

LICENSING PANEL MINUTES

9 NOVEMBER 2016

Chair: * Councillor Adam Swersky

Councillors: * Phillip O'Dell * Stephen Wright

* Denotes Member present

99. Appointment of Chair

RESOLVED: That Councillor Adam Swersky be appointed Chair of the Licensing Panel Hearing.

100. Declarations of Interest

RESOLVED: To note that there were no declarations of interest made by Members.

101. Minutes

(See Note at conclusion of these minutes).

102. Licensing Procedures

The Chair asked the Panel Members, officers, Responsible Authority and other attendees at the meeting to introduce themselves and then outlined the procedure for the conduct of an oral hearing, which was set out in the agenda.

RESOLVED ITEMS

103. Application for Review of the Premises Licence for Good Morning Superstore, 262 Streatfield Road, Harrow

In attendance:

Legal Adviser:	Andrew Lucas
Licensing Officer:	Jeffrey Leib Ash Waghela
Relevant Representations:	Anu Prashar – Trading Standards Samuel Abdullahi – Trading Standards
Present:	A S Arora – Premises Licence Holder S Panchork – Licensing Agent

RESOLVED: That having taken into account the following:

- Written and oral representations by all the parties
- The Licensing Act 2003
- The Guidance issued under section 182 of the Licensing Act 2003
- Harrow Council's Licensing Policy
- Human Rights Act 1998
- The considerations in s.17 of the Crime and Disorder Act 1998

The Premises Licence be revoked.

REASONS:

Whilst the Panel noted the attempts between the Applicant and Licensee to agree conditions prior to the meeting commencing, the Panel unanimously concluded that the only correct decision in the circumstances was to revoke the Premises Licence.

Although this was the first time that the Licence had been before the Panel for review, the Panel noted that this was the Licensee's second offence involving contraband goods at the licensed premises. The Licensee had pleaded guilty to various offences concerning contraband tobacco in November 2015, following a joint search of the Licensed Premises by Trading Standards and HMRC in April 2015. As a result of that search HMRC also seized a significant quantity of contraband alcohol.

While the Panel had felt that it might have been arguable that the Licensee's first offence was a mistake, the Panel felt that the Licensee's behaviour had not changed as a result of the criminal conviction and the Licensee had, within a matter of months of conviction, committed exactly the same offences again. The Panel were extremely concerned that at the time of the second joint search of the Licensed Premises by Trading Standard and HMRC in February 2016, a far greater amount of contraband alcohol had been found than at the first search. The Panel concluded that the Licensee's offending had

worsened, despite the criminal prosecution. The Panel placed a great deal of weight on the Licensee's repeat offending and the escalation of that offending.

The Panel heard from the Licensee's representative the Licensee had invoices for all the alcohol seized at the time of the second search and that it had been legitimately purchased. However, there had been a delay in producing these invoices because they had been sent to India for scanning by the Licensee's accountant. The Panel also heard from Trading Standards that their investigation remained opened and the Licensee had still not produced invoices to Trading Standard or, as far as they were aware, to HMRC either. The invoices were not produced to the Panel. The Panel were satisfied that duty had not been paid on the alcohol as alleged by Trading Standards.

The Panel carefully considered the proposed conditions to be added to the Licence. The Panel did not think that proposed conditions 1-11 properly addressed the reason why a review of the Licence had been brought in the first place. The Panel noted the proposed conditions were either in the licence or updated conditions already in the Licence, or were matters of good business practice that the Licensee ought to be doing anyway (for example, training staff, not selling alcohol to people who were already drunk). The Panel noted that conditions already on the existing Licence, such as CCTV and an incident log had not prevented contraband goods from finding their way on to the Licensed Premises nor had they provided any assistance in determining how the contraband goods had come to be there.

In respect of proposed conditions 12 and 13, the Panel considered these to be a step in the right direction, although again were of the view that it could be said that these were also matters of good business practice. On reflection, the Panel felt that the only real concession being made was that copy invoices would be kept on the Licensed Premises.

Ultimately, the Panel concluded that they did not have any confidence that the Licensee would abide by the proposed conditions if they were added to the Licence. This was because the Licensee's behaviour did not seem to have changed after the first search and the criminal proceedings which had followed.

The Panel were mindful that the proposed conditions appeared to have been agreed immediately prior to the meeting commencing. The Panel also noted that, when asked by Trading Standards which conditions the Licensee had already put into effect, the search having being carried out in February and the review of the Licence having been applied for in September, the answer was none; the Licensee was still only following the conditions set out in the existing Licence. When asked by the Panel, Trading Standards accepted that revocation was a reasonable outcome given the offences, even though they had come to an agreement with the Licensee.

The Panel considered the proposed suspension of the Licence for three months, agreed by Trading Standards and the Licensee, and the removal and replacement of the DPS, with the new DPS to be subject to Police approval.

The Panel were not satisfied that either of these proposals would prevent the Licensee from allowing contraband goods onto the Premises.

The Panel were mindful of paragraph 11.27 of the Statutory Guidance, which states that certain criminal activity should be treated particularly seriously, including the sale and storage of smuggled tobacco and alcohol. The Panel considered paragraph 11.28 which said that revocation of the licence should be seriously considered, even at the first instance.

The Panel also considered paragraph 11.17 of the Statutory Guidance but considered that none of the responses were appropriate given this was the Licensee's second offence.

The Panel concluded that the quantity of contraband alcohol and tobacco found, that significantly more contraband alcohol had been found at the second search and that the Licensee did not appear to have heeded the warning provided by criminal prosecution in 2015 had to be given substantial weight and that the proposed conditions, change of DPS and suspension of the Licence could not offset that. Given the nature and seriousness of the offences, the Panel concluded that the only appropriate action to take in order to prevent the Licensing Objectives from being further undermined was to revoke the Licence.

Right of appeal

Any party aggrieved with the decision of the Licensing Panel on one or more of the grounds set out in Schedule 5 to the Licensing Act 2003 may appeal to the Magistrates' Court within 21 days of notification of this decision.

(Note: The meeting, having commenced at 6.30 pm, closed at 7.20 pm).

(Signed) COUNCILLOR ADAM SWERSKY
Chair

[Note: Licensing Panel minutes are:-

- (1) approved following each meeting by the Members serving on that particular occasion and signed as a correct record by the Chair for that meeting;
- (2) not submitted to the next panel meeting for approval.

Reasons: The Licensing Panel is constituted from a pooled membership. Consequently, a subsequent Panel meeting is likely to comprise a different Chair and Members who took no part in the previous meeting's proceedings. The process referred to at (1) above provides appropriate approval scrutiny].