

LICENSING PANEL

TUESDAY, 4 APRIL 2017

PRESENT:- Councillors Abdul Amin, Nick Martin and Vera Tomlinson

35. Appointment of Chair

Resolved – That Councillor Vera Tomlinson Chair this meeting of the Panel.
(Councillor Tomlinson took the Chair.)

36. 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.

37. Application to Review the Premises Licence, 131 Manchester Road, Swindon, SN1 2AF

The Panel considered (a) a report of the Council's Licensing Manager setting out details of an application for a Review of the Premises Licence for Efes, 131 Manchester Road, Swindon Sn1 2AF, (b) written representations from Wiltshire Police in support of the review, (c) oral submissions in support of the application for a review received from PC Michael Diffin, M.B.E., (Police Licensing Officer) in support of the Police Objection, (d) oral submissions received opposing the application for review from Mr Ali Sari (Premises Licence Holder), (e) questions from Members to the applicants and objectors and answers received, and (f) 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 Officer introduced the report noting that:

- The application for review was called by Wiltshire Police under the Crime and Disorder Licensing Objective.
- The Council's Trading Standards Team have also made representations in support of the review and the submission is set out in the agenda papers pack.
- The Premises Licence was attached to the agenda papers pack.
- There was a change made to the Designated Premises Supervisor in January 2017.
- The current hours for the sale of alcohol set out on the Premises Licence.
- Since the application for review a request had been submitted to the Licensing Authority for a transfer of, and variation to the Designated Premises Supervisor for the premises.
- There had been a number of visits to the premises by Wiltshire Police, including a call for assistance following a theft on 3rd December 2016.
- On 8th December 2016 the Police conducted a licensing check at the property which included tobacco on sale at the premises noting a breach of condition 9 of the Premises Licence.
- On 12th December 2016 the Police visited the premises and made an arrest

related to the immigration status of an individual and noticed breaches of conditions 8 and 10 of the Premises Licence.

- The options available to the Panel following their consideration of the appeal.

PC Michael Diffin advised the Panel of typographical errors in his application for the review.

The Police case for a review and summary of raised points can be broadly summarised as follows:

- On 3rd December 2016 the Police attended the premises following a call from Mr Hider who was working at the store following a theft from the property. A statement was taken from Mr Hider, who confirmed that he worked at the premises, but Mr Sari did not wish to proceed with further action in respect of the incident.
- Immigration Checks confirmed Mr Aqeelshah Hider as being resident in the United Kingdom illegally with no right to work.
- Training records signed by Mr Hider were countersigned by Mr Sari.
- Thirty-nine packets of illicit cigarettes and three pouches of tobacco found at the property under the counter, and on sale for £5 per packet, were foreign branded and passed to Trading Standards for checks.
- The Police found a failure to comply with conditions 9 (weekly stock takes) and 10 (employment) were not being complied with.
- Paragraph 11.28 of the Guidance of the Licensing Act indicated that when dealing with the undermining of the Crime and Disorder Licensing Objective there was an expectation that even in the first instance, that the Panel should consider revocation of the Premises Licence.
- Confirmation by Trading Standards that the tobacco seized at the premises was illicit with no duty paid and/or counterfeit.
- The cigarettes were considered dangerous as it was not known what was in them.
- Mr Sari had previously been arrested for relevant offences.

The Police answered questions in respect of:

- The illicit tobacco found at the premises.

In the absence of a Trading Standards representative the Panel noted the written submission set out on Page 30 of the agenda papers.

Mr Ali Sari opposing the application for review included, but were not limited to:

- That the tobacco at the store was from Belgium and was not counterfeit.
- That he didn't have a choice but to sell the tobacco from Belgium as there were too many local stores selling tobacco (most of them illegal tobacco) and alcohol and he had a family to look after.

Mr Sari answered questions noting:

- Mr Hider had documentation in the form of a National Insurance Number,

Bank Card and Drivers Licence and Household Bill.

- No formal check on Mr Hider's right to work in the United Kingdom had been carried out as he had been told the documentation would take from six to eight weeks to eight months.
- Mr Hider worked for food money.
- Non-alcohol and tobacco products sold at the premises.
- That he was not currently involved in the management of the premises and that he had left the shop which was no longer in his name with a new Designated Premises Supervisor.
- That the alcohol was not currently being sold at the shop but was kept in his garage.

Resolved - After considering: -

1. A review of the Premises Licence in respect of Efes, 131 Manchester Road, Swindon relating to the Prevention of Crime and Disorder Licensing Objective.
2. Representations and material put forward on behalf of the Police, other interested person and the Premises Licence Holder;

and 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 and 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, trading standards and Designated Premises Supervisor and Premises Licence Holder of EFES, 131 Manchester Road, Swindon the Panel reached the following conclusions:

The Police have provided compelling evidence of the employment of an illegal worker, sale of illegal tobacco and breaches of the Premises Licence leading to a failure to uphold the prevention of Crime and Disorder Licensing Objective.

The Panel noted its duty under paragraph 11.28 of the guidance of the Licensing Act in dealing with the undermining of the Crime and Disorder Licensing Objective and the expectation, that even in the first instance, that revocation of the licence should be considered.

Having considered the evidence given by the Premises Licence Holder and Designated Premises Supervisor of EFES, 131 Manchester Road, Swindon the Panel was not satisfied that any compelling evidence was put forward that breaches of the licensing objectives would not continue.

The Panel, conscious of its duty to ensure that the licensing objectives are met, have decided that the appropriate decision is to revoke the premises licence.

The Chair provided written copies of the decision to all parties and reminded all 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.

Reasons

1. The Panel was satisfied that the illegal worker encountered at the property by the Police on 30th November 2016 was working at the Premises. The Panel heard evidence from Mr Sari that he worked at the premises for £15 a day food money.
2. The Panel heard evidence that the illegal worker found on the premises had been confirmed as an illegal immigrant by the Home Office.
3. The Panel heard evidence from the Premises Licence Holder that he had documentation from the illegal worker in the form of a driving licence, household bill, national insurance card and bank card which he considered sufficient to show that the person was able to work in the United Kingdom. The Panel determined that there was a failure of management in not upholding its duty to undertake the appropriate legal checks in respect of the residential status and the right to work in the United Kingdom of persons working at the premises.
4. The Panel determined the employment of an illegal worker did undermine the Crime and Disorder Licensing Objective.
5. The Panel heard evidence that there was illegal tobacco at the premises for sale. Mr Sari confirmed tobacco from Belgium was sold at the premises. The Panel determined that there was no evidence that any duty had been paid in respect of this tobacco.
6. The Panel determined the sale of illegal tobacco did undermine the Crime and Disorder Licensing Objective.
7. The Panel determined that there was a failure of management resulting in breaches of conditions 9 and 10 of the Premises Licence and was not satisfied that any compelling evidence was put forward that breaches of the licensing conditions would not continue.
8. The Panel heard evidence from Mr Sari that he was no longer managing or had a business interest in EFES which were now managed by a third party. The Panel received no evidence of the sale of the premises or return of lease preventing him from returning to operate the premises.