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Our ref: CA/LIC
Date: 8th April 2022

SPELTHORNE BOROUGH COUNCIL

DECISION NOTICE

In accordance with

Date of Licensing Sub-Committee: 4th April 2022

Applicant: Amanda Poole, Assistant Head of Trading Standards

Application: Review of Premises Licence

Designated Premises Supervisor: Mr Mandeep Singh Soni

Licensed Premises: Sunbury Food and Wine, 13 The Parade, Staines Road West, Sunbury-On-Thames TW16 7AB

REASON FOR HEARING: Application for review of premises licence under section 87 of the Licensing Act 2003

DECISION

The application for the review of the Premises Licence is granted with revocation of the Premises Licence with effect from 4th April 2022

SPELTHORNE BOROUGH COUNCIL

LICENSING SUB-COMMITTEE REASONS FOR DECISION 4th April 2022

1. The Sub-Committee followed the procedural guidelines attached to the agenda, considering all of the evidence, which included the following:-
 - The contents of the Report dated 4th April 2022, together with appendices A to G (“the Report”)
 - Representations by Ian Smith of Surrey Trading Standards
 - Representations by Sergeant Ali Dunlop of Surrey Police
 - Representations by Jacquie Clark of Surrey Police
 - Representations by Principal Licensing Officer, Lucy Catlyn
 - Representations and responses from Mr Panchal of Personal Licence Courses Limited on behalf of Mr Mandeep Singh Soni
 - Spelthorne Borough Council Statement of Licensing Policy
 - National Guidance on Reviews issued by the Secretary of State under s182 of the Licensing Act 2003

Background

2. The Sub-Committee considered all the background information provided in the Report dated 4th April 2022.
3. Mr Mandeep Singh Soni is the Designated Premises Supervisor (“DPS”) of the newsagents known as Sunbury Food and Wine located at 13 The Parade, Staines Road West, Sunbury-On-Thames TW16 7AB. Mr Soni has held the status of DPS since 10th November 2010. The premises benefits from a premises licence issued by Spelthorne Borough Council on 7th March 2006 permitting the sale of alcohol between the hours of 9am to 10pm on weekdays and 10am to 10pm on Sundays.
4. Following a test purchase operation carried out by Trading Standards and Surrey Police on 19th September 2020 at Sunbury Food and Wine, two test purchasers under the age of 18 years were sold a box of Nitrous Oxide canisters and balloons. Mr Soni was also found to be in possession of various counterfeit tobacco and alcohol, together with cannabis related products.
5. On 23rd September 2020, Mr Soni voluntarily attended interview.
6. On 19th January 2022, before High Wycombe Magistrates, Mr Soni pleaded guilty to six offences:-
 - 1 count under the Psychoactive Substances Act 2016
 - 2 counts under Trademarks Act 1994

- 2 counts under Tobacco and Related Products Regulations 2016; and
 - 1 count under the Standardised Packaging of Tobacco Products Regulations 2015.
7. The Magistrates considered the offence under the Psychoactive Substances Act 2016 to be the most serious and looked at his offending in the totality when considering sentence. Mr Soni was sentenced to an Individual Community order for 12 months to complete 160 hours unpaid work, plus a victim surcharge of £95. His company GIM Enterprises Limited faced mirror charges to which guilty pleas were also entered and the company was fined £100 (reduced because of the limited operating profit of the company), plus a victim surcharge of £34.
 8. On 14th February 2022, Amanda Poole, Assistant Head of Trading Standards asked the authority to review the premises licence in accordance with s87 of the Licensing Act 2003 on the basis of the licensing objectives concerning the prevention of crime and disorder and the protection of children from harm. Surrey Police also made a representation on 11th March 2022 in support of a review of the premises licence.
 9. The written representation from Trading Standards detailed that NZ brand cigarettes, which are not legitimately available for sale in the UK, were found behind the till area in the premises. The cigarettes were not presented in packaging required by UK law and has no indication that duty had been paid on them. The cigarettes were of a type commonly smuggled. Benson and Hedges cigarettes concealed in an inflatable tower were found to be counterfeit and were also likely to be smuggled in contravention of s144 of the Licensing Act 2003. Canisters containing Nitrous Oxide together with balloons were sold to two test purchasers, both 17 years of age, indicating a disregard of the seller for the welfare of young customers.
 10. During the licensing sub-committee hearing conducted on 4th April 2022, the sub-committee heard and considered oral representations made on behalf of Surrey Trading Standards by Ian Smith, and on behalf of Surrey Police by Sergeant Ali Dunlop and Jacquie Clark (Licensing Officer) and from Mr Soni who was represented by his licensing agent, Mr Panchal of Personal Licence Courses Limited.

Oral Representations

Surrey Trading Standards

11. Ian Smith represented Surrey Trading Standards at the sub-committee hearing. He explained to the sub-committee that Trading Standards had applied for a review of the premises licence following a joint operation by

Trading Standards and Surrey Police Mr Soni supplied narcotic substances to 2 persons under the age of 18 years. Counterfeit tobacco and alcohol were found concealed behind the till area in the premises in boxes purporting to hold something else. When he was interviewed, Mr Soni explained that he would buy items from people that came into the shop and would not ask too many questions or gain receipts or other proof of purchase. Trading Standards is concerned that Mr Soni was well aware of what he was doing and was an unfit person to hold a licence.

12. Upon questioning by Mr Panchal, Mr Smith confirmed that on a subsequent inspection of the premises on 19th September 2021, further illicit tobacco was seized.
13. In answer to questioning by the sub-committee members, Mr Smith confirmed that he had 30 years' experience in trading standards. He confirmed that intelligence was used to do such operations which typically run 2 to 3 times a year. If intelligence suggests certain premises are worth attention, then Trading Standard go and visit with sniffer dogs. The test purchase operation was specifically for Nitrous Oxide. The findings are summarised in the photographs appended to the report, when they spoke to Mr Soni, he said he was not aware that what he did was wrong.

Surrey Police – Sergeant Ali Dunlop

14. On 19th September 2020, two officers and two cadets carried out a test purchase operation for Nitrous Oxide. Two cadets went into the premises and within 5 minutes they had purchased Nitrous Oxide canisters and a bag of balloons. Thereafter a search was conducted of the premises. Mr Soni made representations that he was not aware that what he was doing was wrong. A number of items were seized, Mr Soni said the DVDs found belonged to a customer. A further visit was carried out by the police's Licensing Enforcement Officer
15. In answer to questioning from Mr Panchal, Sergeant Dunlop confirmed that Jacquie Clark, Licensing Officer, visited the premises on 9th February 2022.
16. Upon questioning by the sub-committee members, Sergeant Dunlop stated that she was aware of the problems that Nitrous Oxide canisters bring to the community Referencing her witness statement submitted to the Licensing Authority during the consultation period, she confirmed that the sale of nitrous oxide was legal when sold for a legitimate use such as catering purposes. However, its recreational use can lead to an addictive psychoactive effect and sale for such purposes was illegal. Consequently, Nitrous Oxide can kill if inhaled or cause brain/physical harm. Children as young as 11 or 12 inhale it and are at risk because of the additive psychoactive effects. The Council provides a number of canister bins for their disposal, but people just throw them onto the road. A lot of littering occurs as a result of their use.

17. It was confirmed that the visit to Mr Soni's premises was based on intelligence received that he was selling Nitrous Oxide and attracting youths to the premises, causing people to congregate to purchase Nitrous Oxide and causing anti-social behaviour. It's known as a 'honeypot' – attracting people for congregation. The sale of Nitrous Oxide for inhalation is an offence. The police fully support the application to revoke the licence.

Surrey Police – Jacquie Clark

18. In response to a question from Mr Panchal, Jacquie Clark explained that she had visited the premises on 9th February 2022 with a police constable. Mr Soni was working on the premises. The licence summary was displayed but he could not produce his premises licence and could not tell her any of the conditions. She advised Mr Soni to contact Spelthorne Borough Council to get a copy. He also could not produce his personal licence. They'd had previous issues with CCTV on that site in 2021 and were concerned as they had not been able to gain evidence as the CCTV was turned off. Inspector Clark also confirmed that she had queried whether Mr Soni had notified his conviction to the London Borough of Hounslow - the Authority which had issued his personal licence. Mr Soni advised that he had not informed them about the conviction. Inspector Clark advised him that he was required to notify them of the conviction as soon as possible.

Mr Panchal on behalf of Mr Soni

19. The shop has been run by Mr Soni for 11 years, not a recent time. Only recently has there been a breach involving canisters and cigarettes which were caught in 2020. For 9 years there was no breach, until 2020 when Mr Soni says everyone else was doing it. There was a problem during the Covid period. He got carried away. Mr Soni realises he has made a mistake and immediately when he was caught, he co-operated and was honest. He did not run away from the consequences of his actions. He has to support 3 kids to support and employs staff. He was caught by trading standards, has co-operated with trading standards and went to court. During interview he did not lie. He realised it was not what he should be doing. He has explained to Mr Soni that the way forward is to promote the four licensing objectives. Mr Panchal expressed an opinion that during his last visit to the premises, Mr Soni was promoting the four licensing objectives.
20. Mr Panchal has 20 years' experience in the licensing trade looking after ethnic minorities. He offers a service in different languages, English is compulsory. He has drafted proposed conditions, which have been submitted in advance to the Council's Licensing Service. There are no conditions on the current licence. The new conditions are proposed by Mr Panchal on behalf of Mr Soni to tighten the licence further to put on

conditions so that Mr Soni understands those conditions and co-operates. His firm has supplied Mr Soni with a proper incident book. Mr Soni immediately ordered a replacement for his missing premises licence.

21. Mr Soni has already served community service and a fine, they propose a 3 week suspension of the premises licence which would be a financial hit, alongside conditions to being things back to normal. It's a family business, Mr Soni is proposing to change the DPS to someone else. He wants to co-operate with authorities, he has a shop in the borough and wants to make sure he works with the community. They are not here to argue what happened during that period, just the way forward.
22. In response to a question from Ian Smith, Mr Panchal confirmed that Mr Soni employs one member of staff. His family help the business as and when required.
23. Sergeant Ali Dunlop sought clarification on the statement made by Mr Panchal that Mr Soni's licence has no conditions, as the licence has mandatory conditions. Mr Panchal confirmed he meant to say they are imposing more stringent conditions, not that there were no conditions.
24. In response to questions from Jacquie Clark as to who the new DPS might be and how long would they be at the premises, Mr Panchal commented that the next option is Mr Soni's 21 year old daughter who would be there at the normal time, during the day to day running of the shop. It became apparent during discussions that there was the option of appointing a full-time staff as DPS. Alternatively, Mr Soni's daughter was proposed for the position of DPS although she was not expected to be present on the premises daily.
25. Jacquie Clark asked further if Mr Soni had updated Hounslow Borough Council regarding the conviction in respect of his personal licence as she advised him to do so on 9th February 2022. Mr Panchal said it would be updated. It transpired that to date, Mr Soni had not notified Hounslow Borough Council of his conviction despite being advised to do so. .
26. She also asked if Mr Soni would have a refusal book which is bound and numbered as she often found in practice that loose leaf books tend to lose pages. Mr Panchal confirmed his client had a refusal book which is bound and numbered. Mr Panchal was also asked if Mr Soni would have CCTV at the front and back of the shop, which he confirmed he would. Jacquie Clark encouraged Mr Soni to report all incidents to Surrey Police.
27. Mr Panchal was asked by the sub-committee why his client stored Nitrous Oxide canisters at the premises. His response was that they are intended to be used for cake making.

28. The sub-committee questioned why Mr Soni was storing counterfeit cigarettes and alcohol. Mr Panchal said his client admitted that a person came to him and said everyone else was doing it. His client consequently decided to also sell the products. He admits he was wrong to take it and he made a mistake.
29. The sub-committee questioned why Mr Soni was storing/selling cannabis lollies. Mr Soni replied himself that everyone was selling them. Mr Panchal adds that during the period of 9 years trading his client never went on the other side of the law. In 2020, when the shops closed, Mr Soni did not know what to do. An unidentified and unknown person came in the shop and advised Mr Soni that everyone else is selling cannabis lollies. Mr Panchal advised that Mr Soni got carried away and agreed to stock and sell them., Mr Soni admits his actions and regrets his choices and their consequences. He confirms that there has been press reporting of his conviction. He wants to move forward in a manner that upholds the licensing objectives and expressed remorse.
30. When the sub-committee queried why the test purchasers were not asked for ID when purchasing nitrous oxide and a balloon, Mr Panchal explained that the product was not cigarettes or alcohol which carried an age restriction for sales. Mr Soni added they were tall and he thought they were 21 years old and he would normally always ask.
31. The sub-committee asked Mr Panchal to elaborate on how his client trains his staff to challenge for identification of underage purchasers of alcohol. Mr Panchal said the premises follows the Challenge 25 Scheme. His firm have handed Mr Soni a training manual and one member of staff will get training from them, prior to attaining a new personal licence.
32. The sub-committee questioned what percentage of the shop sales are attributed to alcohol and how is alcohol displayed in the shop? Mr Soni replied 60% of shop sales are attributed to alcohol which is stored on shelves behind the till.
33. The sub-committee finally sought further clarification as to whether the Hounslow Borough Council had been informed as to the conviction. Mr Panchal confirmed that his company had now written to the authority. His firm would take over the training requirements of Mr Soni and his staff.

Adjournment

34. The sub-committee took an adjournment of 20 minutes to review and consider the conditions proposed by Mr Panchal on behalf of his client, Mr Soni.

Findings

The prevention of crime and disorder and the protection of children from harm

35. The licensing sub-committee has carefully considered all the evidence before it, including written and verbal representations, together with its Statement of Licensing Policy and the Secretary of State's Guidance issued under the Licensing Act 2003. It is mindful of its duty to promote all the licensing objectives and particularly in this case: the prevention of crime and disorder and the protection of children from harm.
36. The sub-committee is mindful the submissions by the Applicant for Review and the Responsible Authority. The sub-committee has also noted the remorse expressed by the Premises Licence Holder.
37. The Councillors have noted the flagrant disregard for the law that has been demonstrated by the wilful actions of the Premises Licence Holder. The Councillors note that these wilful actions have resulted in convictions for 6 contraventions of the law. Despite these criminal convictions, the Councillors note that the Premises Licence Holder failed to demonstrate his desire to comply with legislation by failing to report his criminal convictions to London Borough of Hounslow. This failure to report the convictions was despite being advised to do so by Surrey Police on 09 February 2022.
38. Additionally, the sub-committee noted that Mr Soni had displayed a total disregard for the safety of the public and especially children by selling dangerous products that can be harmful to people who use them and by storing and selling counterfeit tobacco.
39. Turning to Mr Soni's explanation about the presence of nitrous oxide and its sale, the sub-committee is of the opinion that the quantity of nitrous oxide would have implied significant demand for cake making. However, the storage nitrous oxide in a concealed manner did not indicate sales related to cake making as suggested by the Premises Licence Holder.
40. The failed test purchase of nitrous oxide together with a balloon indicated the real reason for stocking nitrous oxide was for it to be sold for usage as a recreational, highly addictive drug. The manner of its storage pointed to a deliberate act by the Premises Licence Holder to hide the illegal sale of nitrous oxide.
41. It is enshrined in Spelthorne Borough Council's licensing policy that licence holders will demonstrate knowledge of best practice, an understanding of the legal requirements of operating a licensed business and a knowledge and understanding of the licensing objectives and their responsibilities under the Licensing Act 2003. National Guidance sets out that the sale or storage of smuggled tobacco and alcohol must be treated as particularly serious criminal activity. There is no doubt that the presence of such items in the premises had undermined the

licensing objectives of the prevention of crime and disorder and the protection of children from harm.

42. Having established that there had been breaches of the licensing objectives, the Sub-Committee reviewed the conditions proposed by the Premises Licence Holder's Agent. The Sub-Committee note that they number more than 20 and have been suggested as an alternative to revocation of the premises licence.
43. Some of these conditions have already been met. For example, the Premises Licence Holder does have CCTV on the premises. However, when the premises were inspected by the Responsible Authority in February 2021, it transpired that the CCTV had been switched off some time previously by the Premises Licence Holder.
44. The Sub Committee notes that the presence of CCTV on the premises is intended to aid Responsible Authorities in their investigations. If the CCTV system is capable of being switched off/manipulated at will by the Premises Licence Holder; the effectivity of having a CCTV system to prevent and/or detect crime is diminished.
45. The sub-committee considered the proposal to change of DPS to the 21 year old daughter of the Premises Licence Holder. They found that her relationship to the existing premises licence holder and her reduced presence at the premises would be unlikely to provide the independent, steadfast management required to uphold the licensing objectives.
46. Finally, despite being convicted on 6 counts of criminal activity, the sub-committee notes that the Premises Licence Holder has subsequently failed to comply with Section 132 of the Licensing Act 2003 despite being advised by Surrey Police in February 2022 of the actions required to comply with the legislation.
47. Mr Soni's unlawful conduct and the illicit nature of his trading raised serious concerns with the sub-committee who are left with no confidence in his ability to manage the licensed premises in a way that upheld the licensing objectives. The breaches of law were so serious in the sub-committee's view, that the proportionate response was revocation rather than the imposition of any conditions placed on the premises licence.
48. The sub-committee were satisfied that no conditions could be imposed on the licence to promote the licensing objectives, given the evident serious mismanagement of the premises from the failures to comply with the law on not having for sale illicit counterfeit tobacco products nor nitrous oxide canisters. Members had no confidence that there was any other course of action that would satisfy, maintain and uphold the licensing objectives as there was a clear lack of confidence in Mr Soni, as the premises licence holder, to uphold such licensing objectives after he had demonstrated a total disregard for upholding the law.

49. In reaching its decision, the sub-committee found there were clear issues of crime and disorder and issues over the protection of children from harm.
50. Based on all the evidence before it and minded that the prevention of crime and disorder and the protection of children from harm are paramount, the Sub-Committee decided unanimously that it was both necessary and proportionate for the premises licence to be revoked.

Decision

51. **The application for a review is granted and the premises licence is revoked with immediate effect.**
52. You have a right to appeal this decision to the Magistrates' Court under Section 300 Public Health Act 1936, within 21 days of receipt of the Notice of Decision letter. If you decide to appeal, you will need to submit your appeal to Guildford Magistrates Court. You should allow sufficient time for your payment of the relevant appeal fee to be processed. For queries, Surrey Courts Administration Centre can be contacted on 01483 405 300.

Councillors: R.W. Sider BEM (Chairman), C.L Barratt, S.M. Doran

Date of Decision: 4th April 2022

Date of Notice: 8th April 2022