

Licensing Sub-committee
30 October 2017

WELWYN HATFIELD COUNCIL

RECORD OF PROCEEDINGS of a hearing by the LICENSING AND REGULATED ENTERTAINMENT SUB-COMMITTEE of an application for a premises licence by Hatfield Food and Wine, 7 The Parade, St Albans Road East, Hatfield held on Monday 30 October 2017 at 2:30pm in the Council Chamber, Council Offices, Welwyn Garden City.

PRESENT: Councillors J.Beckerman (C)

H.Bower and M.Cook

OFFICIALS Licensing Technical Officer (D.Pennyfather)

PRESENT: Senior Litigation Officer (R.Ricks)
Governance Services Manager (Clerk to the Hearing) (G.R.Seal)

ALSO V.Aslanov (Premises Licence Holder)

PRESENT: D.Daz (Representative for the Licence Holder)

J.Moatt (Representative of Hertfordshire Constabulary)

D.Stansbury (Licensing Officer for Hertfordshire Constabulary)

1. APPOINTMENT OF CHAIRMAN

Councillor J.Beckerman was appointed Chairman of the Sub-Committee.

2. HATFIELD FOOD & WINE, 7 THE PARADE, ST ALBANS ROAD EAST, HATFIELD, HERTFORDSHIRE

2.1. Introductions and Procedures

The purpose of the meeting was to determine an application for a premises licence for Hatfield Food and Wine, 7 The Parade, St Albans Road East, Hatfield under the Licensing Act 2003.

The Chairman welcomed those present to the meeting and introduced the Members of the Sub-Committee and the Officers serving the Sub-Committee, explaining the hearings procedure which had been adopted by the Council, copies of which had previously been circulated.

The applicant and persons making representations against the application confirmed their identities to the Sub-Committee.

2.2. Documentary Evidence

A copy of the Licensing Officer's report, the premises licence, application for the review of the licence by the police and a site location map had previously been circulated.

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2.3. Premises Licence Holder

The representative for the premises licence holder informed the Sub-Committee that V.Aslanov had now purchased the premises and that the previous owner and Manager did not have any involvement. Legal documentation to confirm this was presented to the Sub-Committee.

Each application should be judged on its own merits. In looking at causes of concern, only action that was proportionate in the circumstances should be taken. Discretion should be exercised that revocation was not necessary to promote the licencing objectives going forward. It was accepted that there had been undermining of the licensing objectives, but this was in the past. The new licence holder was confident that going forward the licencing objectives would be met.

2.4. Report of the Licensing Officer

The Licensing Officer presented his report which contained an application for the review of the Hatfield Food and Wine premises licence which had been in place since 2 April 2011, but was transferred to the present licence holders on 26 March 2014. Also on this date the designated supervisor (DPS) was transferred to Mr A.Demirci.

The review of this premises licence had been formally requested by the police (the applicant) acting as a responsible authority under the Licensing Act 2003 (as amended).

The police had requested the review on the statutory grounds of prevention of crime and disorder.

The Licencing Technician Officer confirmed that there had been a valid application to transfer and vary the DPS of the premises licence which had been received minutes (sent 13:22 hours) before the hearing by an on-line application and he was therefore unable to confirm they were valid at the time.

The police opinion was that the premises were not complying with the Licensing Act objectives because of a history of prolonged criminal activity, some of which was directly linked to the licensable activity permitted under the licence at the premises.

The police had serious concerns over the criminal activities taking place on/within the premises due to a failure by the previous premises licence holder and the DPS to control activities which were taking place or involving the premises.

These concerns had not been resolved prior to this hearing.

The review related to a premises licence which was issued in April 2011.

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The police suspected that the previous behaviour in respect of these premises would continue even with the new owner and they would want to investigate the new licence holder.

2.5. Application for Review

The police representatives gave details of the criminal activity connected to this premises licence review which showed a consistent disregard by the management/owners of the business for the licensing objective of the prevention of crime. The Guidance issued under Section 182 of the Licensing Act 2003 stated that the Secretary of State regarded the sale of smuggled alcohol as particularly serious (11.26) and that where reviews arose and the licensing authority determined that the crime prevention objective was being undermined through the premises being used to further crimes, it was expected that revocation of the licence, even in the first instance, should seriously be considered (11.27). The police respectfully suggested that the only realistic option in this case was revocation of the premises licence.

It was believed that the other sanctions for consideration under a review of a premises licence would not be effective in ensuring that this premises would support the licensing objective.

There were numerous off-licences and stores that had the same business model as this premises within the Borough and this was the only premises that had been known to have acted in such a criminal way and been subject to police/ customs searches with arrests of members of staff. This premises negatively affected the community and undermined the majority of similar businesses which supported the licensing objectives.

It was evident that the premises licence holder did not have any control of this premises and it was unlikely the Police would ever have contact with him. The owner of the business had shown a total disregard for legislation and the licensing objectives and had continued his criminal activity within this premises despite being on bail for similar offences from only eight months ago. It was feared that should this premises be allowed to continue in business the criminal activity would continue with smuggled tobacco being supplied and it was clear that it was common knowledge that cheap tobacco could be purchased from this premises.

The Police had therefore requested a review of the premises licence under section 51 of the Licensing Act 2003.

The Licence permitted the licensable activity of selling alcohol between specific hours. The Sub-Committee could revoke or suspend the licence, attach further conditions to the licence or take no further action which the Police did not feel would be appropriate in this case.

The police could request a review if they believed that the licensing objective of the prevention of crime was not being "advanced". That meant that there were

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grounds for the police believing that there was criminal activity going on in or around the shop. In this case, the previous premises licence holder was selling tobacco products cheaply that had no duty stamp and inadequate health warnings. Significant amounts of these products were found by lawful searches made by the police at the premises and at the licence holder's residence.

Although a small amount of illicit alcohol was found, the real concern for the police was the evasion of duty on the tobacco. There were no complaints of after-hours selling of alcohol, drunk and disorderly behaviour or other complaints relating to the retail sale of alcohol.

2.6. Summary

The premises licence had been transferred on the day of the review to another individual as well as the purchase of the property itself. In other words, a completely new management was in occupation of the premises. This individual was obviously innocent of any criminal activity (as far as the Sub-Committee was aware) and it was also represented that he was of good character. He had no connection to the previous owner or management and had not had any contact with them.

The Sub-Committee did hear evidence from the police that the premises had a reputation for selling cheap tobacco. This was key. The Sub-Committee was advised that it should seek to ascertain the cause of the police concerns and address those concerns by measures that were both reasonable and proportionate.

The Sub-Committee could not proceed against the current licence holder since he had only just taken over the premises. (The defence said that because of this, the licence should remain with no further penalty). However, because the premises were still being visited by those seeking to purchase cheap tobacco, the Sub-Committee was entirely justified in suspending the licence for the statutory maximum of three months to address the reputation that the premises had for such sale, even though there was a new premises licence holder. This period would give the police time to make checks on the new licence holder who only appeared at the review hearing for the first time. The suspension meant that for a three month period, no alcohol would be sold at the premises. This should be long enough for the police to monitor the premises to see whether its bad reputation dissipated.

2.7. Determination

The Sub-Committee and Officers withdrew from the meeting to enable the Sub-Committee to consider its decision.

On returning, the Chairman notified the hearing that the decision of the Sub-Committee was to suspend the premises licence for three months.

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The Sub-Committee considered the evidence of both the police as Responsible Authority and the reviewee via his legal representative. There were no representations from interested parties.

The Sub-Committee considered and took into account the duties imposed on it under the Licencing Act 2003 and the National Guidelines (s182).

It was acknowledged by the Sub-Committee that it was only concerned with the licensing objective of the prevention of crime. Its task was not to punish criminal act or acts of premises licence holders which was beyond its remit. The Sub-Committee also acknowledged that any decision it made must be reasonable and proportionate to advance the directive of the prevention of crime.

In coming to its decision, the Sub-Committee sought to establish the cause of concern to the police in bringing this review and to identify appropriate action that would be both reasonable and proportionate. In this case, the cause of concern was the sale of cheap, illicit tobacco.

The Sub-Committee accepted that there was a new premises licence holder on the premises who was also the new Designated Premises Supervisor. Evidence was given at the review that the new owner was of good character. On this basis, it was argued on behalf of the new owner that there should be no revocation or suspension and that conditions preventing previous members of staff from entering the premises would be reasonable and proportionate. The Sub-Committee concluded that the new owner had not been in the position long enough to establish whether he would run the premises within the licensing requirements. He would be expected to do so.

However, the Sub-Committee also noted at paragraph 11.26 of the Guidelines that the Licensing Authority's duty was to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

The Sub-Committee also noted that paragraph 11.27 of the Guidelines highlighted that the sale or storage of smuggled tobacco as being particularly serious. Paragraph 11.28 stated that such reviews should be used effectively to deter such activities and crime.

The Guidance went on to say that where such reviews arose and the Licensing Authority determined that the crime prevention objective was being undermined through the premises being used to further crime, it was expected that revocation of the licence even at first instance should be seriously considered.

The Sub-Committee gave consideration to the fact that the premises licence holder had not been in the position long enough to assess how he would run the premises, but accepted that he had never been a party to the sale of illicit tobacco. However, the Sub-Committee was concerned that the premises still attracted people hoping to buy cheap tobacco which constituted ongoing

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criminal activity and undermined the licensing objective. This was the evidence of the police.

The Sub-Committee seriously considered revoking the licence as required by the Guidance, but decided to give the new Designated Premises Supervisor the opportunity to run the premises within the licensing regime and to dissipate the reputation the premises currently had of selling illicit tobacco.

Meeting ended at 4.50 pm
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