

**Minutes of the meeting of Licensing sub-committee held at
Committee Room 1, The Shire Hall, St Peter's Square, Hereford,
HR1 2HX on Tuesday 18 July 2017 at 10.00 am**

Present: Councillors DW Greenow (Chairman), CR Butler and A Seldon

Officers: Fred Spriggs and Tim Thorne

52. APOLOGIES FOR ABSENCE

There were no apologies for absence.

53. NAMED SUBSTITUTES (IF ANY)

There were no substitutes present at the meeting.

54. DECLARATIONS OF INTEREST

There were no declarations of interest.

**55. APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF SUPERSAM,
141-143 EIGN STREET, HEREFORD, HR4 0AJ - LICENSING ACT 2003**

Members of the licensing sub committee of the council's planning and regulatory committee considered the application, full details of which appeared before the members in their agenda and the background papers.

Prior to making their decision the members heard from Fred Spriggs, licensing officer, Tim Thorne, principal trading standards officer and Sergeant Duncan Reynolds, West Mercia Police. Members also heard from the applicant and the applicant's agent, Patrick Burke.

The committee heard from the trading standards officer that the premises had a history of selling non-duty paid and/or counterfeit tobacco and the premises licence had been revoked twice in the previous seven years, the most recent revocation being in December 2016. The shop had a long association with the sale of non-duty paid and counterfeit tobacco. The customer base was the same. The premises were sold on 21 February 2017 and thereafter three separate successful test purchases were undertaken on 8 March, 22 March and 12 April of non-duty paid cigarettes. The cigarettes sold were Polish non-duty paid and these were produced to the committee. The applicant had been provided with photographs of the cigarettes Trading Standards were producing. A fourth test purchase had failed and trading standards asserted that this was because the staff had realised that the individual was a test purchaser. Trading standards said the sale of non-duty paid tobacco was a serious offence under the Customs and Excise Management Act 1979 and capable of a punishment of seven years imprisonment on conviction.

The police then stated they were aware of the history of the premises and two revocations and believed because of the activity described by trading standards to grant a licence would undermine the crime and disorder objective.

The applicant's agent said the history of the premises was not relevant as this was a new owner. They refuted that the tobacco had come from these premises, the applicant when questioned by members confirmed this to be the case. They asserted that no one of the description put forward by trading standards was at the premises and questioned if these test purchases had occurred why the applicant had not been interviewed under the Police and Criminal Evidence (PACE) regulations. The evidence of trading standards was flawed.

The applicant stated that they were committed to there being no contraventions of the licensing conditions going forward as demonstrated by the proposed operating schedule in the application. They were prepared to accept additional conditions and opening hours of 0800 hours to 2000 hrs.

There were some questions asked of both the applicant, the applicant's agent and the trading standards officer about who worked at the premises and when. The replies from the applicant were inconsistent first saying two people and then stating one. The committee sought clarity from the applicant and her agent as to whether she understood the proceedings or would like the matter adjourned to another day to have an interpreter present. She said that she understood everything being said and did not need an interpreter. Her agent sought clarity from her and agreed she did not require one. The applicant was asked whether there was any association between themselves and the former owner or other shops in Herefordshire. They said no. On further questioning it was clarified that Anita Spzorak, aged approximately 18, had worked at the premises when Mr Jamal had been the premises licence holder and now worked for the applicant. (Mr Jamal being the premises licence holder in December 2016 when the licence was last revoked). Trading standards stated this individual was the person who had made the sale in all the test purchases and had been employed there under Mr Jamal's ownership. The applicant's agent refuted this as the description given to them by trading standards did not fit with the description of the said individual.

Decision

In coming to their decision, Members carefully considered the application, report and all the representations they had heard. They had considered their duty under Section 4 of the Licensing Act 2003, Section 182 guidance and the council's statement of licensing policy. It is the decision of the committee that the application be refused.

Reasons

The reason for this decision is that it is considered that to grant a licence would undermine the prevention of crime and disorder licensing objective. The committee felt that the evidence of trading standards as to the occurrence of the test purchases was more persuasive than the applicant's assertion that they had not occurred, particularly as trading standards had at the hearing identified the seller for all three test purchases by name and the applicant accepted that the individual worked there. It was also noted that this person had also been employed by the previous premises licence holder. There were inconsistencies in the evidence given by the applicant about who had been working at the premises. This was pertinent given that the committee had enquired during the hearing whether the applicant had understood all that was being said and she confirmed she had and did not require an adjournment for an interpreter.

The committee found that the history of the premises was relevant, individuals would associate it as a place where non duty paid tobacco could historically be acquired

making it more imperative that any further licence holders took robust measures to make sure it did not occur again. This had not happened at these premises since being acquired by the applicant resulting in the successful test purchases. The sale of non-duty paid tobacco is very serious and the committee had little confidence in the proposed applicant's ability to prevent future breaches of the law in relation to non-duty paid tobacco or robustly adhere to the premises licence and promote licensing objectives if a premises licence had been granted in the terms sought.

RESOLVED

That the application be refused.

The meeting ended at 11.30 am