

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE LICENSING SUB-COMMITTEE

MONDAY, 14TH MARCH 2022, AT 11.25 A.M.

PRESENT: Councillors R. J. Deeming, S. P. Douglas and A. B. L. English

Observers: Ms. L. Hodgetts, Worcestershire Regulatory Services

Officers: Mr. R. Keyte, Mr. P. Morrish and Mrs. P. Ross

9/21 **ELECTION OF CHAIRMAN FOR THE MEETING**

RESOLVED that Councillor R. J. Deeming be appointed Chairman of the Sub-Committee for the meeting.

10/21 **APOLOGIES**

No apologies for absence were received.

11/21 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

12/21 **APPLICATION FOR THE REVIEW OF A PREMISES LICENCE IN RESPECT OF UK MINI MARKET, 38 WORCESTER ROAD, BROMSGROVE, WORCESTERSHIRE, B61 7AE**

The Chairman welcomed everyone to the meeting and asked all parties present to provide a brief introduction.

The Chairman asked the premises licence holder and named designated premises supervisor, Mrs. Sozan Qadir Taha, if she was aware that she could have had legal representation. Mrs. Taha confirmed that she had been made aware and was happy for the Hearing to continue; and that her representative would assist her at the hearing, who introduced himself as Mr. Taha, her husband.

The Sub-Committee then considered an application for the review a Premises Licence, in respect of UK Mini Market, 38 Worcester Road, Bromsgrove, Worcestershire, B61 7AE.

The premises licence had been called in for review following an application received on 19th January 2022, as detailed at Appendix 1 to the report, from Mr. Christopher Coxon, Worcestershire County Council, Trading Standards Service.

A representation was also received from the Responsible Authorities, namely, Mr. Dave Etheridge, Principal Licensing Officer, Worcestershire Regulatory Services (WRS), as detailed at Appendix 3 to the report.

The Technical Officer (Licensing) WRS, introduced the report and in doing so highlighted that following a seizure of illicit tobacco from the premises on 8th September 2021, the sale of an age restricted product to a minor by the licence holder on 26th October 2021, Trading Standards were of the opinion that the licence holder had a disregard for the licencing objectives.

The representation received from Mr. Dave Etheridge, Principal Licensing Officer, WRS detailed that visits were conducted at the premises in September 2021 and February 2022 where it was found, on both occasions, that licence conditions were not being complied with. Mr. Etheridge had concluded that he had little confidence in the licence holder and employees at the premises to uphold the licensing objectives.

At the invitation of the Chairman, Mr. Coxon, Worcestershire County Council, Trading Standards Service, provided a summary of his review application, as follows: -

“This review has been brought due to the licensed premise being found to be in possession of illicit tobacco products and for selling a nicotine inhaling product to a 15 year old child.

On the 8th September 2021, the shop was visited following a report that the shop was selling alcohol, cigarettes and vaping products to children. During the visit, illicit tobacco was discovered behind the sales counter and the storeroom (as shown in the photographs on pages 19 to 21 of the main agenda report). The amount seized from these premises by Trading Standards were 5,080 cigarettes and 0.85kg of hand rolled tobacco (HRT) which represents a retail value of £2,940.

On 26th October 2021, Trading Standards carried out an age restricted test purchase exercise using two 15 year old volunteer children. Sozan Qadir Taha, the premises licence holder (PLH) and designated premises supervisor (DPS) sold a nicotine inhaling product, known as an Elf Bar, which is a disposable vaping device to the 15 year old child, contrary to S 92 (2) of the Children and Families Act 2014; it being an offence to breach a prohibition in regulations, that is Regulation 3 of the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015”.

On the 3rd November 2021, Mrs. Taha was interviewed as the seller of the vaping product to a 15 year old child and with regard to the illicit tobacco found at the premises. Mrs. Taha had stated that the illicit tobacco had been left by a person who worked at a local car wash, and that they had never returned to collect the illicit tobacco. Mrs. Taha

further stated that she was busy and stressed at the time of selling a vaping product to a 15 year old child.

Mr. Coxon continued and further informed the Sub-Committee that the owner of the local car wash had categorically stated that none of his employees had sold illicit tobacco, he was quite angry about this being said.

Mr. Coxon highlighted that as stated earlier, the illicit tobacco was discovered in the storeroom and behind the sales counter. The criminal offences associated with the possession and supply of illicit tobacco and the sale of a nicotine inhaling product to a person under the age of 18, were detailed on page 12 and 13 of the main agenda report.

Mr. Coxon referred to Revised Guidance issued under section 182 of the Licensing Act 2003 and that for any serious criminal activity / total disregard of the licensing objectives, that Licensing Authorities could consider revocation of a premises licence.

At the invitation of the Chairman, Mr. Dave Etheridge, Principal Licensing Officer, WRS detailed his representation as a Responsible Authority.

Mr. Etheridge referred Members to the letter sent to Mrs. Sozan Qadir Taha, as detailed on page 33 of the main agenda report, with regard to his visit on 22nd September 2021. The letter enclosed a report detailing the issues he had found during his visit and setting out actions that were required as a result.

Mr. Etheridge informed the Sub-Committee that on 22nd September 2021 and 10th February 2022 he was invited as part of a multi-agency visit to the premises. On both occasions his checks highlighted a number of licence conditions that it appeared were not being complied with, as detailed on pages 36 to 43 of the main agenda report.

At the visit on 10th February 2022 he explained that he was present to check that the issues identified during his visit on 22nd September 2021 had been rectified. Unfortunately, a number of the issues remained, detailed in full on pages 36 to 37 of the main agenda report; and in summary as follows: -

Licence Conditions Relating to CCTV

The member of staff present at the time of the visit was not able to demonstrate that the CCTV system provided storage capacity to store a minimum of 31 days footage.

Licence Condition Requiring to Use of an Incident Book

The incident book kept on the premises remained completely blank. This may suggest that the requirement to record relevant incidents in an incident book was not being complied with but equally could be because

no relevant incidents have occurred at the premises that required recording.

Licence Condition Requiring Use of a Register of Refusals

The register of refusals maintained on the premises did have a number of entries dated between 1st October 2021 and 20th December 2021. There were no entries recorded after this date.

Licence Condition Requiring Staff Training

There were no completed records to demonstrate staff had been trained as required.

Licence Condition Requiring Signage at the Exits of the Premises

The signage required to ask customers to leave the premises and area quickly and quietly was still being displayed at the shop counter rather than at the public exit from the premises.

In conclusion, Mr. Etheridge stated that it was clear from his findings during the second multi-agency visit on 10th February 2022, that very little progress had been made by the holders of the premises licence to secure that the conditions attached to the premises licence were being complied with. Following his attendance at the multi-agency visit on 22nd September 2021, he had provided Mrs. Taha with a clear report detailing the issues that needed attention and direction as to the actions they needed to take.

Mr. Etheridge stated that it gave him very little confidence in the ability of the premises licence holder and their employees to uphold the four licensing objectives appropriately at the premises. For that reason, he felt that Members should give very serious consideration to using their powers to revoke the premises licence.

At this stage in the Hearing, Mrs. Taha stated that the CCTV system was now working and that everything was good.

The Chairman asked Mrs. Taha if she had now done everything that Mr. Etheridge had requested during his initial multi-agency visit on 22nd September 2021.

Mrs. Taha replied that the cameras were working.

At the invitation of the Chairman, Mrs. Taha addressed the Sub-Committee and in doing so explained that, when Trading Standards had visited everything was now sorted out, there was nothing illegal to sell, no vaping products.

With the agreement of the Chairman, Mr. Coxon informed Members that in response to Mrs. Taha, it was evidenced that when Trading Standards had carried out an age restricted test purchasing exercise, that Mrs. Taha had sold a nicotine inhaling product, known as an Elf Bar, which was a disposable vaping device to a 15 year old volunteer.

Members were further informed that the County had been swamped with non-compliant tobacco related products, some of which were vaping products that had contained too high a level of nicotine, with some products seized being 10/20 times over the nicotine limit.

Under the Tobacco and Related Products Regulations 2016, disposable vapes cannot hold more than 2ml of nicotine-containing e-liquid. One of the products identified were Elf Bars, which Mrs. Taha had sold to a 15 year old during the test purchasing exercise

In response to Members with regard to the letter from Mr. Etheridge following the issues found during his initial multi-agency visit on 22nd September 2021; Mrs. Taha responded initially that she did not understand the questions. Mr. Taha then clarified the questions to Mrs. Taha. Mrs. Taha then further responded that at the time she had been very busy and stressed, she had explained to Mr. Coxon during the visit that she was sick and had had problems with family back home. Mrs. Taha stated this had happened this time but never again.

With the agreement of the Chairman, the Council's Legal Advisor asked Mrs. Taha if she had anything further to add / say. She had confirmed that following the multi-agency visit in February 2022, that the CCTV system was now working; was she in a position to respond with regards the other issues identified during the multi-agency visits in September 2021 and February 2022.

Mrs. Taha replied that the CCTV system was now working and recording for 31 days, this could be checked.

Members asked Mrs. Taha if an Incident Book and Register of Refusals was now being kept and if staff training was being carried out, including Challenge 25.

Mrs. Taha responded and in doing so referred to the red book, which was used and yes everything was being used, with times/dates being recorded. She had two staff members, one who worked full time and one who work 16 hours. They had everything and they wrote it all down.

In response to Members regarding the relocation of the signage asking customers to leave the premises and area quickly and quietly; Mrs. Taha responded yes.

Members commented that Mrs. Taha had appeared to carry out a lot of work, since February 2022, to address the issues raised. Mrs. Taha responded, yes.

With the agreement of the Chairman, Mr. Coxon asked Mrs. Taha if she had any evidence with her today, with regard to the CCTV system, the Incident Book and the Register of Refusals being used.

In response Mrs. Taha stated that she had it in the shop.

The Council's Legal Advisor asked Mrs. Taha if she had always done the work required or had she only completed it since February 2022; and had she any evidence with her.

In response Mrs. Taha stated it was always done from February 2022, she had no evidence with her.

In summing up Mr. Etheridge stated that he has nothing further to add. His letter following on from the multi-agency visit in September 2021, was clear and comprehensive and there had been a considerable amount of time from September 2021 to February 2022 to address the issues identified and to put things in place. Mrs. Taha had not provided any evidence during the course of the Hearing. Therefore, he was still concerned that Mrs. Taha was not adhering to the licensing objectives.

In summing up Mr. Coxon referred to the Revised Guidance issued under section 182 of the Licensing Act 2003 and that the licensing objectives, namely the prevention of crime and disorder and the protection of children from harm, were not being met. Mrs. Taha had not provided an explanation with regard to the illicit tobacco found on the premises and had not provided any further evidence that procedures had been tightened up with regard to selling age restricted products to children. No evidence had been provided to show that appropriate staff training was being carried out, or that an Incident Book or Register of Refusals were being kept

In summing up Mr. Taha stated that Mrs. Taha really did not know why she was before Members today, she was shy today during the Hearing.

Mr. Taha further informed the Sub-Committee that staff had received training and that the CCTV system cameras and dates were working, everything was fine. Someone from the car wash had brought the tobacco but did not come back to collect it. Mrs. Taha had thought the lady was 18, she did not ask her for any identification. Sometimes young children were bought items from the shop by different people. The CCTV system was now perfect. Mr. Taha commented that he would ask Members to forgive them for the bad things that had happened in the shop. They had put a nice system in place now and had an English speaking staff member. Could Members forget this time. The decision was up to Members; they could not do anything.

The Council's Legal Advisor further informed Members that they should consider the four licensing objectives, the written and oral representations as presented during the course of the Hearing, section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy. Members should consider all of the evidence provided and heard during the course of the Hearing. Members should determine if they were satisfied with the evidence put before them and if the

licensing objectives were complied with and would continue to be complied.

The Sub-Committee must take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives:

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence.

Any steps taken needed to promote the licensing objectives.

Having had regard to:

- The licensing objectives set out in the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The guidance issued under section 182 of the Act.
- The report presented by the Technical Officer (Licensing) Worcestershire Regulatory Services and Appendices
- The review application / supporting documents, as detailed at Appendix 1 to the report and the oral representations made at the Hearing by Mr. Christopher Coxon, Worcestershire County Council, Trading Standards Service.
- The additional evidence/ representations of the Principal Licensing Officer, Worcestershire Regulatory Services, as detailed at Appendix 3 to the report and the oral representations made at the Hearing by Mr. Dave Etheridge.
- The Oral Representations of the Premises Licence Holder Mrs. Sozan Qadir Taha and her representative who assisted her at the hearing and introduced himself as Mr. Taha, her husband.

The Sub-Committee decided to revoke the premises licence relating to UK Mini Market, 38 Worcester Road, Bromsgrove, Worcestershire, B61 7AE.

The reasons for the Sub-Committee's decision were as follows:

- Sub-Committee Members considered all of the evidence, both written and oral, provided by the Technical Officer (Licensing), Trading Standards and the Principal Licensing Officer in support of the application for Review of the Premises Licence.
- The Sub-Committee considered the responses given within the reports presented to them by the Premises Licence Holder and the oral evidence of the Premises Licence Holder and her husband during the hearing.

- In respect of the sale of illicit cigarettes and tobacco, the Sub-Committee was not persuaded by the suggestion that broadly they had been left by another person to store. In particular the report and the photographs showed that some were stored directly under the counter and the rest in another part of the shop, this would appear inconsistent with simply storing them. This reason was repeated during the Sub-Committee hearing, but no further evidence or explanation was given.
- In respect of the underage sales, the Sub-Committee was not persuaded by the suggestion that the premises licence holder would normally ask for proof of age but was busy and stressed on this occasion. The result confirmed the community intelligence that under-age sales were taking place and being busy and stressed was neither persuasive nor excuse. This reason was repeated during the Sub-Committee hearing, but no further evidence or explanation was given.
- In respect of the failure to comply with conditions of the licence, it was accepted by the Premises Licence Holder of the failure to comply and also accepted that the follow up visit in February 2022 that the premises still failed to comply. The Premises Licence Holder stated that since February 2022 all of the concerns had been addressed. No evidence of compliance was presented to the Sub-Committee. The Sub-Committee without evidence was not persuaded of compliance or ongoing compliance with the conditions of the licence or the principals of the licensing objectives.
- Having considered the evidence presented by all parties, the Sub-Committee was of the view that the premises had operated contrary to the licensing objectives due to the presence of illicit cigarettes and tobacco on the premises, the under-age sale and the historic failure to comply with the conditions of the licence and lack of evidence/concern as to whether those conditions were now or would be complied with in the future. All together these identified significant management concerns.
- The Sub-Committee concluded that in light of the evidence presented that the premises had not operated to promote the licensing objectives with regards to crime and disorder and protection of children from harm.
- Members did not consider that any of the other options available to them were sufficient to satisfy the concerns or would lead to confidence that the business would operate promoting the licensing objectives in the future. The Sub-Committee was therefore of the view that it was appropriate to revoke the licence.

The following legal advice was given:

- That the Licensing Objectives must be the paramount consideration.
- That the Sub-Committee was obliged to determine the review application with a view to the promotion of the licensing objectives.
- The Sub-Committee must consider the review application and relevant representations and take such of the following steps (if any) as it considers appropriate for the promotion of the licensing objectives:
 - The modification of the conditions of the premises licence
 - The exclusion of a licensable activity from the scope of the licence
 - The removal of the DPS from the licence
 - The suspension of the licence for a period (not exceeding 3 months) or
 - The revocation of the licence.

The Council's Legal Officer was asked to specifically respond on the weight that should be attached to the verbal evidence of the Premises Licence Holder that the licence conditions had since February been complied with, in light of the fact that no documentary evidence was provided to the Sub-Committee in support. The Council's Legal Officer responded that the amount of weight to be attached was a decision for the Sub-Committee, but they were free to take into consideration how persuasive the verbal evidence was and any supporting evidence or any other evidence to corroborate or the lack, therefore.

An appeal to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision was received by Mrs. Sozan Qadir Taha.

The meeting closed at 12.22 p.m.

Chairman