

Coventry City Council
Minutes of the Meeting of Licensing and Regulatory Sub-Committee (Hearing)
held at 10.00 am on Monday, 2 September 2019

Present:

Members: Councillor J Birdi
 Councillor J Clifford
 Councillor C Thomas

In attendance: Aziz Fatah (Licensee)
 Terri Hill (Representative)
 Alan Harwood (Review Applicant – Trading Standards)

Employees (by Directorate):
 Place: J Glover, R Masih, C Sinclair, B Welch, A Wright

Public Business

1. **Appointment of Chair**

Councillor C Thomas was appointed Chair for the meeting.

2. **Apologies**

There were no apologies.

3. **Declarations of Interest**

There were no declarations of interest.

4. **Licensing Act 2003 - Application to Review a Premises Licence**

The Sub-Committee considered an application to review a Premises Licence in respect of Bucharest (also known as Bucuresti), 490a Foleshill Road, Coventry CV6 5HP.

The review had been called by Trading Standards on the basis that the licensing objective of Prevention of Crime and Disorder had been undermined by virtue of criminal activity on the premises.

The Sub-Committee's statutory duty was to consider the application and any representations and to take such steps as contained in the Licensing Act 2003 as it considered appropriate for the promotion of the licensing objectives.

At the outset of the hearing, the Licensee confirmed that he had read and understood the papers. He had no further documents to produce and would not be calling any witnesses. He had brought his wife, Terri Hill, with him to act as his representative.

The Licensing Officer, Ms Glover, presented the report to the Sub Committee. The Review Applicant, Mr Harwood of Trading Standards, was then given the opportunity to present his case.

The Review Applicant began by explaining that the premises was known as "Bucharest" as well as "Bucuresti", and there had been a name change between seizures of illicit cigarettes at the premises. The Review Applicant also explained that a Premises Licence transfer application was made and granted on 9th January 2019 in the name "Bucharest". The transfer documentation was produced by an agent and dated 4th December 2018. A further name change from "Bucharest" to "Bucuresti" was made and granted on 22nd January 2019.

The Review Applicant explained that the review was being sought on the basis of criminal activity at the premises, namely the discovery of illicit cigarettes on three separate occasions over a seven-week period.

Officers attended the premises on 5th December 2018 with a sniffer dog to conduct an inspection. The Licensee was present at the premises and was behind the counter when officers arrived. At the rear of the shop, the sniffer dog indicated the presence of tobacco and an elaborate hiding place was discovered. The Sub Committee were invited to look at Appendix 1, and the Review Applicant explained that the door frame could be pulled out to reveal some shelving units.

The Review Applicant stated that it was clear from the marks on the skirting board that the frame had been pulled out a number of times. On this occasion, 276 packets of cigarettes were seized. These were a mixture of counterfeit and smuggled (non-duty paid) cigarettes. The Review Applicant estimated the illicit street value to be around £1,242.00. He explained that if they were genuine cigarettes they would be sold for approximately £2,760.00.

Following this inspection, Trading Standards decided to conduct a test purchase to establish whether illicit cigarettes were being sold from the premises. The test purchase took place on 16th January 2019, when an illegal packet of L&M cigarettes were successfully sold to an officer.

The Review Applicant explained that a further inspection took place on 26th January 2019, again with the sniffer dog. Once again, the sniffer dog indicated the presence of tobacco in the rear store room. The Sub Committee was invited to look at Appendix 2 and the Review Applicant explained that this hiding place comprised of three shelves. The bottom shelf had a false back that slid upwards and revealed illicit cigarettes. A number of items were placed in front of the false back to further conceal the cigarettes.

A total of 88 packets of illicit cigarettes were seized on this occasion (a mixture of counterfeit and smuggled cigarettes). The illicit street value was approximately £396.00, and the price had they been genuine would have been in the region of £880.00.

The Licensee was interviewed under PACE and maintained that he did not become the owner of the business until 31st December 2018. He said he was not the licensee or owner during the first seizure on 5th December 2018. However, the Review Applicant pointed out that on this date, he was present behind the counter

and the transfer application in his name was dated 4th December 2018 (although it was not submitted until 9th January 2019).

The Review Applicant said he believed the Licensee had more involvement than he provided in his answers during interview. The Licensee had stated in interview that the cigarettes found belonged to the old owner and he had no knowledge, to which the Review Applicant questioned why the previous owner would leave such valuable stock behind. Further the Review Applicant said that the dog handler was clear that had the second concealed compartment been in existence on 5th December 2018, the dog would have discovered it. That means the second compartment must have been created some time between 5th December 2018 and 26 January 2019.

The Review Applicant submitted that the two seizures and test purchase, particularly in a short space of time, indicated significant criminality and asked the Sub Committee to consider that this could only mean that the Licensing Objective of Prevention of Crime and Disorder had been undermined. The Review Applicant stated that the Licensee had given no account to date that was credible.

The Sub Committee thanked the Review Applicant for providing such a thorough presentation of evidence and confirmed they had no questions for him.

The Licensee was then given the opportunity to present his case with the help of his Representative.

The Licensee explained that on 5th December 2018 he was training to take over the shop, which belonged to his friend. When officers came in, another person was also working in the shop who he had only met that morning. They were working together. When officers discovered the cigarettes, he was surprised as he had no clue they were there.

The Licensee explained that the previous owner had left him in debt and gone to Iraq. He had been unable to contact him since he left.

The Licensee described himself as working hard for 15 years to provide for his wife and three children. He said he had no criminal record and had never been in trouble in this country. He maintained that the cigarettes belonged to the old owner and he was unaware of their existence.

The Representative continued that the Licensee would 'hold his hands up' to the seizure and test purchase in January as he had taken over control by that time and was responsible for the running of the shop. However, he did not know about the illicit cigarettes and had not authorised their sale from his shop. The Representative described the Licensee as being sorry that the cigarettes were found in his shop.

The Licensee finished by saying no illicit cigarettes would ever be found in his premises in the future, and he would never be in front of the committee again.

The Sub Committee were invited to ask questions and stated they had an issue with the second seizure of cigarettes on 26th January 2019, as the Licensee was denying knowledge of any cigarettes, but the evidence of the Review Applicant

was that the cigarettes discovered on 26th January could not have been there on 5th December 2018. The Licensee answered that he did not know anything about them and the previous owner must have put them there.

The Sub Committee also noted that the transfer documentation for the premises licence was produced by an agent and dated 4th December 2018 (although it was not submitted until 9th January 2019). The Sub Committee put to the Licensee that this tended to suggest he had an interest in the premises during the first seizure on the 5th December 2018. The Licensee agreed that he had an interest on this date.

The Licensee was invited to sum up his case and, on his behalf, his Representative said he was a hard-working man who wants to provide for his family and get them out of debt. He believed that obtaining a licence was the best way to do this.

The Review Applicant was then given the opportunity to sum up. He said that from what he had heard today, the Licensee was admitting having an interest in the premises on 5th December 2018 which is what he had been trying to establish for some time given that the comments made during his PACE interview were that he had nothing to do with the premises until he took over ownership on 31st December 2018.

The Review Applicant stated it was for the Sub Committee to decide whether they believed the account of the Licensee on the balance of probabilities, or that of the dog handler who contends that the second seizure of cigarettes would have been picked up if they were in situ on 5th December 2018. He also reiterated that a successful test purchase took place on 16th January 2019, when the Licensee by his own admission was in control of the shop.

The Sub Committee asked a final question to the Review Applicant – was it the Licensee who served the cigarettes to the test purchase officer on 16th January 2019? The Review Applicant said that he did not know.

In reaching its decision, the Sub Committee had regard to both national guidance and the Council's own policy.

In particular, the Sub Committee noted that whilst the Police were to be regarded as the primary source of advice on the Prevention of Crime and Disorder, Trading Standards were the main source of information in respect of the trade in illicit cigarettes.

The Sub Committee noted paragraph 11.27 of the statutory guidance which notes, in the context of review applications, that certain criminal activity should be treated as being particularly serious, including smuggled tobacco.

The Sub Committee also had regard for paragraph 11.28, which noted that 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.

The Sub Committee accepted the evidence presented by Trading Standards as being true on the balance of probabilities, particularly that if the second concealed compartment (discovered on 26th January 2019) was present on the first inspection on 5th December 2018, the sniffer dog would have discovered it. This therefore gives rise to the indication that after the initial inspection on 5th December 2018, a second concealed compartment was created in an attempt to elude the authorities.

The Sub Committee find it extremely unlikely that this would have been possible without the knowledge of the licensee, as the owner. The Sub Committee find on the balance of probabilities, given the evidence presented by Trading Standards that a transfer application in favour of the licensee was prepared by an agent and dated 4th December 2018, that he was more involved in the running of the premises on 5th December 2018 than he has admitted in his evidence today. The Sub Committee consider the explanations given by the licensee were both evasive and implausible, and unsupported by any evidence.

The Sub Committee considered that the Licensee had failed to provide any assurances or details of any controls that he could put in place to prevent a recurrence of the reported incident.

The Sub Committee considered that a suspension of the licence would not be appropriate owing to the fact that, even taking aside the inspection on 5th December 2018, illicit cigarettes were found on two separate occasions within three weeks of the licensee accepting that he took over control of the premises. Further, the Licensee's contradictory and implausible remarks gave the Sub Committee concerns that, if he really did not know about the sale of cigarettes from his premises, then he has no real control over his business or his employees that would reassure them that the licensing objective of Prevention of Crime and Disorder would not be undermined in the future.

The Sub Committee decided that as the licensee is also the DPS at the premises, it would be inappropriate for the purposes of upholding the licensing objective to simply terminate his position.

As such, the Sub Committee concluded that only revocation of the premises licence would be appropriate and proportionate in the circumstances.

RESOLVED that the Sub-Committee revoke the Premises Licence.

5. Any Other Business

There were no other items of business.

(Meeting closed at 11.10 am)