

## **LICENSING PANEL**

**THURSDAY, 2 AUGUST 2018**

PRESENT:- Councillors Vera Tomlinson (Chair) Steph Exell and Brian Mattock.

### **5. Appointment of Chair**

Resolved – That Councillor Vera Tomlinson be Chair of this meeting of the Panel.

(Councillor Tomlinson took the Chair.)

### **6. Minutes**

Resolved - That the minutes of the meetings held on 23<sup>rd</sup> April and 1<sup>st</sup> June 2018 be confirmed and signed.

### **7. Declarations of Interest**

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

### **8. Application to review the Premises Licence, Mike PL, 123 Cricklade Road, Gorsehill, Swindon, SN2 1AD**

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application to review the Premises Licence for Mike PL, 123 Cricklade Road, Swindon, (b) written representations from Wiltshire Police in support of the review, (c) written representations from Swindon Borough Council's Trading Standards Team in support of the review, (d) Oral submissions in support of the application by Wiltshire Police and Swindon Borough Council's Trading Standards Team, (e) oral submission opposing the review received from Mr Michal Ryszard Cekus (Premises Licence Holder, (f) questions from Members to representatives of Wiltshire Police, Trading Standards Officers and Mr Cekus and answers received, and (g) the Council's procedure for licensing hearings, the Secretary of State's Guidance and the Council's Statement of Licensing Policy.

The Council's Licensing Manager introduced the report noting:

- That the options available to Members in considering the review application in respect of Mike PL, 123 Cricklade Road, Swindon.
- The details of the current Premises Licence in operation at the premises.
- That the application for a review of the Premises Licence had been made by Wiltshire Police and supported by the Council's Trading Standards Team.
- That the current Premises Licence had been issued on 29<sup>th</sup> June 2017.
- The current conditions in operation under the current licence.
- That the application for review and supporting documentation was set out in appendices A to D of the agenda papers pack.
- The review process had been carried out in accordance with the appropriate regulations.

The case for the review by Wiltshire Police can be broadly summarised as:

- The review was brought under the Crime and Disorder Licensing Objective as the premises were being used for the sale and storage of smuggled and foreign cigarettes, tobacco and alcohol.
- In addition a number of conditions appended to the Premises Licence were not being complied with.
- On Friday 10<sup>th</sup> April 2018 Wiltshire Police and the Council's Trading Standards Team visited the premises and following a search of the premises found 109 packets of non-duty paid or counterfeit cigarettes, 27 packets (50g) of tobacco and 71 bottles of imported alcohol.
- The illegal tobacco and alcohol found at the premises had been hidden in a number of locations in the storage area and in a rucksack that was within easy reach of the shop counter.
- The majority of conditions relating to the Premises Licence were not complied with. Dummy cameras were also being used within the premises.
- The shop was staffed by Mr Ryszard Cekus, the father of the Premises Licence Holder who spoke very little English.
- In accordance with Paragraph 11.27 of the Secretary of State's revised guidance the Police considered that the revocation of the Premises Licence was appropriate.

The evidence of Mr Peter Morgan and Miss Natalie Hill (Trading Standards) in support of the application for a review can be broadly summarised as:

- There were public health concerns associated with illicit tobacco and alcohol.
- That Mr Ryszard Cekus claimed that the tobacco and alcohol had been bought from the driver of a white van. Mr Ryszard Cekus said he could not provide details of the driver's name or vehicle registration.
- Mr Ryszard Cekus also claimed that the goods were for personal use.
- That intelligence in relation to the sale of illicit items at the shop had been received in March 2018.

Responses to Questions to the Police and Trading Standards Officers can be broadly summarised as:

- The quantity of goods found at the premises suggested that they were not for personal use but for sale.
- Whilst no test purchase had been attempted the Police had received intelligence regarding the sale of illicit tobacco at the premises. Furthermore intelligence had indicated that sales of illicit tobacco were to people known to staff.
- In relation to his letter dated 24<sup>th</sup> May 2018, and set out on page 91 of the agenda papers, Mr Morgan indicated Trading Standards had not taken action due to the licensing review of the premises and the referral to Her Majesty's Customs and Excise about the illicit alcohol and tobacco. Furthermore the costs and the difficulties associated with proving the case against the licensee to the criminal standard in this case made it inappropriate for Trading Standards to prosecute the licensee.
- Her Majesty's Customs and Excise were seeking payment of outstanding duties in respect of the illicit goods seized which would be destroyed.
- During the search Mr Ryszard Cekus continually claimed that there were no

further cigarettes or alcohol although, as the search continued, additional illicit goods were found concealed in several places in the storage area.

- The reason given by Mr Ryszard Cekus for the illicit goods being at the premises changed on several occasions.
- The tobacco seized was a combination of counterfeit and non-duty paid.
- Mr Ryszard Cekus claimed not to know who owned the rucksack behind the counter before asking for personal items in it at a later time.
- Two bottles of imported alcohol were on display for sale on shelves at the store and Mr Ryszard Cekus indicated that these had been bought from the driver of a white van.
- Mr Ryszard Cekus was sober when the Police and Trading Standards Team visited the premises.
- The fact that cartons of 200 cigarettes had been opened with individual packets missing suggested that individual packets were being sold.

The case against the review and responses to questions asked can be summarised as:

- The illicit tobacco and alcohol found on the premises were stored there at the request of a driver of a white van.
- His father could not have bought the goods as all takings from the store was in his possession at the end of each day.
- The illicit alcohol and cigarettes were not for sale and that 8 litres of spirits could be legally brought into the country.
- The illicit alcohol and cigarettes were left at the premises around eater by a van driver who was returning to Poland and would be collected by him the following week. His father, who was an alcoholic, had agreed to the storage in return for alcohol for his personal consumption.
- That his father did not drink at work.
- In respect of breaking conditions of the Premises Licence Mr Michal Cekus explained that he didn't know a paper copy of records of training needed to be kept for family members; that his father couldn't operate the camera system and that there were problems with displaying the licence.
- His father was looking after the shop during the hearing as there was no-one who could do this.
- He was considering selling the shop.

That taking into account: -

1. The Secretary of State's Guidance; and
2. The Licensing Authority Licensing Statement:

And having in mind the promotion of the Licensing Objectives in particular: -

- i. The Prevention of Crime and Disorder

And having listened to and carefully considered all of the evidence and submissions put forward by the police, the Trading Standards Manager and the management of Mike PL the Panel has reached the following conclusions:

The Police and Trading Standards have provided evidence of breaches of the Prevention of Crime and Disorder Licensing Objective. There was evidence of the following, the storage of significant quantities of counterfeit and non-duty paid

tobacco and the display for sale and storage of non-duty paid alcohol. There was also evidence of poor management relating to the premises.

Having considered the evidence given regarding breaches of the conditions of the Premises Licence and the storage and display of non-duty paid goods and poor management of the premises, the Panel was not satisfied that any compelling evidence was put forward that breaches of the licensing objectives would not continue at the level currently experienced nor was the Panel given a satisfactory explanation for the storage/sale of non-duty paid and counterfeit goods that this would not happen again.

The Panel conscious of its duty to ensure that the licensing objectives are met determined that the appropriate decision was to revoke the premises licence.

### Reasons

1. The Panel heard evidence that a large quantity of both non-duty paid and counterfeit tobacco had been found stored on the premises.
2. The Panel heard evidence that non-duty paid alcohol was both stored at the premises and was on display for sale on shelves within the shop.
3. The Panel was mindful of the potential health risks associated with counterfeit tobacco.
4. The Panel was not convinced by the evidence of Mr Michal Cekus that the illicit goods stored on the premises were left by a van driver around April 2018. The Panel noted that Police intelligence regarding the sale of illicit goods was received in March 2018 and that the explanations offered by the Premises Licence Holder and his father changed on a number of occasions and contradicted each other.
5. The Panel noted that whilst no tobacco products were found in the shop itself a quantity of illicit tobacco was found in a rucksack “within easy reach” of Mr Ryszard Cekus when officer entered the Premises. Given that Mr Ryszard Cekus had personal items in the rucksack the Panel was satisfied that it was in his possession.
6. The Panel was mindful that under paragraph 11.27 of the Secretary of State’s Revised Guidance that the storage of illegal goods was sufficient to consider, in the first instance, revocation of the Premises Licence.
7. The Panel heard no evidence to suggest that the Licensing Conditions attached to the premises Licence would be upheld in the future by Mr Michal Cekus.

The Chair reminded both parties that they had the right of appeal to the Magistrates Court and that an application for any such appeal should be made within 21 days.