettes, over 10Kg of tobacco and a small quantity of alcohol from the premises. In view of this, Mr Doyle asserted that a persistent and deliberate pattern of criminal activity had been demonstrated where profit had been placed before the licensing objectives, safety of customers and the impact on the local community. Section 11.27 of the statutory guidance issues by the Home Office under S187 of the Licensing Act stated that the use of premises in connection with certain criminal activities should be treated seriously. The list of such activities included the sale of smuggled tobacco and alcohol.

Mr Doyle went on to state that, although the PLH was aware of what had been going on at the premises, the PLH together with the Designate Premises Supervisor (DPS) were responsible under the Act. There had also been a complaint about illicit goods being sold on the premises when the PLH had previously been the DPS.

Mr Doyle confirmed that the application to review related to the following licence objectives: -

1. The prevention of crime and disorder;
2. The prevention of public nuisance;
3. The protection of children from harm;
4. Public safety.

Mr Doyle concluded by stating that the revocation of the licence in this case should be seriously considered by the Sub-Committee.

The Chair invited questions of Mr Doyle.

Mr Thomas referred to the statement about it being well known that such illicit products could contain harmful ingredients and asked if any of the products seized at the premises had contained any harmful ingredients.

Mr Doyle advised that not all goods had been tested, but the small sample which had been tested did not contain any harmful substances.

Mr Thomas asked if there was any evidence in this case which associated the illicit goods with organised crime gangs.

Mr Doyle stated there was not.

Mr Thomas referred to the statement about children having access to the goods and asked if, during the PLH's tenure, had there been any successful test purchase made by minors.

Mr Doyle advised that he was unsure; only one test purchase had been carried out during that period.

Mr Thomas asked if there was any evidence which could be presented to the Sub-Committee to confirm that children had purchased illicit goods or goods which they should not have been sold due to them being underage.

Mr Doyle confirmed that there was no evidence, but he was aware that proxy sales had been made whereby adults had purchase goods for children.

Mr Thomas referred to the comments made about the prevention of crime and disorder and asked if there was any evidence for Sub-Committee to consider in relation to nuisance.

Mr Doyle advised that Trading Standards did not deal with public nuisance matters.

Mr Thomas, in view of this, sought clarification that public nuisance was, therefore, not being brought as part of this review.

Mrs Boothman advised that the police had evidence relating to public nuisance.

Mr Thomas referred to the concerns relating to the premises which went back as far as 2010 and referred to the PLH taking up the position at Vina in January, 2014. He asked whether any of the issues which had occurred prior to him being in this position could be attributed to the PLH.

Mr Doyle confirmed that the PLH could not.

Mr Thomas queried whether the PLH could be held responsible for anything found at the premises prior to his appointment as PLH.

Mr Doyle confirmed that the PLH could not.

Mr Thomas clarified if the only evidence which could be brought to the Sub-Committee related to a single incident in May, 2014, which was attributable to the PLH.

Mr Doyle confirmed that this was correct.

Mr Thomas sought clarification that this incident in May 2014 turned up 6 bottles of counterfeit whiskey and tobacco found at the premises.

Mr Doyle confirmed that this was correct.

Members had no questions for Mr Doyle.

The Chair invited the Police representative to address the Sub-Committee.

PC Gardiner advised that the police received intelligence on daily basis, some of which related to Vina. Some of the intelligence was received via crime stoppers and some was received via electronic means. Intelligence which had been received related to the selling of duty free cigarettes which had been sold from the back of the shop. The level of intelligence received from the local community suggested that there was a general knowledge that illicit goods could be purchased from Vina.

PC Gardiner then referred to the logistics which would be involved in the selling of the illicit cigarettes and tobacco which had been recovered in May, 2014. The weight of the goods seized was equivalent to 10 bags of sugar in relation to the tobacco alone. Mr Gardiner asserted that to have kept that quantity of contraband hidden would have been difficult.

He continued, stating that Vina was known in the local area for selling illicit goods so customers would have known and staff would have known. In view of this, he felt

that the PLH should bear the responsibility and must be accountable for the operation of the store.

PC Gardiner then read out the email attached at Appendix 4 to the paperwork.

The Chair invited questions.

Mr Thomas referred to the 7 logs in relation to the premises which went back to 2013, some of which had occurred prior to the PLH and DPS being in their respective positions in January, 2014, and questioned if only 2 out of the 7 logs were relevant to this period.

PC Gardiner clarified that this was correct.

Mr Thomas questioned the figure referred to as thousands of cigarettes/tobacco and asked if the exact amount was 5600.

PC Gardiner clarified that this was approximately correct.

Mr Thomas questioned whether this was considered a large quantity.

PC Gardiner stated that he felt that it was a large quantity.

Mr Thomas asked whether it was beyond comprehension whether one individual acting alone could have been responsible for selling the illicit goods.

PC Gardiner stated that on the balance of probabilities, he felt that it would be unlikely that other members of staff or the DPS would not have been aware.

Mr Thomas asked whether PC Gardiner felt that the PLH should lose his licence in respect of this case.

PC Gardiner stated that he did.

Mr Thomas referred to the alleged harm to the public and asked if there was any evidence which could be presented to the Sub-Committee to support this claim.

PC Gardiner advised that there was no evidence, but general guidance suggested that such illicit goods potentially could cause harm to users.

Mr Thomas clarified that on the sample test carried out, no harmful substances had been found.

PC Gardiner advised that according to Trading Standards this was the case, but there was documentary evidence which supported that counterfeit goods such as illegal cigarettes could contain harmful substances.

Mr Thomas referred to the street drinking issue relating to the three individuals claiming to have obtained alcohol from Vina and asked whether this constituted a public nuisance.

PC Gardiner advised that they were three well-known individuals in the area.

Mr Thomas asked whether it was beyond comprehension that the three individuals concerned would have been unlikely to report their favourite establishment and had named the nearest shop.

PC Gardiner asserted that this was a very general assumption but it was not beyond comprehension.

Mr Thomas questioned if there was any evidence which could be presented to the Sub-Committee to prove that the alcohol which the three individuals had obtained had been purchased at Vina.

PC Gardiner stated that there was no evidence other than the fact that when questioned, the three individuals had claimed to have purchased the alcohol from Vina. He added that, in his experience, the individuals would have been regular customers.

Mr Thomas asked whether, in PC Gardiner's experience as a Police Officer, the people he dealt with generally told the truth.

Mr Gardiner stated that, in general, they would not.

Mr Thomas asked whether the Officers who had spoken with the three individuals had obtained CCTV footage from Vina to verify their assertions.

PC Gardiner advised that he was not aware either way if the CCTV footage had been obtained in any of the cases.

Mr Thomas asked how many other licenced premises there were in the local area within in the vicinity of Vina, as a rough estimate.

PC Gardiner stated that he would say 25 as a rough guess.

Members were invited to ask questions.

Councillor Sarohi sought clarification in relation to the concealment of the illicit goods.

Mr Doyle advised that, on the three occasions that Trading Standards had gone in to Vina, it would have been unlikely that anything would have been found without the use of the sniffer dogs as the goods had been concealed extremely well.

Councillor Sarohi sought clarification on how many bottles of liquor had been seized

Mr Doyle confirmed that it was 6 bottles.

Councillor Anson sought clarification on how many prosecutions had been made in connection with Vina.

Mr Doyle stated that investigations were still ongoing.

Councillor Anson sought clarification as to whether any enforcement action been undertaken in relation to selling to underage people.

Mr Doyle confirmed that test purchases had been carried out, but they had been unsuccessful.

Councillor Anson asked if any of the other establishments in the local area had had any problems similar to this case.

Mr Doyle advised that there were and investigations were underway.

Councillor Clarke referred to the organised crime gangs issues and asked if any such gangs could be attributed / associated with Vina.

Mr Doyle stated that none had been uncovered at present, but the amount of goods found suggested that it was unlikely that such a gang would not be involved.

The Chair invited Mr Thomas to present the case on behalf of the PLH.

Mr Thomas sought confirmation that the Sub-Committee had received the 2 witness statements and petition which he had submitted.

The Chair confirmed that all parties had been circulated with the additional paperwork.

Mr Thomas advised that he would be foolish to think that there would be no action taken arising from the Sub-Committee's determination of this case. However, the two responsible authorities were calling for the PLH's licence to be revoked, but Mr Thomas advocated that the Sub-Committee considered utilising its other powers in relation to this case. He added that he was of the opinion that the circumstances of the case did not warrant a revocation and he highlighted other options available to the Sub-Committee which he felt were more suitable and proportionate.

Mr Thomas highlighted that the evidence of previous occasions where illicit products had been found at the premises had been prior to when both the PLH and DPS were in their respective posts. In view of this, such occurrences could not be attributed to them as it happened before they were actually working at the premises.

Mr Thomas requested Members to consider what hard evidence had been brought to the Sub-Committee to support the assertions being made. The only evidence which was attributable to the PLH and DPS related to a visit to the premises in May, 2014, where a quantity of illicit tobacco and alcohol had been seized.

Up to this date, the PLH had an unblemished record and he had not had any issues. Mr Thomas advised that a PNC check had corroborated this fact. Furthermore, he had previously operated licensed premises in Birmingham and Smethwick. The PLH had moved from Smethwick to Caldmore as it had not been a viable business. The PLH had brought in the DPS shortly after he took up his position at Vina. When the

PLH started at Vina, existing members of staff remained at the premises. The PLH worked 2/3 days a week and carried out checks and balances. The DPS worked 5/6 days a week and was responsible for the day to day operations. The fact that the illicit goods were concealed was why he didn't know of its existence. The PLH had placed his trust in DPS and the employees. The PLH had not been responsible for the concealment or selling of illicit goods.

Mr Thomas added that, in his experience, it was brave for an individual to come forward and admit that they had made a mistake. In this case, the person who was solely responsible for concealing and selling the illicit goods had given his name and admitted to his wrong doings. The individual had carried out the activity purely for his own financial benefit. As a result, criminal prosecution may ensue. The signed witness statement of the individual concerned fully corroborated the case being put and added credibility to what was being reported to the Sub-Committee.

The PLH, as a result of this matter, had removed the DPS from his position. The PLH had been shocked that the DPS had not had a better grip on what was going on at the premises and he should have been aware of the wrongdoings.

Mr Thomas referred to the comments made earlier in relation to Section 182 Guidance, which also stated that premises should be advised when failings had been identified. However, in this case nothing had been brought to the attention of either the PLH or DPS. This highlighted a lack of due diligence on behalf of the responsible authorities. In view of this, Mr Thomas questioned whether the PLH should have his licence revoked as a result. Again, he questioned what would be a proportionate response in terms of what powers the Sub-Committee held and suggested that revocation was not proportionate.

Referring to the assertions relating to street drinking, Mr Thomas asked what evidence had been presented which was categorically attributable to Vina. Referring to the three individuals who had given evidence, Mr Thomas suggested that these types of individuals were not likely to be trustworthy. In addition, there were other premises in area which could have been responsible for or had contributed to the problem.

Mr Thomas then referred to the petition presented by Councillor Arif. He advised that no one individual who had signed the petition was present to give evidence, which was unfortunate as the meeting could have tested and challenged the individuals. Furthermore, the petition contained a number of names which appeared, to Mr Thomas, to be from the Muslim faith. The petition was in no way a fair representation of the community make up of the local area. Mr Thomas added that it appeared to be an orchestrated petition as the Muslim faith was against alcohol. In view of this, Mr Thomas questioned how much weight should be attached to the petition.

Conversely, Mr Thomas advised that the petition presented by him contained evidence from customers who frequented Vina, with a good community mix which brought greater credibility in terms of community representation.

Mr Thomas advised that the PLH had now put in place mechanisms to ensure that such occurrences never happen again. He questioned whether the PLH should lose his licence or whether other action would be more appropriate and proportionate.

Mr Thomas added that a Review meeting should not be a punishment; it should be a chance to review the facts and merits of the case.

Mr Thomas concluded by stating that the PLH had not been directly responsible for the wrongdoings and he had subsequently removed the DPS. He therefore, requested the Sub-Committee to carefully consider the facts of the case as well as the available evidence before deciding what powers it used and what sanction it applied.

The Chair invited questions.

Mr Knapper had no questions.

PC Gardiner questioned why the PLH's first act was to go to a solicitor.

Mr Thomas reported that the PLH had been advised about the proceedings quite late in the day and had done what was reasonable and in his best interest by seeking legal advice.

Mr Knapper clarified that, as he had not received any contact from the PLH, he had made a telephone call to PLH directly and advised him of the proceedings.

Mr Thomas advised that Mr Knapper's statement corroborated what the PLH had said.

PC Gardiner asked why Mr Thomas had waited until the day before the Sub-Committee meeting before volunteering the signed witness statements.

Mr Thomas advised that there was certainly nothing conspicuous in the way paperwork had been served and it had been served with 24 hours notice to all parties which was reasonable.

Mr Doyle asked how many other people worked at Vina.

Mr Thomas advised that there were 5.

Mr Doyle questioned whether any of the other staff knew about the concealed goods.

Mr Thomas advised that the signed witness statement reported that the culprit had acted alone.

Mr Doyle advised that people would have been going to the shop and asking for illicit goods and other members of staff must have been aware.

Mr Thomas advised that it was not difficult to believe that the culprit would have had many opportunities to sell the illicit goods without other staff knowing about it.

Mr Doyle questioned why the PLH had not been aware of what was going on at the store when he attended the store 2/3 times a week.

The PLH advised that he had not seen, nor was he aware of, what had been going on. In addition, he added that he had never been asked for any illicit goods in his life.

Mr Doyle referred to the locations and methods of concealment which had been utilised and suggested that it was unlikely that the PLH and DPS would have been unaware of such goings on.

Mr Thomas advised that if you looked at the periods of time involved, a lot of the activity had preceded when the PLH and DPS had taken up their respective posts. In view of this, it was possible that the concealment work had taken place long before they had started at Vina.

The Council's Solicitor referred to when the PLH had previously acted at Vina in the capacity as the DPS and questioned why he had left.

Mr Thomas advised that he left to set up a business in Birmingham.

The Council's Solicitor referred to when the PLH became the licence holder at Vina and asked whether he had been aware of illicit goods during his previous tenure as DPS.

The PLH stated that he was not aware of any wrongdoings.

Members had no questions.

All parties were given the opportunity to sum up their cases.

Mr Knapper drew the Sub-Committee's attention to paragraph 4.2 of the report.

The Chair sought clarification that all parties had said all that they had wanted to.

All parties confirmed that they were content.

The meeting adjourned at 12:25pm to enable the Sub-Committee to deliberate.

All parties were recalled to the meeting at 1:15pm and advised of the Sub-Committee's decision.

representations that have been made by the parties attending the hearing, the Sub-Committee determined the application as follows: -

Resolved

That the Sub Committee, having regard to the application and any relevant representations, considers that the following steps are necessary for the promotion of the prevention of crime and disorder objective.

The steps are:

1. That the premises licence be suspended (in relation to the supply of alcohol only) for a period of 3 months;
2. That the conditions of the licence be modified to: -
 - i. the removal of the current Designated Premises Supervisor;
 - ii. the appointment of a new Designated Premises Supervisor before the expiry of the period of suspension.

Termination of meeting.

There being no further business, the meeting terminated at 1:20pm.

Chairman

Date