

CITY OF
WOLVERHAMPTON
COUNCIL

Statutory Licensing Sub-Committee

Minutes - 17 January 2020

Attendance

Members of the Statutory Licensing Sub-Committee

Cllr Keith Inston

Cllr Jonathan Crofts

Cllr Rita Potter

Review Applicant

Dianne Slack

Trading Standards

Responsible Authorities

Elaine Moreton

Michelle Smith

Gurjinder Bans

Licensing Authority

Public Health

Public Health (observing)

Officers

Anita Chonk

Sarah Hardwick

Donna Cope

Fabrica Hastings

George Burrell

Licensing & Compliance Officer

Senior Solicitor

Democratic Services Officer

Democratic Services Assistant (observing)

Apprentice Licensing & Compliance Officer (observing)

Item No. *Title*

1 Apologies for absence

There were no apologies for absence.

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 Batas Supermarket, 130 Lime Street, Wolverhampton, WV3 0EX

An application for a Review of a Premises Licence in respect of Batas Supermarket, 130 Lime Street, Wolverhampton, WV3 0EX, had been received from Trading Standards.

Donna Cope, Democratic Services Officer, reported that on 16 January 2020, the day before the Hearing, a friend of Mr Majeed (Premises Licence Holder) had contacted Democratic Services and requested that the Hearing be adjourned to a future date. The Democratic Services Officer outlined the reasons for the request and stated that the Applicant, Dianne Slack, Tobacco Control Officer for Trading Standards, had submitted a written response detailing why it was in the public interest to refuse the request. Copies of the Tobacco Control Officer's response were tabled by the Democratic Services Officer.

The Statutory Licensing Sub-Committee considered the request to adjourn and the written submission from the Applicant and resolved to refuse the Premises Licence Holder's request to adjourn the Hearing.

The Chair confirmed that all parties had sight of the hearing procedure.

Anita Chonk, Licensing and Compliance Officer, provided an outline of the application. Dianne Slack, Tobacco Control Officer for Trading Standards (applicant), confirmed that the summary was accurate.

The Chair invited Trading Standards to present their application. Dianne Slack, Tobacco Control Officer, did so as per Appendix 3 of the report.

The Chair afforded all parties present the opportunity to question the applicant in relation to her submission. Dianne Slack, Tobacco Control Officer, provided responses to questions asked.

The Chair invited Public Health to make representations. Michelle Smith, Principal Public Health Specialist, did so as per Appendix 4 of the report.

The Chair invited all parties present to question Public Health in relation to its submission. Michelle Smith, Principal Public Health Specialist, provided responses to questions asked.

The Chair invited the Licensing Authority to make representations. Mrs Elaine Moreton, Licensing Section Leader, did so as per Appendix 5 of the report.

The Chair invited all parties present to question the Licensing Authority in relation to its submission. Elaine Moreton, Licensing Section Leader, provided responses to questions asked.

The Chair invited all parties present to make their final address.

Elaine Moreton presented a summary on behalf of the Licensing Authority.

Dianne Slack presented a summary on behalf of Trading Standards.

All interested parties, with the exception of the Solicitor and the Democratic Services Officer, withdrew from the meeting to enable the Sub-Committee to determine the matter.

All interested parties were invited back to the meeting and the Chair advised them of the decision of the Sub-Committee, which was read out in full by the Solicitor.

Resolved:

At the hearing to review the premises licence, members of the Statutory Licensing Sub-Committee considered all written evidence and listened carefully to all representations made both written and oral. They considered all the evidence presented and found the following facts:

They heard from the applicant that:

1. On 3 July 2019, following an anonymous complaint about activity at Batas Supermarket, Trading Standards conducted an underage test purchase at the premises and a fifteen year old girl was able to purchase one bottle of lager.
2. On the same day, an officer of the Council was able to purchase two single cigarettes, contrary to the Standardised packaging of Tobacco Products Regulations 2015.
3. On 4 September 2019 Trading Standards attempted a test purchase of illicit tobacco at the premises and an eighteen year old was able to buy twenty Counterfeit cigarettes.
4. On 24 September 2019 Trading Standards received further intelligence that counterfeit, foreign or non-duty paid tobacco was available at the premises.
5. On 26 September 2019 a fifteen year old was able to purchase a large bottle of Smirnoff, a sixteen year old was served with illicit cheap white cigarettes and an eighteen year old purchased a single can of lager and a packet of counterfeit cigarettes.
6. On 27 September 2019 Trading Standards exercised a warrant and seized a holdall and green shopping bag containing 7,800 illicit cigarettes and 300g of illicit hand rolling tobacco from the premises.
7. It was an offence to sell alcohol to a person under the age of 18 (Section 146 LA 2003) and an offence to sell tobacco to a person who is underage (Section 7 Children and Young Persons Act 1933, as amended).

8. There had been breach of several conditions of licence.
9. The seized goods included cigarettes known as foreign cheap whites, which were foreign brands brought into the UK illegally specifically to be sold on the black market.
10. To knowingly keep or allow to be kept on relevant premises, goods such as cigarettes, which had been imported without payment of duty or which had otherwise been unlawfully imported was a criminal offence under section 144(1) and (3) of the LA 2003.
11. Guidance under section 182 of LA 2003 at paragraph 11.27 suggests that sale to minors of alcohol together with the sale of counterfeit/illicit tobacco, where premises were used the further crime, revocation should be considered even in the first instance.
12. The concern of Trading Standards was that the sale of illicit and counterfeit cigarettes and tobacco contributes to the shadow economy, drives down the cost of tobacco which counteracts the government attempt to use price as a disincentive in relation to smoking and the action undermines public health.
13. The prevention of crime and disorder, prevention of public nuisance and prevention of children from harm Licensing Objectives had been undermined.
14. This was serious criminal activity and therefore the applicant would request revocation of the licence.

The Premises Licence Holder had failed to attend, and an application had been made for an extension of time and for the matter to be adjourned to a specified date. The applicant had objected to this for reasons outlined in an email which had been submitted to all parties present.

Regulation 11 of the LA2003 (Hearings) Regulations 2005 provides an authority may extend time where it considers this necessary in the public interest.

Having considered submissions, the Licensing Sub-Committee determined to hear the matter in the Premises Licence Holder's absence.

They heard from Mrs Moreton, Licensing Authority as responsible authority that:

1. The authority supported the application of Trading Standards.
2. There was a history of non-compliance at the premises.
3. Now there was evidence of possession, custody and control of illegal cigarettes, breach of licence conditions and sale to minors.
4. Revocation of the premises licence was appropriate in the first instance.

They heard from Public Health that:

1. They supported the application of Trading Standards.
2. There was concern regarding the significant amount of illicit tobacco seized on the premises.
3. There were several breaches of licensing conditions and underage sale of alcohol.

4. With reference to s182 LA 2003 revocation was recommended in the first instance.

The Sub-Committee could take such steps as it considered appropriate for the promotion of the Licensing Objectives.

Paragraphs 11.27 and 11.28 of the revised Guidance under s182 of the Licensing Act 2003 provides premises that had been used for the criminal activity of the sale or storage of smuggled tobacco together with the illegal purchase and consumption of alcohol by minors should be treated particularly seriously, and where reviews arise and it is determined that the prevention of crime and disorder licensing objective was being undermined through the premises being used to further crime, it was expected that revocation of the premises licence should be seriously considered, even in the first instance.

The Sub-Committee were satisfied that criminal activity had taken place at the premises and that the prevention of crime and disorder licensing objective was being undermined through the premises being used to further crimes. Further they were satisfied that there had been breach of licence conditions.

Based upon the evidence presented and having 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 had on the balance of probabilities, found that in order to promote the prevention of crime and disorder, prevention of public nuisance and protection of children from harm licensing objectives the premises licence of Batas Supermarket should be revoked in accordance with Section 52 of the Licensing Act 2003.

The action was considered appropriate and proportionate action for the promotion of the crime and disorder, prevention of public nuisance and protection of children from harm Licensing Objectives.

Written notice of the determination would be given to the holder of the licence, the applicant, and any other person who made relevant representations.

An appeal could be made against the decision by the applicant, the holder of the Premises Licence or any other person who made a relevant representation to the application, within 21 days from the day on which notice of the decision was given.