

## **LICENSING SUB-COMMITTEE**

**Friday 8<sup>th</sup> April 2016, at 10.30 am**

**In a Conference Room, Council House, Walsall**

### **Present:-**

Councillor Clarke (Chairman)  
Councillor Rochelle  
Councillor Anson

### **In Attendance:-**

Ms H Powell – Senior Licensing Officer – Walsall MBC  
Mr D Patouchas – Legal Services – Walsall MBC  
Mr Dana Ali Kamal – Applicant  
Mr Walid Mohammed – Friend and Interpreter of Mr Kamal  
Mr S Doyle – Trading Standards Officer  
Constable N Gardiner – Walsall Police Licensing Department

### **Appointment of Chairman**

#### **Resolved**

That Councillor Clarke be appointed Chairman of the Sub-Committee for this meeting only.

#### **Councillor Clarke in the Chair**

### **Welcome**

The Chairman extended a welcome to all persons present at the Sub-Committee which had been established under the Licensing Act, 2003, and everyone introduced themselves.

### **Apologies**

An apology for non-attendance was submitted on behalf of Councillor C Bott.

### **Declarations of Interest**

There were no Declarations of Interest.

The Chairman enquired if all parties had received a copy of the documents for the hearing. A copy of the documents was provided to Mr Kamal and his Friend and Interpreter Mr Mohammed and Mr Kamal confirmed that he had previously received and read the documents.

### **Licensing Hearing**

#### **Application for a Premises Licence under Section 17 of the Licensing Act, 2003 in relation to International Mini Market, 246B Wednesbury Road, Walsall, WS2 9QN**

The report of the Head of Economy and Environment was submitted:-

(see annexed)

The Senior Licensing Officer (Ms Powell) enlarged upon the report for the benefit of the Sub-Committee and indicated that the application for a premises licence in respect of International Mini Market, 246B Wednesbury Road, Walsall, WS2 9QN had been made under Section 17 of the Licensing Act 2003 and could not be granted or refused under officer's delegated authority as there had been a number of representations received from interested parties. Ms Powell confirmed that an application for a premises licence had been received on 11<sup>th</sup> February 2016 and she drew attention to Section M of the application form at appendix 1 which indicated steps the applicant intended to take in order to promote the licensing objections, along with the proposed layout of the premises and a street map of the locality at appendix 2.

Ms Powell drew the Licensing Sub-Committee's attention to paragraph 3.8 of the report referring to representations received on 8<sup>th</sup> March 2016 from West Midlands Police, which was given as appendix 3. She added that a representation had also been received from Trading Standards on 8<sup>th</sup> March 2016, which was given at appendix 4 and that a further written representation had been received on 29<sup>th</sup> February 2016 from a resident (known as other persons under the Act) which was endorsed by several other persons, was given at appendix 5.

Ms Powell added that the premises had held a premises licence previously. However, this had been revoked on 23<sup>rd</sup> November 2015 by Walsall Council due to the seizure of illegal tobacco and alcohol from the premises and no appeal to the decision had ever been made. She stated that although the licence holder and DPS at the time of the revocation was a different person to the current applicant, Mr Kamal was present and working at the premises at the time the enforcement exercises were carried out.

Ms Powell drew the Licensing Sub-Committee's attention to paragraph 4.2 of the report which referred to the legal position.

The Licensing Sub-Committee had no questions for Ms Powell.

Mr Kamal disputed the signatures on the written representation at appendix 5 stating that those signing the petition did not live in Pleck. Mr Kamal was advised he could

discuss the issue further as part of his case at the appropriate time within the meeting.

The objectors present were invited to make their representations.

At this point, Mr Patouchas (Legal Services) informed Mr Kamal of the appendices within the documents to enable him to follow the representations. Mr Kamal then stated that he had not received the documents prior to the meeting.

At this juncture of the meeting, the Chairman adjourned the meeting to enable Mr Kamal's Interpreter, Mr Mohammed to interpret appendix 4.

Mr Doyle from Trading Standards then made the following representation on behalf of Walsall Council which included that following intelligence gathered between September 2014 and January 2016, Trading Standards had made five visits to the store and on each occasion illegal cigarettes and hand rolling tobacco had been seized and on some of these occasions illegal alcohol was removed from the premises. He stated that in total over 93,000 cigarettes, 537 packets of hand rolling tobacco and 16 bottles of spirits had been seized from International Mini Market.

Mr Doyle added that on the morning of 22<sup>nd</sup> July 2015, Trading Standards, West Midlands Police and the Borders Agency had visited International Mini Market and when asked by Trading Standards for personal details, Mr Kamal had provided details which had been proved to be incorrect when checked by the Borders Agency officers. When asked under caution about his involvement with the store and whether he knew of a Rebwar Mahmood, Mr Kamal had stated that he had only worked at the store for two weeks and he had denied any knowledge of Rebwar Mahmood although Rebwar Mahmood was the designated premises supervisor for the store at that time and he only lived a few doors away from Mr Kamal on the same street. Mr Kamal had stated that a Mr Ahmed was the owner.

Mr Doyle further added that during investigation into the selling of illegal tobacco at the store in question, a Mr Ali Kamal was present at a store in Wolverhampton in August 2014 when illegal tobacco was seized by Wolverhampton Trading Standards. Mr Dana Ali Kamal has denied that he is the same person though the signature signed in the Wolverhampton store was identical to his. Mr Doyle confirmed that following the receipt of intelligence, Trading Standards and West Midlands Police had made numerous visits with detector dogs and tobacco had been found on each occasion.

Mr Doyle concluded that the reasons he had highlighted, Trading Standards objected to the granting of the premises licence application for International Mini Market at 246B Wednesbury Road, Pleck as it would undermine the licensing objections of the Licensing Act 2003 specifically the protection of children from harm and prevention of crime and disorder.

Mr Kamal was then invited to ask questions of Mr Doyle. Through his interpreter Mr Kamal asked who had made the allegations and whether Mr Doyle could provide proof of the allegations and he stated that he was not involved in the seizure in September 2014 as he had not moved to the shop at that time and that he had no problems with local residents, only the owner of the shop opposite International Mini Market.

Mr Patouchas suggested that Mr Kamal be allowed some time in which to read through the representations from the police and therefore the meeting was adjourned from 11.05am to 11.10am for this purpose.

Constable Gardiner from West Midlands Police made the following representation on behalf of the Chief Constable of West Midlands Police, Walsall Licensing team. He reported that following the Licensing Committee's decision and subsequent letter sent out on 8<sup>th</sup> January 2016 in relation to the revocation of International Mini Market's alcohol licence. Operation Labrador had been conducted between Walsall Police and Walsall Trading Standards on 17<sup>th</sup> January 2016 when 200 packets of hand rolling tobacco was discovered during the operation.

Constable Gardiner further added that Walsall Licensing team were in possession of recent credible intelligence which suggested illegal alcohol and cigarettes were continually being sold at the premises and it was well known in the immediate area where these items could be purchased. He added there were 16 intelligence logs in total relating to criminality where the most recent dated between 8<sup>th</sup> February and 26<sup>th</sup> February 2016 detailing the selling of illegal cigarettes and alcohol. Constable Gardiner also stated that Customs & Excise had seized alcohol from the premises.

For the reasons he had reported Constable Gardiner concluded that West Midlands Police objected to the granting of the premises licence application at International Mini Market, 246B Wednesbury Road, Pleck as it would undermine the licensing objections of the Licensing Act 2003 with regards to the prevention of crime and disorder and the protection of children from harm.

The applicant was invited to ask questions of Constable Gardiner through his interpreter. Mr Kamal stated that he was not at the premises at the time of the September 2014 seizure as he had only moved to the premises in October 2014 and he denied that he was aware of any alcohol seizures from 8<sup>th</sup> February 2016. Mr Kamal added that he has had no problems with any nearby residents and it was the shop opposite that was not happy and had reported him to the police. Mr Kamal asked Mr Doyle where the allegations had come from and whether Mr Doyle had proof. Mr Doyle confirmed that allegations had been received from a variety of intelligence sources including the police, anonymous allegations, crime stoppers and members of the public and that he did not have the proof available at the meeting.

Mr Patouchas explained to Mr Kamal that it was the evidence acted upon that had uncovered the hidden cigarettes and alcohol. Mr Patouchas then asked Mr Doyle why Trading Standards had also removed 16 bottles of alcohol during its various visits to the store. Mr Doyle replied that the alcohol seized had been counterfeit. Mr Kamal added that he was not responsible for the seizures of alcohol which had occurred before he had moved to the premises.

Councillor Rochelle asked Constable Gardiner if he had evidence of the sale of alcohol since the licence was revoked on 8<sup>th</sup> January 2016. Constable Gardiner confirmed that the police had found and seized evidence that the store was continuing to sell alcohol without a licence.

Mr Patouchas informed Mr Kamal it was now his opportunity to present his case to the Licensing Sub-Committee.

Speaking through Mr Mohammed, Mr Kamal's Friend and Interpreter, Mr Kamal stated that he wanted his licence back and that he would not sell illegal cigarettes and alcohol. He asked to see proof of the seizures and denied ever having sold any of the goods mentioned. He stated that he had spent a lot of money on the store which he would have to close should he not be granted a premises licence.

Councillor Rochelle enquired if Mr Kamal had provided any evidence for the purchase of the alcohol and cigarettes seized. Mr Kamal replied that he had purchased the stock from a cash and carry.

Councillor Rochelle asked Mr Kamal why alcohol and cigarettes had been found since the licence had been revoked to which Mr Kamal stated that although the police had found 5 packets of cigarettes at the store they may have been placed there beforehand and he denied any of the intelligence information that had been produced.

Constable Gardiner asked Mr Kamal if he denied selling illegal cigarettes and alcohol. Following Mr Kamal's denial that he had ever sold illegal cigarettes and alcohol, Constable Gardiner asked Mr Kamal if he had brought along any receipts or his company books as proof of purchase as this would have been beneficial in his application for a premises licence. Mr Kamal replied that he had not received the report before the meeting and therefore did not know that he was supposed to bring along any receipts to the meeting.

Mr Patouchas asked Mr Kamal how he had known about the date and time of the meeting if he had not received his paperwork to which Mr Kamal replied that he had spoken with a Licensing Officer. Ms Powell confirmed that Mr Kamal had attended the Licensing Office and had spoken with a Licensing Officer and at that time Mr Kamal did have his paperwork with him and that he had stated he would be getting a solicitor. Mr Patouchas asked Ms Powell if she was satisfied Mr Kamal had received his paperwork to which Ms Powell confirmed that she was.

Mr Doyle asked Mr Kamal when he had commenced trading at International Mini Market to which Mr Kamal replied in October 2014. Mr Doyle then queried why illegal items had been found during four raids subsequent to October 2014. Mr Kamal said he did not deny the goods were seized but someone must have hidden the goods before he had started in order to sell them as he had not been aware they were hidden there.

Mr Patouchas asked Mr Doyle if the cigarettes that had been found had been on shelves or hidden away. Mr Doyle stated that a detector dog had been deployed and as a consequence cigarettes had been found on each occasion hidden in a compartment held closed by electro magnets in a shelf unit in the store or under the counter and he added that on one particular date cigarettes had been found and seized on the morning and a further amount of cigarettes was subsequently found in the same location that same afternoon following another search. Mr Kamal said although Mr Doyle had said cigarettes had been found he denied any had been found in the same place on more than one occasion.

Mr Patouchas asked Mr Doyle what types of cigarettes had been found at the premises. Mr Doyle reported that unregulated 'Cheap Whites', cigarettes from abroad which had evaded stamp duty, and counterfeits of genuine brands had all been seized.

Mr Patouchas asked Mr Kamal if he had sold any alcohol since revocation of the licence. Mr Kamal claimed he had not sold any alcohol since the licence had been revoked two weeks previous. Ms Powell reported that the actual date of the revocation had been 29<sup>th</sup> January 2016. Mr Kamal responded that he had visited Walsall Council and had been told he could not transfer the licence into his name and that he had to apply for a licence around 25<sup>th</sup> February, and that up to the time he submitted an application he could continue selling alcohol.

All parties were invited to sum up and Mr Doyle stated that Mr Kamal by his own admission had a blatant understanding of the situation, he had given false information, the store had sold half price cigarettes to children which in itself was against licensing objectives specifically for the protection of children from harm and that due to the criminal activity having taken place, the premises was not a fit and proper place and a licence should not be granted.

Constable Gardiner reported that investigations into criminal activities had been ongoing over a long period of time and prosecution was pending. He further added that if Mr Kamal had felt he would have to close the store without a licence, why had he attended today's meeting without any documentary evidence such as receipts.

Mr Kamal reported that since 23<sup>rd</sup> November the shop had been unable to sell alcohol but following a visit to the Licensing Office he had been informed that once he had transferred the premises licence into his name he would then be allowed to sell alcohol but 3 weeks ago someone had visited the shop and he had been told to stop and he had not sold any alcohol since that time.

All parties withdrew from the meeting at 11.55am.

The Sub-Committee carefully considered all the written evidence submitted and the representations made at the hearing and was satisfied that Mr Kamal had bought the premises in October 2014 and that he was the owner of International Mini Market at the time of the seizures.

The Sub-Committee found the evidence of the Police and Trading Standards credible and finds on the balance of probabilities that illegal tobacco and illegal alcohol was sold at the premises including sales to persons underage.

The Sub-Committee is satisfied that alcohol was sold by retail at International Mini Market without an authorisation and that the ultimate responsibility was on Mr Kamal to ensure he had a licence and that he acted lawfully and that ignorance of purported confusion was no defence especially since Mr Kamal had taken professional legal advice.

The Sub-Committee is satisfied that to grant the licence would not promote the licensing objectives of the prevention of crime and disorder and the protection of children from harm, no conditions were felt appropriate to be imposed because the evidence established the repeated sales of illegal goods. The Sub-Committee was

not satisfied that the steps set out in the application would promote the licensing objectives or that conditions would be effective because of its findings of illegality. The Sub-Committee had regard to the Council's Statement of Licensing Policy and having accepted the evidence of the responsible authorities and other persons and having regard to the above policy, it would be necessary to depart from the police to grant this licence application and it was

### **Resolved**

That the Licensing Sub-Committee refuses permission for a premises licence in respect of International Mini Market, 246B Wednesbury Road, Walsall pursuant to Section 18(4)(d) of the Licensing Act 2003.

All parties were re-admitted to the meeting at 12.30pm and advised of the Licensing Sub-Committee's decision and right of appeal to the local Magistrates' Court within 21 days of receipt of the decision letter.

Mr Patouchas reiterated to Mr Kamal that he did not have a licence to sell alcohol and that he could take legal advice and had a right to appeal to the local Magistrates' Court otherwise he could make a new application in six months.

### **Termination of meeting**

The meeting terminated at 12.35pm

Chairman.....

Date.....