

COUNCIL MEETING – 8 DECEMBER 2020

REPORT OF THE VIRTUAL LICENSING (LICENSING ACT) SUB-COMMITTEE

19 October 2020

Present: Councillors Simmons (Chairman), Maguire and Morrall.

Also present: Mrs A Wilcox, (Principal Environmental Health Manager), Ms L Delavaloire (Legal Adviser/District Law). Mr M Pettit and Mr M O'Donnell (Licensing Officers), Mrs C A Mundy, (Senior Democratic Services Officer) and Mrs E Robinson (Meeting producer).

Mr Tanna, Mr Poori and PC Bryan, Northamptonshire Police.

The meeting commenced at 2pm.

1. APPOINTMENT OF CHAIRMAN

RESOLVED that Councillor Simmons, as chairman of the Licensing Committee, would sit as chairman for this meeting.

The chairman welcomed everyone to this virtual sub-committee and reminded members of the meeting protocol; he welcomed and introduced everyone present, along with the premises licence holder, Mr Tanna and PC Bryan, who had joined the meeting using the conferencing call facility.

2. APOLOGIES AND DECLARATIONS OF INTEREST

There were no apologies and no declarations made.

3. APPLICATION TO REVIEW THE PREMISES LICENCE IN RESPECT OF ROGALIK, 51 MIDLAND ROAD, WELLINGBOROUGH

The annexed circulated report of the assistant director of place and strategic growth was received in respect of an application for a review of the premises licence for Rogalik, 51 Midland Road, Wellingborough.

The chairman asked the officer to present her report to the sub-committee.

Mrs Wilcox introduced the report and explained that the application was for a review of the premises licence as detailed above and was being made by Northamptonshire Police acting in their capacity as a 'responsible authority' as defined in section 12 of the Licensing Act 2003, as they considered that the licensing objective of 'the prevention of crime and disorder' as prescribed by section 4(2) of the Act had not been met.

It was reported that on two occasions illegal tobacco products had been found on the premises, the first on 3 March 2020, when tobacco products

had been found for which the required duty had not been paid, and again, following a test purchase, on 14 April 2020, when a plain clothes officer purchased a pack of Russian cigarettes.

In accordance with procedure the application, for review, had been advertised at the premises, on the council' licensing unit website and outside the council offices. A further two representations had been received from responsible authorities – the fire service and the licensing team at the borough council.

The report at appendix C referenced the fire service representation, which included details of an inspection of the premises on 21 September 2020 where it was found that none of the fire safety documentation could be located and the fire alarm system was faulty. There were several remedial actions required to bring the premises up to the required standard. This indicated a potential public safety risk and was contrary to the licensing objectives. The fire service had confirmed they were not taking formal enforcement action, as improvements to the condition of the premises had been carried out.

Environmental health officers inspected the premises on 8 September 2020, the officer attending noticed that Rogalik employees had removed the blue notices, required to be displayed during the consultation period from outside the premises. This was believed to have been done to prevent representations being made by customers. The notices were replaced by council officers and employees reminded of the requirement for these to remain in place. It was also noticed that the licence summary was not on display as required under the Licensing Act; the employee was unaware of the location of the licence and was unable to name the licence holder and designated premises supervisor (DPS). A number of contraventions to the conditions within the premises licence were noted during the inspection including the fact that there was no age verification policy, no incident log, no authorisation process for the sale of alcohol, employees had not been trained in licensing matters, the CCTV system was not fully operational in accordance with the Data Protection Act and there was no first aid box. These contraventions demonstrated a failure to comply with the licensing objectives.

Northamptonshire Police has requested that consideration be given to the revocation of the premises licence, since the individual named as the licence holder and DPS, does not have any control over the running of the premises. In addition, the representations from the fire service and licensing team indicated a failure to comply with public safety and licensing requirements.

The chairman thanked Mrs Wilcox for her presentation and asked if the representative from Northamptonshire Police wished to address the meeting.

Police Constable 113 David Bryan informed the meeting of his findings and the subsequent request for a review of the licence.

He clarified that on 3 March 2020, officers from H M Revenue and Customs, trading standards at Northamptonshire County Council and Northamptonshire Police visited the premises as part of a joint operation on the illegal sale of tobacco products which had not had duty paid on them. At the time of the visit the owner of the premises was present but the premises licence holder and DPS was not.

It was found that to the rear of the property there was a storage hole/hide that could be accessed via a metal door situated on the outer wall of the property, which could be accessed by an alleyway. Officers found various tobacco products that had been dropped when the storage compartment had been cleared. It was also found that one of the shop keys fitted the lock on the metal door. Appendix A to the report gave further details of what was found. On 14 April during a 'test purchase' a police officer in plain clothes had purchased a packet of Russian labelled cigarettes for £3.50.

Northamptonshire Police wrote to the premises licence holder and DPS detailing the visits in March and April. The DPS responded stating he had sold the business and was not the landlord of the property at 51 Midland Road, he explained that he had offered to remain as the premises licence holder and DPS as the owner did not have a personal licence. He also said that he had nothing to do with the business and was not involved in the day to day running, although he did say that a member of staff had been sacked.

PC Bryan advised that the licence needed to be transferred to the new owner who would have to become the DPS. No transfer request had been received.

The chairman thanked PC Bryan for his presentation and asked Mr O'Donnell if he wished to inform the sub-committee of the findings of the licensing officers.

Mr O'Donnell confirmed that two of his licensing colleagues, Mr Pettitt and Ms Smith had attended the premises on 9 September 2020 to carry out a licensing inspection as further detailed in the witness statement attached at Appendix D. The employee on duty confirmed that she had removed the 'blue notices' on 1 September, there was no explanation of why she had done this, and she subsequently handed them to the licensing officer. The manager of the premises Mr Ali attended the premises and said he had taken the notices down as he did not want customers to make representations. There was no licence on display, and no age verification policy. The CCTV was not working properly, staff had received no training and there was no first aid box on site. The operation of the business did not comply with the licensing objectives. A repeat visit on 14 October indicated

that some of the issues had been dealt with

The chairman asked the licensed premises holder if he wished to speak.

The licence holder and DPS, Mr Tanna, addressed the meeting and confirmed that he considered that all the issues raised had now been addressed and that he had personally arranged for all signage to be put up and staff had been trained about the licensing objectives to ensure that they complied with age limits for the retail sale of alcohol.

He explained the Mr Poori was not aware of the illegal sale of tobacco products and the manager had subsequently been dismissed from his employment.

Councillors asked Mr Tanna to clarify who owned the premises and whether he knew the importance of being the premises licence holder and DPS?

Mr Tanna confirmed that he did understand that this was very important and that he had continued in these positions as he was a good friend of Mr Poori, who had bought the premises on 15 November 2019 and he wished to support him.

Members questioned Mr Tanna about his understanding of the licensing law, which appeared to be sparse, and the employment of the staff. Mr Tanna could not confirm his understanding of the licensing laws and said he had no control over the employment of staff.

Mr Poori also addressed the meeting and confirmed that Mr Tanna had offered to act as DPS and premises licence holder on his behalf. It was the intention that Mr Poori would apply for these to be transferred to him, but this had been delayed due to Covid-19. He also mooted that he felt the licensing officers had particularly targeted his premises.

Members spoke in relation to this comment and stated that licensing officers would only act if the licensing objectives were not being met. Any comments against licensing officers were unfounded as they would only be doing the job they were tasked to do.

Mr Tanna confirmed that in future the new DPS would attend the premises and would run the shop to make sure that there was full awareness of what was happening to ensure that everything ran properly and professionally in the future. He considered that the manager had let him down badly He felt that Mr Poori needed a second chance.

The chairman allowed Mr O'Donnell to ask a question of Mr Tanna and Mr Poori over the date that the said employee was dismissed. Mr Poori said it was within a few days of the first incident. Mr O'Donnell then asked why some six weeks later contraband cigarettes were still being sold. The response given to this was that another employee had said that his Mother had returned from Poland with cigarettes which he was illegally selling. No date of the dismissal of the employee was confirmed.

PC Bryan again asked Mr Tanna if he could tell him what the licensing objectives were. Mr Tanna said he did know them but was unable to state what they were when questioned. .

PC Bryan also asked what the age verification policy was at Rogalik. Mr Tanna responded to say that if the purchaser looked underage, he would ask for official ID to prove they were over 18. When questioned over what sort of ID was acceptable, he said either a driving licence or another form of ID would be acceptable.

Reference was made to the statement that Mr Poori had received training in retail and the sale of alcohol and clarity was sought on whether this was a certified course. Mr Poori replied that there was no documentation for such training.

The statement of the licensing officer referred to a Mr Sharam Ali, being the manager of the premises, the manager had asked if he knew Mr Poori and he had said that he didn't know him. On pursuing this it appeared that Mr Ali and Mr Poori was in fact the same person.

Mr Tanna was also asked about how frequently he was at the premises. He said he was quite often there at different times sometimes during the day before 2pm and after 4pm, or in the evenings. He now attended more frequently, because of the two incidents, to supervise what was going on, he considered that there had been significant improvements made and the shop was much cleaner, the proper signage had been put up and other changes had been implemented.

Councillors asked Mr Tanna if he had any financial involvement or whether he was getting paid as an adviser. Mr Tanna said he was not financially involved and neither did he get paid. He voluntarily advised Mr Poori as a close friend.

There being no further questions from councilors the chairman invited Mrs Wilcox to address the meeting.

Mrs Wilcox raised one point with Mr Tanna, as to whether he thought he had complied with the licensing objectives and conditions. Mr Tanna responded to say that he was now compliant with the objectives but had not

originally been so.

The chairman thanked everyone for the good discussion and asked those present if they considered they had received a fair hearing.

Mr Tanna, Mr Poori and PC Bryan confirmed that the hearing had been a fair and full hearing

The legal adviser informed all present that the meeting would now close to allow the sub-committee to make the decision in private. The decision notice would be forwarded to those concerned within five working days.

The meeting was closed at 3.15pm.

Members met with the legal adviser separately to deliberate. The sub-committee made its unanimous decision.

DECISION:

RESOLVED that the premises licence be revoked.

REASONS FOR DECISION:

The sub-committee took into account the report of the environmental health manager, the representations from the licensing enforcement officer of the Borough Council of Wellingbrough, PC David Bryan of Northamptonshire Police, the premises licence holder and designated premises supervisor Chandrakant Tanna and the tenant of Rogalik, Sharam Poori.

The sub-committee had regard to the following:

Licensing Act 2003; Statement of licensing policy; Section 182 guidance; and the Borough Council of Wellingborough's Licensing Policy.

The reasons for the review was in relation to the failure to promote the licensing objective in relation to the prevention of crime and disorder

The sub-committee took into consideration their obligation to treat the sale and storage of illegal tobacco as a serious criminal activity.

The number of failures to comply with the conditions of the premises licence including the lack of age verification policy, no incident log, no authorisation procedure for the sale of alcohol, the lack of employee training in licensing matters, particularly around the operation of the CCTV system and no first aid box, demonstrated a failure to consider public safety in general.

The premises licence holder and designated premises supervisor failed to demonstrate that he had any reasonable control over or connection to, the premises. He also failed to show a basic knowledge of the licensing objectives and his responsibilities under the Licensing Act.

The sub-committee considered the options available and received appropriate legal advice.

It was considered not appropriate to merely modify the conditions of the licence. A suspension of the licence was deemed inappropriate as the sub-committee was not satisfied that doing so would prompt a change in the operation of the premises due to the ongoing lack of management control.

It is for that reason that the committee decided unanimously that it is appropriate and proportionate to revoke the premises licence.

Chairman

