



LICENSING SUB-COMMITTEE

MEETING : Thursday, 29th July 2021

PRESENT : Cllrs. Finnegan, Walford and O`Donnell

Officers

Licensing Team Leader
Senior Lawyer, One Legal
Democratic & Electoral Services Officer

Also in Attendance

Senior Trading Standards Officer, Gloucestershire County Council
Trading Standards Service

Licence Holder, WAG 3
Solicitor, Fountain Solicitors (Representing the Licence Holder)

APOLOGIES : None.

1. ELECTION OF CHAIR

Councillor Walford was elected Chair.

2. WELCOME AND INTRODUCTIONS

Those present introduced themselves and the Chair outlined the procedure to be followed for the meeting.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. APPLICATION FOR DETERMINATION

Counsel representing the Licence Holder attended the meeting virtually after a Court date she had participated in Ealing overran. The Chair confirmed with her and the Licence Holder that they were content for her to represent her client virtually. Counsel representing the Licence Holder confirmed that she and her client were

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happy to proceed and, she thanked the Sub-Committee for allowing her to join virtually.

Licensing Team Leader's Report

The Licensing Team Leader presented the report inviting members to consider an application to review an existing Premises Licence in respect of WAG 3, 38 Bristol Road, Gloucester, GL1 5SD.

Statement of Gloucestershire County Council's Senior Trading Standards Officer

The Senior Trading Standards Officer stated that the reasonings for the application for a review of the Premises was contained within the report. He stated that Gloucestershire County Council Trading Standards were the responsible authority that had applied for a review of the Licence.

He stated that Trading Standards enforced legislation regarding the sale of illegal tobacco, which was tobacco that could not be legally sold. He said that the application laid out the pieces of legislation broken by the Licence Holder, which could attract a fine on summary conviction of up to 2 years imprisonment.

He said that the sale of illegal tobacco was in the top 5 areas of work that Trading Standards were attempting to deal with. He stated that, unfortunately, Gloucester had numerous premises which sold illegal tobacco, though most did not have a Licence to sell alcohol.

He stated that illegal tobacco was far cheaper than the legal equivalent. He said that the consequence of this was that it made it more accessible to people who would otherwise be encouraged to give up smoking. He added that, the Government purposefully have tobacco at higher prices to encourage people to give up.

He said that another consequence of the sale of illegal tobacco was that it damages trade for Businesses within the City who were operating fairly.

He said that illegal tobacco had no duty paid on it. He said that the excise duty payable on 20 cigarettes was currently £6.42.

He said that regarding the sale of counterfeit and often smuggled tobacco products, consumers were being misled into believing that they were purchasing legal brands such as Richmond, when they were being given low-quality tobacco.

He said that cheap white cigarettes were made for smuggling and that they had no legitimate market.

The Senior Trading Standards Officer pointed to the revised guidance issued under Section 182 of the Licensing Act 2003.

'It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will

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use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered'

He said that Trading Standards decided to investigate Wag 3 after receiving intelligence that they may be selling illegal cigarettes. He stated that a person was sent for a test purchase into the shop in March 2021 and enquired after 'cheap polish cigarettes'.

He stated that the Licence Holder replied that they had a pack of 'Cheap Richmond cigarettes' for £6.00.

The Senior Trading Standards Officer stated that after investigating the purchased packet of cigarettes, he believed that they were counterfeit. He showed the packet to those present at the meeting. He stated that the package did not contain the warnings required by law on the packet. He further added that they could not have had duty on them as the duty cost more than what the cigarettes were sold for.

He stated that following the first test purchase, it was decided to conduct a second test purchase on the 14th of April, 2021. He stated that the test purchaser again purchased a pack of 'Cheap Richmond' cigarettes for £6.00, and the packaging was identical to the first test purchase. He stated that after the second failed test purchase, a third test purchase was conducted on the 20th of April 2021. He stated that the test purchaser on this occasion was informed by the male behind the counter that he did not have any cheap cigarettes but may have some the following day.

He stated that on the 21st April 2021 a Trading Standards Inspection was carried out at WAG 3 for the purpose of identifying and seizing any illegal tobacco suspected of being in possession for sale. He stated that the Licence Holder was on his own behind the counter. The Senior Trading Standards Officer stated that the inspection identified two packets of illegal cigarettes under the counter.

The Senior Trading Standards Officer stated that on the discovery of the illegal cigarettes the Licence Holder informed him that the illegal cigarettes were not for sale and that he did not sell them. The Senior Trading Standards Officer stated that he, therefore, asked for CCTV to investigate the matter, which Trading Standards had the authority to do. He stated that the Licence Holder informed him that he could not access the CCTV as his business partner knew the code for the CCTV but was in Pakistan and that he could not get in contact with him.

He stated that alongside the discovery of illegal cigarettes, the following breaches of the Licence were discovered:

- There was no refusal log;
- The Challenge 25 poster in the premises was obscured by a product display. The Licence Holder was unclear as to whether he understood the Challenge 25 policy;

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- The statutory tobacco notice required under the Children and Young Persons (Protection from Tobacco) Act 1991 stating that “It is illegal to sell tobacco products to anyone under the age of 18” was not on display.

The Senior Trading Standards Officer stated that after multiple attempts to get the password from the Licence Holder, on the 11th of May, 2021, after several hours of work, the Senior Trading Standards Officer managed to obtain a password reset code from the manufacturer of the CCTV system and reviewed footage from the shop. He noted that the time listed on the CCTV footage was one hour slow.

He stated that he located the CCTV footage of the first test purchase. He stated that the footage confirmed the sale of illegal tobacco in the form of a test purchase and pointed to a still image (RC5) contained in the report demonstrating this fact. He stated that he subsequently did the same for the second test purchase.

He said that following confirming of the failed two test purchases on CCTV from April and March, the Senior Trading Standards Officer watched an entire day of footage from April 14th which showed the Licence Holder taking illegal cigarettes out of a sports bag and proceeding to sell numerous packs of illegal tobacco.

The Senior Trading Standards Officer noted that there was an error contained within his report. He stated that an image included in the report (RC11) showed a packet of Gold illegal cigarettes being handed over to a customer. He said that on this occasion, the pack of cigarettes photographed in RC11 were handed back to the Licence Holder and that they were not the cigarettes the customer walked off with.

The Senior Trading Standards Officer said that on the 21st April 2021 a male who looked younger than 18, and ‘certainly’ younger than 25 obtained cigarettes.

The Senior Trading Standards Officer stated that there was further evidence of severe breaches of the Licence on July 7th and asked the Chair whether he could introduce the evidence.

After consulting Counsel representing the Licence Holder, the Chair stated that the additional piece of the evidence not contained within the report should not be viewed by members of the Sub-Committee nor introduced into the meeting as Counsel representing the Licence Holder and the Licence holder had not been given due time to evaluate and respond to the evidence.

The Senior Trading Standards Officer concluded by stating that the Licence Holder had failed two test purchases. That there was CCTV evidence of the sale of illegal tobacco after the review of a day’s footage from the 14th April 2021. That the Licence Holder had failed to provide CCTV, which was a breach on the Licence. He noted that he believed that the Licence Holder had been deliberately obstructive regarding the failure to provide CCTV, as he knew that it contained evidence of the sale of illegal tobacco. He stated that when the report was written, the Licence Holder had denied that there had been a sale of illegal tobacco, despite CCTV evidence demonstrating that he had. He stated that a person cannot accidentally purchase illegal tobacco and that no legitimate sellers do so. He said that he was

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unaware as to why the Licence Holder sold illegal tobacco, but the fact was that he had. He stated that a condition of the Licence was that CCTV should be provided when requested by a responsible authority. He said that there was no refusal log at the shop, single cigarettes had been sold, that there had been sales of illegal tobacco, that there was no Challenge 25 policy being enforced and that the Challenge 25 poster was obscured. He stated that he had little faith that the Licence Holder could comply with further Licence conditions, should he or his Counsel propose them.

The Chair asked Counsel representing the Licence Holder whether she, or her client sought clarification on any aspect of the statement of the Senior Trading Standards Officer.

Counsel representing the Licence Holder stated that they sought no clarification.

The Chair asked Members whether they sought any clarification on the report.

Councillor Finnegan and O'Donnell sought no clarification on the report.

The Chair asked the Senior Trading Standards Officer whether Richmond cigarettes were sold in the country.

The Senior Trading Standards Officer responded by stating that Richmond was a legitimate brand. However, he believed that the cigarettes sold under the counter had counterfeit packaging and were not Richmond cigarettes.

Statement of the Licence Holder

Counsel representing the Licence Holder pointed to Appendix 1 of the report and noted that the Licence had been renewed in November 2020. She stated that it was evident that, prior to the Licence breaches in March and April of 2021, there was no evidence that there were any issues before or after this period. She stated that her client had undergone training, so understood the terms of the Licence and that he understood what the Challenge 25 policy was. She said that there was an acceptance on her client's part that there had been sales of non-legal tobacco substances. She stated that her client had stated that he had been given some packs of 20 and that he had made the mistake of deciding to try and get rid of them by selling them to customers who did not have enough to purchase expensive cigarettes. She reiterated that her client understood that he should not have sold the illegal cigarettes. She stated that the video evidence demonstrated that the Licence Holder was not operating a large scale illegal tobacco selling operation and that by her calculations, over the course of a two day period, there were a total of 4 illegal packs of cigarettes sold, and a couple of individual sales. She stated that the Licence Holder was sorry for the offence and that it would not occur again.

Regarding the difficulties surrounding accessing the CCTV, she stated that the Licence Holder's business partner was in an outer region of Pakistan and was difficult to contact. She stated that the Licence Holder was not trying to frustrate the process of the Senior Trading Standards Officer of accessing the CCTV. She stated that it was just unfortunate timing as the Licence Holder's business partner was in Pakistan.

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She stated that her client understood that he had made a mistake. She stated that the Challenge 25 poster had been obscured at the time of the Trading Standards visit as there was a pile of deliveries that had just come in, which obscured the poster. She stated that had the inspection occurred on a different day, the Challenge 25 poster would have been visible. She stated that the sign was no longer obscured.

She stated that regarding the lack of a refusal logbook, there was an acceptance that there was not a refusal logbook but that this had been rectified and there was one now. She stated that a poster saying that it was illegal to sell tobacco to persons aged under 18 was displayed clearly.

Counsel representing the Licence Holder stated that the Licence Holder had had a licence for a long time without any issues, that he had training and was fully aware of the Challenge 25 policy. She stated that posters were in the shop and were visible to customers and that the evidence showed that he had not sold copious amounts of illegal cigarettes and understood that he had made a mistake.

She stated that she was not trying to minimise his behaviour, but he was by no means a 'criminal mastermind'.

The Chair noted that a condition of the Licence was to always have someone on site during opening hours who could access CCTV. He asked what would be done to ensure that this was the case in the future.

Counsel representing the Licence Holder replied that this situation had been rectified and that the Licence Holder now had the codes to access the CCTV. Therefore, the Licence Holder would be able to access the CCTV when required.

Councillor Finnegan asked the Licence Holder why he sold single cigarettes, particularly with the potential of cross infection during the COVID-19 pandemic.

The Licence Holder replied that he had not sold single cigarettes and that the single cigarette he had given was to a shop worker next door was his own personal one. He added that he took money from the customer as she could not afford an entire packet.

The Chair noted that the Licence Holder had admitted to selling counterfeit cigarettes on a small scale, the reasonings behind not displaying adequate signage and why CCTV was not provided when originally requested.

The Licence Holder stated that he tried to get the code to the CCTV on the same day as he was asked to by the Senior Trading Standards Officer. He added, however, that he did not get a response from his business partner until June 20th. He stated that he had sold illegal cigarettes and was sorry for this. He stated that he would follow all terms of the Licence going forward. He added that all signage was in the correct place.

The Chair asked the Senior Trading Standards Officer whether he would pursue prosecution in the future.

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The Senior Trading Standards Officer replied that they were not considering that option at the current time and that a review at this point was the preferable option, though he would not rule any option out.

Councillor O'Donnell asked the Licence Holder whether he owned the shop with his business partner.

The Licence Holder replied that this was correct.

Gloucestershire County Council's Senior Trading Standards Officer Sum Up

The Senior Trading Standards Officer noted that Counsel representing the Licence Holder stated that he had been on training to get the Licence and had been told what he could and could not do, and that he had not done so. He stated that he was not a 'tobacco mastermind' as highlighted by the Licence Holder's counsel but he had sold illegal cigarettes. He stated that the Licence Holder had claimed that he had not sold single cigarettes and that it was his personal cigarette, but that he had put the money in the till which showed this statement to be inaccurate. He stated that regarding the lack of visibility of the Challenge 25 Policy poster, this was not obscured by stock but by an aftershave display, as evidenced in picture RC5 in the report.

Licensing Team Leader Sum Up

The City Centre Improvement Officer outlined the options available to the Sub-Committee detailed in paragraph 7.4 of the report.

Licence Holder Sum up

The Licence Holder stated that it was the first and last time he would breach conditions of the Licence and that he was sorry. He stated that he was aware of the rules, that he had made a mistake and that he wanted one chance for his business. He said that if his Licence were taken away from him, then he would lose his business. He asked the Committee for one chance.

Counsel representing the Licence Holder stated that she reiterated what her client had just said. She stated that he had accepted wrongdoing and rectified the issues that had led to the necessity of a Sub-Committee. She stated that the Licence Holder was a gentleman who had learnt from his mistake.

The Decision

The Sub-Committee having considered the request of a review of the premises licence of WAG 3, 38 Bristol Road, Gloucester, GL1 5SD under section 51 of the Licensing Act 2003, after having undertaking a hearing and considering all of the relevant representations has resolved: -

To issue a general warning about how the Licence Holder conducts his business and suspend the licence for a period of 21 days.

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The Sub-Committee say that this is the appropriate outcome in this case because of the following: -

The Sub-Committee did not believe taking no action was appropriate given the seriousness of selling illegal tobacco, but it did not think that revoking the licence was proportionate in the circumstances.

The Sub-Committee realises that the breaches were over a short period of time but at the first instance there was a blatant denial that the illegal tobacco was being sold and it appears that it was only after the CCTV was accessed that the admission was made.

Furthermore, the Sub-Committee saw no need to remove the DPS given the sincerity and promises made by the Licence Holder this evening.

The Sub-Committee was unable to think of any suitable modifications to the conditions as already drafted the current conditions if complied with deal with every eventuality.

The Sub-Committee believe that people should be given the opportunity to prove themselves but if that opportunity is then thrown back in the Council's face then a harder view will be taken next time.

The Sub-Committee would ask the licencing team and trading standards to make ad hoc visits to view the CCTV over the next three months.

Right of appeal

All parties are reminded that there is a right of appeal to the local Magistrates' Court within 21 days of formal notification of this decision.

Time of commencement: 6.00 pm hours

Time of conclusion: 7.20 pm hours

Chair