

DURHAM COUNTY COUNCIL

At a Meeting of **Statutory Licensing Sub-Committee** held in Committee Room 2 - County Hall, Durham on **Tuesday 27 November 2018 at 10.00 am**

Present:

Councillor P Crathorne (Chair)

Members of the Committee:

Councillors L Brown and G Darkes

Also Present:

Councillor L Kennedy

Mrs G Proud – Council's Solicitor

Mrs L Cloney – Licensing Enforcement Team Leader

Mrs H Johnson – Licensing Team Leader

Miss K Robson – Senior Licensing Officer

Mr A Cook – Team Leader (Special Investigations), Trading Standards

Mr M Miller – Trading Standards Investigator

Mr S Barry – Public Health Practitioner (Living and Ageing Well)

1 Apologies for Absence

An Apology for absence was received from Councillor Maitland.

2 Substitute Members

There were no substitute Members.

3 Declarations of Interest

There were no declarations of interest.

4 Minutes

The Minutes of the meetings held on 7 September 2018, 2 October 2018 and 30 October 2018 were agreed as a correct record and were signed by the Chair.

5 Application to Transfer a Premises Licence - Lebaneat Wrap House, First Floor, 69 Claypath, Durham

ITEM WITHDRAWN

6 Application to Vary a Premises Licence to Specify an Individual as Designated Premises Supervisor - Lebaneat Wrap House, First Floor, 69 Claypath, Durham

ITEM WITHDRAWN

7 Application for the Review of a Premises Licence following a Closure Order - M & A General Stores, 44 Middle Street, Blackhall

The Committee considered the report of the Senior Licensing Officer regarding an application for the review of a premises licence following a closure order in respect of M & A General Stores, 44 Middle Street, Blackhall (for copy of report, see file of minutes).

A copy of the application form and supporting information had been circulated to Members together with copies of the representations received from Trading Standards and Public Health.

The Licensing Team Leader addressed Members in relation to the Service of the Notices regarding the review of the Premises Licence. The address for the Premises Licence Holder is the store at 44 Middle Street, Blackhall. There is no alternative address known to the Licensing Authority. As the premises are currently closed, the Notices of hearing and associated paperwork have been served via first class post on this address, together with serving a copy on the DPS and taping the notices to the premises as there is no letterbox and the flat above is not associated with the premises. The Notices have been checked and replaced when they were torn down. There was also a letter attached to the premises which provided a link to allow the Premise Licence Holder to access an electronic version of the Licensing Papers.

The Senior Licensing Officer had made numerous attempts to contact the DPS with a view to obtaining the address for the Premises Licence Holder. She had left messages with the daughter of the DPS who stated that the DPS would telephone her back. The DPS had failed to respond to any requests regarding the address for the Premises Licence Holder and had also failed to return any of the Senior Licensing Officers calls. In addition to the above, the Senior Licensing Officer had confirmed that she approached the Police and the solicitor representing Mr Takhar in the Closure Order appeal, and both parties were unable to assist with an address.

The Sub-Committee considered the information provided and were advised with regard to the Licensing Act 2003 (Hearings) Regulations 2005, in particular Regulations 20 and 34. The Sub-Committee were satisfied that all attempts to contact the Premises Licence Holder had been made and agreed that the hearing would proceed in his absence.

The Licensing Team Leader presented the report and explained that a closure order had been issued by Peterlee Magistrates Court. Trading Standards had applied for the closure order following an investigation into the supply of illicit

tobacco products sold within the vicinity of the premises. The relevant Licensing Authority must review the premises licence following the issue of a Closure Order. Members were advised that the premises were licensed for off sales only Monday to Sunday 08.00 hours until 13:00 hours and Sunday 10:00 until 23:30 hours. The application was deemed relevant and advertised in accordance with the regulations.

During the short consultation period 2 representations had been received 1 from Trading Standards and 1 from Public Health. Members were asked to determine the application and were provided with the details of the options available.

There were no questions of the Licensing Officer.

The Licensing Enforcement Team Leader outlined the review application and that a Closure Notice was served on the premises on Monday 12 November 2018, under Section 76 of the Anti-Social Behaviour Crime and Policing Act 2014.

Members were advised that the premises are referred to as Lifestyle Express but are licensed as M & A General Stores.

She advised Members that in 2017 a previous investigation had been undertaken into a premises under the control of Mr Takhar for selling counterfeit goods which resulted in the revocation of the licence. On this occasion, Trading Standards acted on intelligence that illicit tobacco was being sold from vehicles outside of his premises on Middle Street. Surveillance was used as proof and warrants were executed for the premises, home address, vehicles and storage container and quantities of illicit tobacco were seized. It appeared that payments were being made within the premises and it was believed that the premises were associated with criminal activities.

Councillor Brown sought clarification if the DPS and the owner of the premises were related. Officers confirmed that they were husband and wife.

The Council's Solicitor sought clarification that sales were from vehicles outside the premises. The Licensing Enforcement Officer confirmed that the tobacco products were sold from vehicles and not from the premises itself.

The Team Leader (Special Investigations), Trading Standards then addressed Members and explained that the investigation commenced on the 20 July 2018 following intelligence that Mr Takhar was selling tobacco from vehicles outside the premises. The surveillance showed that Mr Takhar was supplying tobacco products from vehicles which were registered to him. Trading Standards noted that they did not appear to be an exchange of money but customers first entered the shop then approached the vehicle. Mr Takhar also had access to a container nearby.

A warrant of entry was obtained for the premises, container, vehicles and home address which led to the seizure of 8,800 cigarettes and 9.5 kg of tobacco which on examination were found to be counterfeit and were in breach of health warning regulations.

The total value of the products seized was between £3,250.00 and £3,690.00. Following the enforcement operation Mr Takhar was interviewed under caution and answered no comment to questions. Mr Takhar denied selling tobacco items and that they were in his possession for personal use as he was a heavy smoker.

The counterfeit products were a copy of a registered brand which were brought into the country illegally.

He then referred to the written representations of the Trading Standards Manager that highlighted various concerns regarding illegal tobacco being available to children more easily at 'pocket money' prices, although there was no evidence of children being supplied. He also referred to the adverse health effects, the knock-on effect of criminality in the area, the undermining of public health goals to reduce smoking and local businesses confirming that illegal tobacco causes them a serious nuisance and were losing out on significant revenue as a result of this activity taking place as it detracts people from purchasing genuine products.

The Team Leader (Special Investigations) continued that Mr Takhar had previously been involved with Trading Standards and prosecuted last year where they recovered counterfeit and illicit cigarettes and tobacco from Mr Takhar's premises at Vine Stores. Mr Takhar had indicated that the 4000 cigarettes and tobacco were for his own personal use but he pleaded guilty to the offence at court and was fined.

Trading Standards submit that illegal tobacco causes problems to the community and Mr Takhar's attempts to sell tobacco from his vehicle is an extra layer of concealment, to detract attention away from the premises. Trading Standards believe that there is an association with the premises and this is undermining the licensing objectives.

The Trading Standards Investigator then addressed the Sub-Committee and explained that this was an ongoing investigation but CCTV footage was available showing the sales from the vehicles outside the premises. He advised Members that if they wished to view the footage then it should be in private as the footage showed members of the public.

The Council's Solicitor advised Members that the CCTV footage could be viewed under Regulation 14 and request to exclude the public in order to view the footage.

Members agreed to the Regulation 14 request and all parties other than Members, Trading Standards Officers and the Council's Solicitor were invited to leave the meeting.

Prior to leaving the meeting the Licensing Team Leader asked Trading Standards if they had ever come across Mr Singh at the Premises. Members were advised that they had never seen the Premises Licence Holder at the premises but had seen the DPS.

All parties left the meeting at 12.00 Noon to allow the CCTV footage to be viewed. All parties returned to the hearing at 12.10 pm.

The Council's Solicitor advised parties that Members had viewed the footage from the 3 August 2018 and 5 September 2018. They had been given the opportunity to view further footage but indicated that they were satisfied with what they had seen.

Councillor Kennedy sought clarification if the boxes recovered were similar to those that could be seen on the footage being taken from the vehicle. Members were advised that a box consistent with that seen on the footage was recovered.

The Chairman sought clarification if the container was located near the premises or his home address. The Trading Standards Investigator confirmed that the container was located 200 metres from the shop premises.

The Council's Solicitor asked if the boxes were found at the home address. The Trading Standards Investigator confirmed that the boxes were found at Mr Takhar's home address.

The Public Health Practitioner then addressed the Sub-Committee and referred to his letter of submission on behalf of Public Health.

He referred to all tobacco kills but illicit tobacco causes additional problems to communities on many levels. The contents of illicit tobacco is not known and illicit tobacco provides an opportunity for young people to gain access to tobacco.

Illicit tobacco also causes crime to local communities and those people supplying illicit tobacco are frequently involved in other criminality such as illicit alcohol, illegal drugs and illegal money lending.

Illicit tobacco undermines the work of Public Health and cheap tobacco encourages smokers to keep smoking. Public Health believed the role of the premises licence holder and designated premises supervisor are positions of responsibility and they would support the application to review the premises licence.

There were no questions of the Public Health Practitioner.

At 12.20 pm the Sub-Committee Resolved to retire to deliberate the application in private. After re-convening at 12.45 pm the Chair delivered the Sub-Committee's decision.

In reaching their decision the Sub-Committee had taken into account the report of the Senior Licensing Officer, the written and verbal representations of the Licensing Authority, Trading Standards and Public Health. Members had also taken into account the Council's Statement of Licensing Policy and Section 182 Guidance issued by the Secretary of State.

Resolved: That the premises licence be revoked.