

NOTTINGHAM CITY COUNCIL
SPECIAL LICENSING PANEL
RECORD OF PROCEEDINGS

1.	Date of hearing - 19 May 2015
2.	Panel - Councillor Grocock (Chair) - Councillor Smith - Councillor Ibrahim
3.	Legal advisor & Note taker - Ann Barrett - Tanith Davis
4.	Nature of application - Review
5.	Applicant - Jane Bailey, for and on behalf of Nottingham City Council Trading Standards Service
6.	Premises under Review and Premises Licence Holder Super Sam's 66 Gregory Boulevard Nottingham NG7 5JD Premises Licence Holder : Yosuf Ali Barawari
7.	Parties present (1) <u>For the Applicant</u> - Jane Bailey, Nottingham City Council Trading Standards Service accompanied by Ammie Hemmingway (2) <u>For the License Holder</u> - Gary Ekpenyoung, Shakespeares Solicitors accompanied by Mr Barawari, Amrita Kalra and Simon Singh <u>Persons refused permission to speak and reason why – none</u>
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 As a preliminary issue Mr Ekpenyoung confirmed that Mr Barawari no longer intended to raise or rely on the matters raised in paragraphs 3- 8 of his representation.

10.	Supplementary material taken into consideration other than that which was contained within the agenda <ul style="list-style-type: none">• 39 page bundle of documentation submitted by Ms Bailey including:-<ul style="list-style-type: none">○ Application for review○ Summary○ Photographs○ Statements of Ammie Hemingway, Paul Wheddon and Kathryn Sweeney○ Public Analyst Certificate○ Statement of Iain Macleod○ Records of formal interview with Mr Barawari dated 13th January and 9th February 2015
11.	Facts/Issues in dispute <p>Whether it was appropriate to take any of the following steps in order to promote the prevention of crime and disorder, the prevention of public nuisance, public safety, or the protection of children from harm licensing objectives :</p> <ul style="list-style-type: none">• modifying 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 <p>The Panel listened to all the evidence put before it and also took into account the contents of the application and all supporting documentation, Mr Barawari's representation, and the submissions made in relation to them by the parties.</p> <p>The Panel found that:</p> <ul style="list-style-type: none">• Following intelligence received through Nottingham Crime Stoppers and Nottingham City Council, a warrant was executed at the premises of Super Sam's, 66 Gregory Boulevard, Nottingham on 6 January 2015.• A specialist trained tobacco dog was used during the execution of that warrant which found 399 packets of cigarettes; 2x 50g pouches of Golden Virginia and 4X 50g pouches of Amber Leaf Tobacco in a hidden concealment behind a shelving unit at the rear of the shop.• All of the cigarettes had been found to be either illicit or counterfeit and the tobacco had been found to be counterfeit.• Also found at the time the warrant was executed were 8 bottles of Arctic Ice vodka and 3 bottles of Blossom Hill wine.• The Blossom Hill wine had subsequently been confirmed as being counterfeit.• Whilst it had been contended that there was no link in the paperwork submitted by Trading Standards to show that the vodka tested by the public analyst was the same vodka which had been seized from the shop, the Panel considered the

case on the balance of probabilities and accepted Ms. Bailey's submission that it was a sample of the seized Arctic Ice Vodka which had been sent for forensic examination. This had been found to be 54.6% proof (substantially over the 37.5% shown on the bottle) and to contain t-butanol, which is normally found in industrial grade solvents. The product did not consist of genuine vodka and was so contaminated that it was unfit for human consumption.

It was Trading standards submission that on the basis of what was said at interview that Mr Barawari's conduct had consisted of more than a one off purchase of illicit and counterfeit goods and that the concealment was of a size and nature more consistent with use for the concealment of illicit and counterfeit products than the safe storage of money as Mr Barawari had suggested. Mr Barawari had admitted purchasing the goods for sale but had indicated that he had been naive, made some poor business decisions and would not make the same mistakes again. Whilst he had purchased the goods to sell to keep up with other businesses he would now rather go bankrupt than act illegally again.

The Guidance 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 Guidance also indicates that when reviewing a licence, the Licensing Authority should seek to establish the cause of the concerns identified, and that any remedial action taken should be directed at the cause(s) and be no more than an appropriate and proportionate response. Here the cause of concern was that very soon after taking over the premises Mr Barawari had chosen to purchase illicit and counterfeit goods for sale, some of which (namely the vodka) were unfit for human consumption and others (such as the counterfeit and illicit tobacco) affected public safety by way of not being properly marked and manufactured to expected standards.

It was noted that the sale and storage of smuggled tobacco and alcohol were indicated in the Guidance as being matters which should be treated particularly seriously. Given this; the quantity of cigarettes and tobacco seized; the fact that the vodka was so seriously contaminated and unfit for human consumption; and Mr Barawari's admission that he had bought the products to enable him to compete with other businesses, the Panel were of the view that it was not appropriate to issue a warning, as had been suggested on Mr Barawari's behalf. Nor would it be appropriate to impose a condition requiring Mr Barawari to only purchase goods from reputable retailers and legitimate sources as this was to be expected of any business. As Mr Barawari would remain in control of the business, then removing him as the DPS would have little effect.

Whilst little had been heard about the financial impact that would arise from a suspension or revocation of the licence, the Panel was mindful that the Guidance indicates that where premises are found to be trading irresponsibly the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises, and where other measures are deemed insufficient, to revoke the licence. The Panel's duty was to take steps with a view to the promotion of the licensing objectives in the interests of the wider community.

Given that Mr Barawari had consciously made the decision to trade in illicit and counterfeit goods from the start of his business and the Panel's belief that had the goods not been seized and a review brought that he would have continued to do so, the

Panel was of the view that the matters raised undermined the prevention of crime and disorder, public safety and protection of children from harm objectives and were so serious that revocation of the licence was appropriate. The licence was therefore revoked.

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

Signed: Councillor Grocock (Chair)

Dated: 19 May 2015