

NOTTINGHAM CITY COUNCIL

SPECIAL LICENSING PANEL

RECORD OF PROCEEDINGS

1. **Meeting date** - 2 and 25 September 2014
2. **Panel** - Councillor Brian Grocock (Chair)
- Councillor Dave Smith
- Councillor Mick Wildgust
3. **Legal advisor & Note taker** - Ann Barrett
- Mark Leavesley
4. **Type of application** - Premises review
5. **Applicant** - Jane Bailey, for and on behalf of Nottingham City Council Trading Standards Service

6. **Premises Licence Holder and premises under review**

Mr Osman Rahman
Kubus Mini Market
19 Radford Road
Nottingham
NG7 5DQ

7. **Parties present**(1) For the Applicant & Responsible Authority

Jane Bailey, Nottingham City Council Trading Standards Service accompanied by Sergeant Chris Hardwick (2 September 2014 only)

(2) For the License Holder

John Kent, Solicitor
Osman Rahman, Premises Licence Holder and DPS
Dilshad Baghi Business Owner
Kalid Ahmed (2 September 2014 only)
Najat Baghi (2 September 2014 only)
Serzad Jabary interpreter (2 September 2014 only)

Persons refused permission to speak and reason why – None.

8. **Parties not present and reason why – None.**9. **Applications and decisions on ancillary issues eg requests for adjournments, determinations whether to proceed in absence, directions etc**

There was an initial discussion as to whether the parties felt that the hearing could be concluded in one day given the need for an interpreter. It was pointed out that if the proceedings were not concluded on 2 September then an adjournment to a date 3 weeks later would be required due to the leave commitments of the legal advisor to the Panel. The Parties hoped that the matter might be concluded on 2 September and the hearing commenced on that basis. however, as it was not possible to conclude the hearing on that date the hearing was subsequently adjourned to 25 September 2014.

10. Supplementary material taken into consideration other than that which was contained within the agenda

Submitted on behalf of Trading Standards

71 page Bundle of documentation including:

- Application for Review;
- Summary;
- Photographs showing the nature and location of the tobacco concealment;
- Statement of Trading Standards Officer;
- Record of Interview – Osman Rahman;
- Statement of Sergeant Chris Hardwick;
- Letter to Osman Rahman dated 9 May 2014;
- Copy of age restricted training document from Kubus.

Submitted on behalf of the Premises Licence Holder

- 9 page bundle comprising witness statements of Dilshad Baghi, Osman Rahman, Kalid Ahmed;
- 57 Page bundle comprising:
 - Plan;
 - Copy personal licences;
 - staff training log;
 - Law and Policy on preventing illegal sales and signatures of receipt and understanding;
 - Extract from lease;
 - Passport and immigration stamps and boarding passes for Dilshad Baghi;
 - Correspondence between VHS Fletchers Solicitors and Nottingham City Council relating to criminal proceedings;
 - Photographs of shop;
 - Age restricted refusals register;
- Proposed Additional Licence Conditions.

11. Facts/Issues in dispute

Whether no action is necessary or whether it was appropriate to take any of the following steps in order to promote the prevention of crime and disorder, public safety, or the protection of children from harm licensing objectives:

- modify the conditions of the licence permanently or for a temporary period of up to 3 months;
- exclude a licensable activity from the scope of the licence permanently or for a period of up to 3 months;
- remove the designated premises supervisor;
- suspend the whole Premises Licence for a period of up to 3 months;
- revoke the licence in its entirety.

12. Decision

The Panel listened to all the evidence put before it and also took into account the contents of the application and all supporting documentation and submissions made in relation to it by both/the parties.

On behalf of Trading Standards it was submitted that:

- Osman Rahman had been the Premises Licence holder since 13 June 2013 and the DPS of the premises since 28 December 2013;
- Prior to Mr Rahman taking over the store had a history of selling illicit and counterfeit tobacco both during the time that Dilshad Baghi had been the owner of the business (2011-date) and before;
- In May 2013 following intelligence a small quantity of illegal tobacco was found on the premises and a warning letter sent to Khaid Ahmed in respect of it;
- On 17 July 2013 an inspection was carried out by trading standards. Neither the licence holder (Mr Rahman) nor the DPS (Dilshad Baghi) were present. The store did not operate a refusals book (contrary to the conditions of the licence and the person in control of the store was unsure whether he would be able to operate the CCTV as required by the conditions of the licence;
- On 14 August 2013 a warrant was executed and a search took place by police and Trading Standards Officers at Kubus Mini Market. During the search 549 packets of cigarettes and 39 Packets of hand rolling tobacco were found in an elaborate concealment behind a toilet in a back room. The tobacco did not have the correct pictorial/written warnings on it contrary to regulations made under S12 of the Consumer Protection Act 1987. Within this tobacco were 39 packets of 50g pouches labelled as Amber Leaf hand rolling tobacco which had subsequently been identified by the Trademark holder as Counterfeit and in breach of the Trade Marks Act 1994. In addition a number of foreign labelled spirits were also found within the concealment which did not appear to have duty paid on them. The concealment was elaborate and sophisticated and only found after using the services of a specially trained tobacco search dog;
- At the time of the search neither Mr Rahman, nor the DPS Dilshad Baghi were in the store. The store at the time was being managed by Najat Baghi and all persons present denied knowledge of the concealment;
- During interview under caution on 16 September 2013 Mr Rahman stated he did not work in the shop more than 7-12 hours per week and that Dilshad Baghi was the owner of the shop. Mr Rahman had at that time appeared unclear as to what licence he held and the conditions attached to it. Najat Baghi indicated that Dilshad Baghi was out of the country;
- On 17 September 2013 Dave Browitt from Nottinghamshire Police carried out a licence check and noted that the premises were in breach of the CCTV condition on their licence as the premises did not have 31 days recorded footage;
- On 21 September 2013 a 14 year old underage volunteer was sold alcohol by Najat Baghi;
- On 8 October 2013 and 14 November 2013 the Police carried out compliance checks which indicated that although 30 days CCTV footage was now being retained the premises were still technically in breach as the condition required 31;
- Osman Rahman became the DPS with effect from 13 December 2013;
- On 16 April 2014 alcohol was sold to a person under the aged 14 during a test purchase operation. The seller was Najat Baghi and Osman Rahman was abroad that the time. The Store did not appear to operate a challenge 21 Policy contrary to the requirements of the conditions of the licence;
- Mr Rahman in interview under caution had conceded that he had been abroad for about a month at the time of the sale and indicated that he trained his staff in the law and his policies relating to underage sales and had now removed Najat Baghi from the tills;

- The training records indicated last entry on 20th September 2013 and contained no reference to Najat Baghi having been trained since 17th April 2012 when training had been carried out by the previous DPS;
- On 24 April 2014 Najat Baghi was serving on the tills and there appeared to be no other member of staff in the store;
- On 28 April a further police compliance check was carried out where all conditions appeared to be being complied with;
- Problems with illicit and counterfeit tobacco in the Radford Road area are well documented and trading standards staff are consistently hearing the same story of “I was out of the country at the time,.... it must have been the staff.....I know nothing about the concealment”. On a balance of probabilities given an earlier seizure in 2011 (when Dilshad Baghi was the owner of the business) the tobacco and alcohol seized in August 2013 must have been concealed on the premises at the time Osman Rahman and Dilshad Baghi were in control as otherwise the sniffer dog would have discovered it in 2011. It was noted that staff also had illicit products in the store which it was claimed had coincidentally just been given to them as presents at the times when trading standards had visited and that the only time Najat Bhaggi had been left alone in the premises after trading Standards had been told that he no longer worked on the tills was at the time of their visit on 24 April 2014. It was suggested that these were not coincidences but indicated that there was a trade in counterfeit and illicit tobacco at the premises and that the operators did not adhere to assurances given as to the shops method of operation.

On behalf of the premises licence holder it was submitted that:

- None of the staff had any knowledge of the concealment of tobacco and alcohol which was found and seized by trading standards on 14 August 2013;
- The tobacco and alcohol must have been left at the premises by a previous owner. The dog which had been used in an earlier search in 2011 had not gone into the toilet area where the concealment was found and therefore it could have been there since before Dilshad Baghi had taken over the premises;
- The illicit tobacco which had been taken from Khalid Ahmed in the shop in May 2013 and August 2013 was not for sale but was for his personal use. There was a dispute with trading standards evidence as to the manner in which they it was found. The first quantity taken in May 2013 was taken from a bag in Mr Ahmed’s hand whilst he was visiting the premises and the second quantity was duty free which had been brought back for him from abroad by the mother of one of the girls who worked on the meat counter and which had only been brought into the shop on that day;
- Dilshad Baghi had held the lease for the premises since 2011 however due to a number of problems relating to his wife’s health and his family’s visas he had spent a considerable time abroad and had been out of the country most of the time when problems had occurred. It was for these reasons that Osman Rahman had become the premises licence holder. Neither Dilshad Baghi nor Osman Rahman had fully understood the licensing process or realised that as Dilshad Baghi was out of the country so often that a transfer of DPS application was also needed. As soon as they understood this Osman Rahman also became the DPS (in December 2013);
- At the time Dilshad Baghi had been away his brother Najat had been left in charge of the premises. Dilshad had been severely let down by Najat who had failed the two test purchases. Initially Najat had been taken off the tills but did some shelf work but since August 1st 2014 Najat Baghi had ceased to work at the shop and would no longer be involved in the operation and management of the premises;

- Training had taken place at the premises but not always been recorded accurately. There was now strict adherence to recording refusals though most of these tended to be recorded by Khalid Ahmed as his English was better;
- Since legal advice had been sought on the review improved notices had been placed around the shop and there had been improvements in training. Dilshad Baghi would be content for the proposed conditions to be imposed on the licence and would accept a suspension if felt appropriate. The problems had arisen whilst he had been out of the country but he was now going to look after the shop. If the licence were revoked 3 or 4 people would lose their jobs and the business could not survive without alcohol sales;
- There was very little concrete evidence and nothing which linked the staff to the products found in the concealment. Whilst the premises history had not been good but it had not been found wanting since April 2014. Dilshad Baghi knew that if he was given a second chance and was found to be wanting again that revocation would be likely.

Conclusions

The Guidance (June 2014) at paragraph 11.24 states that the role of the Licensing Authority when determining a review is not to establish the guilt or innocence of an individual but to ensure that the crime prevention objective is promoted. The Panel therefore focused on the management of the premises. Paragraph 11.20 indicates that when reviewing a licence, the Licensing Authority should seek to establish the causes of the concerns which the representations identify, and that any remedial action taken should be directed at the causes and be no more than an appropriate and proportionate response. Here, the causes of concern were:

- The alleged connection of the premises with the sale/supply of illicit and counterfeit tobacco and alcohol;
- Two instances of underage sales to 14 year olds; and
- The general management of the premises.

Paragraph 11.28 of the Guidance states that where reviews arise in such circumstances and the Licensing Authority determines that the prevention of crime objective is being undermined it is expected that revocation of the licence even in the first instance should be seriously considered.

These premises appeared to have been associated with the sale/supply of illicit and counterfeit tobacco over a number of years through both intelligence reports and a number of inspections and operations. A number of inspections and seizures had taken place since Dilshad Baghi had taken over the business and licence in 2011. Dilshad Baghi had been out of the country for a majority of that time.

During the time that Dilshad Baghi had been out of the country he had chosen to leave his brother Najat Baghi in charge of the business and the management of the shop. However, Najat Baghi had not been given any formal responsibility under the Licensing Act and was neither the premises licence holder or DPS. Najat Baghi had proved himself not to be a responsible manager and was the person responsible for carrying out the two sales to 14 year olds and had a clear disregard for both the licensing objectives and the businesses own challenge 21 policy. Despite this Najat Baghi had been responsible for training other staff.

The premises licence had however been transferred to Osman Rahman who had eventually also become the DPS. The Panel had found that all of the witnesses called to give evidence to the Panel had language difficulties to some extent and the Panel was not convinced that any of the personnel associated with the business had an appropriate level of understanding of the Licensing Act, its objectives or what actually went on in the shop even after Mr Kent's intervention in August 2014.

The Panel did not find the explanations put forward on behalf of of the Premises Licence

Holder to be credible. Despite warnings and advice staff had continued to have illicit tobacco on the premises and the Panel believed on the balance of probabilities that the seizure taken from the premises in August 2013 must have been placed on the premises since Dilshad Baghi had taken over in 2011 and during the time when Dilshad Baghi and Osman Rahmen had responsibility as Premises Licence Holder and DPS.

The explanations offered had been that none of the staff had known anything about the concealment or earlier seizures and that a previous owner must have left this significant quantity and value of illegal goods on the premises. Other issues that had been raised, such as Najat Baghi being found behind the counter of the premises when he had supposedly been removed and staff having possession of illicit tobacco on the premises at times when trading standards visited, were pure co-incidences. On the balance of probabilities the Panel did not accept this.

The causes of concern were therefore a number of instances of serious crime (within paragraph 11.27 of the Guidance) and the general poor management and disregard for responsibilities under the Licensing Act and the promotion of the Licensing Objectives. Whilst regard had been had to the information submitted to them Panel relating to the likely effects of revocation of the licence on the business owner (who did not hold that licence) the Panel's concern was to ensure that the Licensing Objectives were upheld and to protect the wellbeing of the wider community. Suspension of the licence as suggested by Mr Kent would not address the issues and causes of concern as the management would effectively remain the same. On that basis the Panel was satisfied that bearing in mind paragraphs 11.27 and 11.28 of the Guidance it was appropriate and proportionate that the licence be revoked.

The action outlined above shall take effect in accordance with the provisions of section 52 (11) of the Licensing Act 2003.

Signed: Councillor Brian Grocock (Chair)

Dated: 25 September 2014