

Statutory Licensing Sub-Committee

Minutes - 18 November 2022

Attendance

Members of the Statutory Licensing Sub-Committee

Cllr Phil Page (Chair)

Cllr Gillian Wildman

Cllr Rashpal Kaur

Applicant for Review

Nicola Biddle

Trading Standards

Responsible Authorities

Amitabh Singh

Michelle Marie-Smith

Licensing Authority

Public Health

Employees

Debra Craner

Angela Bernard

Jacob Stokes

Section Leader – Licensing & Compliance

Senior Solicitor

Democratic Services Officer

Item No. *Title*

1 Apologies for absence

Apologies for absence were submitted by West Midlands Police and the Premises Licence Holder.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application for a Review of a Premises Licence in respect of Phoenix Express and International Food, 715 Parkfield Road, Wolverhampton, WV4 6EE

An application for a review of a Premises Licence in respect of Phoenix Express and International Food, 715 Parkfield Road, Wolverhampton, WV4 6EE had been received from Trading Standards.

Before proceeding with the hearing, the Chair advised all parties present that the Premises Licence Holder was not present. It was confirmed that the Premises Licence Holder had advised Democratic Services that he would not be in attendance for the review hearing.

Angela Bernard, Senior Solicitor, advised the Sub-Committee that they could vote to continue with the hearing or adjourn until such date that the Premises Licence Holder be available to attend. The Sub-Committee voted to continue with the hearing.

The Chair welcomed all parties to the hearing and invited all those present to introduce themselves. All parties did so. He outlined the procedure to be followed and all parties confirmed that they understood the procedure.

The Sub-Committee's statutory duty was to consider the application and any representations, and to take such steps as contained in the Licensing Act 2003 as it considered appropriate for the promotion of the Licensing Objectives.

Debra Craner, Section Leader - Licensing & Compliance, provided an outline of the application. Nicola Biddle, Senior Officer - Trading Standards, confirmed that the summary was accurate.

The Chair invited Trading Standards to present their application. The Senior Officer - Trading Standards, did so as per Appendix 3 of the report. She stated the following:

1. In December 2021, Trading Standards received a complaint that illegal cigarettes were being sold at Phoenix Express and International Food.
2. A visit on 23 September 2022 by officers from Trading Standards, West Midlands Police and Home Office Immigration Enforcement found a gentleman behind the counter without entitlement to work in the UK, a male found to be living in the premises and various illicit tobacco products and vapes concealed in the premises and in a car registered at the premises.

Neither the Designated Premises Supervisor nor the Premises Licence Holder were present during the visit.

3. 8,000 cigarettes, 1 kilogram of hand-rolling tobacco and 44 disposable vapes were seized. These products breached various pieces of legislation.
4. The licence summary and tobacco notice were not displayed in the premises.
5. The Premises Licence Holder had engaged in activities that breached the Licensing Objectives and the Sub-Committee should consider revoking the premises licence.

The Chair afforded all parties present the opportunity to question Trading Standards in relation to its submission. There were no questions asked.

The Chair invited the Licensing Authority to make representations. Amitabh Singh, Section Leader - Licensing, did so as per Appendix 4 of the report and the Supplementary Agenda Pack. He stated the following:

1. The Licensing Authority supported the application for review put forward by Trading Standards.
2. A Senior Licensing Officer had attended the premises on multiple occasions, and trader notices had been issued on three visits.
3. On these three visits, multiple breaches were discovered, and these had not been rectified in subsequent visits.
4. The premises had failed to uphold the Licensing Objectives.

The Chair afforded all parties present the opportunity to question the Licensing Authority in relation to its submission. There were no questions asked.

The Chair invited Public Health to make representations. Michelle Marie-Smith, Principal Public Health Specialist, did so as per Appendix 7 of the report. She stated the following:

1. Public Health supported the application for review put forward by Trading Standards.
2. Public Health had concerns regarding the significant amount of illicit tobacco that had been uncovered at the premises.
3. The illegal tobacco trade undermined efforts to reduce smoking rates, undermined tobacco control methods and had links to organised crime.
4. National evidence had shown a link between single can sales of high strength alcohol and high levels of alcohol dependency.
5. Wolverhampton was a regional outlier for alcohol-related harm and hospital admissions and had the highest alcohol-specific mortality rate in the entirety of the UK.
6. Licensed premises who sell alcohol should always act responsibly and promote the key objectives of the Licensing Act 2003 and the Sub-Committee should therefore consider revoking the licence.

The Chair afforded all parties present the opportunity to question Public Health in relation to its submission. There were no questions asked.

The Chair invited all parties present to make their final address. The Section Leader - Licensing made a final statement.

The Senior Solicitor provided legal guidance to members of the Sub-Committee and reminded them of their available options. She advised members that the Sub-Committee could take into account written representations submitted by West Midlands Police and the Home Office even though they were not present at the hearing.

Councillor Page, Councillor Wildman, Councillor Kaur, the Senior Solicitor and Democratic Services Officer withdrew from the meeting to enable the Sub-Committee to determine the matter.

The Sub-Committee adjourned at 10.54 hours.

The Hearing reconvened at 11.40 hours.

Councillor Page, Councillor Wildman, Councillor Kaur, the Senior Solicitor and Democratic Services Officer re-joined the meeting.

The Chair advised all parties of the decision of the Sub-Committee, which was read out by the Senior Solicitor.

Resolved:

An application was made by the City of Wolverhampton Council's Trading Standards Department as a Responsible Authority on 29 September 2022 for a review of a Premises Licence in respect of Phoenix Express and International Food, 715 Parkfield Road, Wolverhampton, WV4 6EE, on the grounds that actions at the premises undermined the Licensing Objectives.

Representations were received from Trading Standards, the Licensing Authority, and from Public Health as Responsible Authorities. Written representations were received from the Home Office and West Midlands Police.

At the hearing on the 18 November 2022 to review the Premises Licence, members of the Statutory Licensing Sub-Committee considered all written evidence and listened carefully to all representations made by persons who had spoken at the hearing. They considered all the evidence presented and found the following facts:

The Licensing Sub-Committee heard from Debra Craner, Section Leader – Licensing, who provided an outline of the application.

The Licensing Sub-Committee heard from Trading Standards, the Applicant for Review, that:

1. On 23 September 2022, a multi-agency operation led by officers from Trading Standards supported by officers from West Midlands Police and Immigration Enforcement visited Phoenix Express and International Food.
2. On entry to the premises, one individual was found solely occupying the shop and was behind the counter. He confirmed he was illegally present in the UK and was therefore arrested. Following Home Office checks it was confirmed he had an outstanding asylum claim with no right to work. Illegal working questions were completed, and he was asked to leave the premises.
3. Another individual was encountered sleeping in living accommodation at the back of the shop by police and referred to Immigration.

4. Home Office checks confirmed he had valid Leave to Remain in the UK. The owner of the premises arrived. He stated the person arrested was covering for the member of staff who was sleeping at the back of the shop in living accommodation.
5. The owner was informed that the individual found working illegally has no right to work in the UK. An illegal working notice was served on site.
6. The street value of the illegal tobacco and the retail value was then outlined in detail.
7. Trading Standards believes that the Prevention of Crime and Disorder and the Protection of Children from Harm Licensing Objectives have been undermined by the way in which the premises operates and therefore the Licensing Sub-Committee should consider revoking the Premises Licence.

The Licensing Sub-Committee heard from the Licensing Authority that they support the Application for Review.

In summary of their representations:

1. On 11 February 2022, the transfer application was received transferring the Premises Licence Holder to Mr Hamid Idris.
2. On 24 February 2022, a visit was made Phoenix Express and International Food to follow up issues highlighted during the visit conducted on 10 February 2022 when the officer had spoken with an individual in the shop who confirmed they did not work there but were serving customers. This individual said that he would phone the owner of the shop.
3. Upon the officer's arrival at the premises on 24 February 2022, the Premises Licence Holder was not present at the time of the visit.
4. A further visit was made on 3 March 2022 and on 8 September 2022.
5. On 8 September 2022 a Licensing Officer attended Phoenix Express and International Food. The Premises Licence Holder and Designated Premises Supervisor were not present. However, following a phone call the Premises Licence Holder, Hamid Idris, attended the premises.
6. The purpose of this visit was to conduct a compliance inspection. The inspection highlighted several conditions which were not complied with, and these were noted in a trader's notices, a copy of which is attached as Exhibit EG2. The notice allowed four weeks for the breach to be rectified.
7. During the officer's visit, a single sale of cider above 6.5% ABV was observed.
8. On 1 November 2022, Licensing Officers attended Phoenix Express and International Food. The Premises Licence Holder and Designated Premises Supervisor were not present. The purpose of the officers' visit was to conduct a compliance inspection.
9. A male and female were present at the premises, with both confirming they did not work there. However, the female was witnessed serving a customer and taking payment.
10. The male called the Premises Licence Holder who advised work has been conducted but he was unsure if it is completed. Checks were made on the outstanding breaches of conditions to see if they were now rectified, and a further traders notice was left at the premises with a friend of the Premises Licence Holder confirming breaches should be rectified immediately. This is exhibited in the supplementary agenda pack.

The Licensing Authority has concerns that the Premises Licence Holder, Mr Hamid Idris, and Designated Premises Supervisor are not upholding the Licensing Objectives, namely the 'Prevention of Crime and Disorder' and 'Protection of Children from Harm'. These have been undermined by the way in which the premises operates, putting the public at risk and therefore the Licensing Sub-Committee should consider revoking the Premises Licence.

The Licensing Sub-Committee heard from Public Health that they support the Application for Review, and they believe that the actions at the premises undermine the Licensing Objectives. Public Health have very serious concerns regarding the significant amount of illicit tobacco, vapes and cigarettes seized on 23 September 2022. They would expect any business licensed to sell alcohol to always act responsibly and promote the key objectives of the Licensing Act 2003. With several breaches of the Licensing Conditions reported, Public Health is not reassured that the business is operating in adherence to the Licensing Act.

Public Health, in summary, state that the premises in question is located within one of the most concerning geographical areas to Public Health, and therefore supports Trading Standards request that the Licensing Sub-Committee should consider revoking the Premises Licence.

The Licensing Sub-Committee did not hear from the Premises Licence Holder.

The Premises Licence Holder has been in contact with Democratic Services via email. The Premises Licence Holder is aware of the hearing and informed Democratic Services he is in another country. No return date was given. The Licensing Sub-Committee resolved to proceed in his absence under Section 20(2)b of the Licensing Regulations 1985. Sufficient notice has been given and the Premises Licence Holder has provided no return date for the Sub-Committee to take into its consideration today. He has also made no written representations to the Licensing Sub-Committee.

The Licensing Sub-Committee read representations West Midlands Police that they support the Application for Review and believe that the actions at the premises undermine the Prevention of Crime and Disorder and the Protection of Children from Harm Licensing Objectives. Written representations from the Home Office were also read by the Sub-Committee.

The options open to the Sub-Committee today are as follows: -

- Modify the conditions
- Exclude a licensable activity from the Licence
- Remove the Designated Premises Supervisor
- Suspend the Licence for up to 3 months
- Revoke the Licence

The Sub-Committee have considered the evidence presented and had regard to the application, representations made, guidance issued under Section 182 of the Licensing Act 2003 and the Council's own licensing policy. The Sub-Committee have on the balance of probabilities, found that in order to promote the Licensing Objectives the Premises Licence of Phoenix Express and International Food should

be Revoked and the Designated Premises Supervisor be removed in accordance with s52 of the Licensing Act 2003.

This action is considered appropriate and proportionate action for the promotion of the four Licensing Objectives (of the Licensing Act 2003), in light of the significant amount of illicit tobacco, vapes and cigarettes seized on 23 September 2022. Furthermore, several breaches of the Licensing Conditions were reported to the licensee, the Premises Licence Holder failed to act, and no measures have been proposed by the Premises Licence Holder.

It was deemed inappropriate to modify conditions and suspend the Licence as the Premises Licence Holder appears not able to comply with conditions of Licence and the Sub-Committee do not believe that suspension for a limited period would assist. The Sub-Committee noted the several breaches of the Licensing Conditions reported to the licensee, failure to act by the licensee, the significant amount of illicit tobacco, vapes and cigarettes seized on 23 September 2022 and that the Responsible Authorities attending recommended the revocation of the Premises Licence.

Written notice of the determination will be given to the holder of the Premises Licence, the Applicant, and any other person who made relevant representations.

An appeal may be made to the Magistrates' Court against the decision, by the Applicant, the holder of the Premises Licence, or any other person who made a relevant representation, within 21 days from the date of receipt of written notice of this decision.