

MAIDSTONE BOROUGH COUNCIL

LICENSING ACT 2003 SUB COMMITTEE

**MINUTES OF THE MEETING HELD ON THURSDAY 16 NOVEMBER
2017**

Present: Councillors Newton, Mrs Robertson and Springett
(Chairman)

Also Present: Mr R Harris, Legal Advisor and Mrs Lorraine
Neale, Senior Licensing Officer

34. DISCLOSURES BY MEMBERS AND OFFICERS

There were no disclosures by Members and Officers.

35. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

36. EXEMPT ITEMS

RESOLVED: That the items on Part II of the agenda should be taken in private, as proposed, due to the likely disclosure of exempt information.

37. APPLICATION FOR REVIEW OF A PREMISES LICENCE - CAPITOL EXPRESS,
11 SNOWDEN PARADE, VINTERS PARK, MAIDSTONE, KENT, ME14 5NS

The Chairman requested that all those participating in the hearing identified themselves as follows:

Councillor Mrs Springett – Committee Chairman
Councillor Newton – Committee Member
Councillor Mrs Robertson – Committee Member
Mr Robin Harris – Legal Advisor
Mrs Lorraine Neale – Senior Licensing Officer
Mrs Caroline Matthews – Democratic Services Officer
Mr Ferhat Ok – Applicant
Mr Bulent Ok – Witness and Representative
Mr Oliver Jewell – Kent County Council Trading Standards
PC Neil Barnes – Kent Police

The Chairman asked all parties to confirm that they were aware of the hearing procedure and that each had a copy of the procedure document.

The Committee Members confirmed that they had pre-read all the papers and any other documents contained in the report regarding the hearing.

The Legal Advisor outlined the application and advised that an application for a review of the premises licence had been brought by Mr Jewell on behalf of Kent County Council Trading Standards in respect of the premises Capitol Express, 11 Snowden Parade, Vinters Park, Maidstone, Kent ME14 5NS.

The Members of the Committee were advised that during the consultation period representations were received from Police in support of the review application made by Kent County Council Trading Standards.

The Chairman invited the applicant, Mr Jewell on behalf of Trading Standards to provide his opening remarks. Mr Jewell detailed the incidences that had led up to the request for a review of the premises licence which included:

- The premises licence was reviewed by Trading Standards in 2013 following a failed test purchase where Mr B Ok had sold alcohol and cigarettes to minors.
- In March 2015 complaints were made to Trading Standards about the possibility of counterfeit spirits being on sale in the premises.
- In June 2015 a member of the public reported that Capitol Express was known to local children that they sold alcohol and tobacco to minors who would be instructed to wait out the back to receive their purchases.
- In February 2017 there were complaints of anti-social behaviour in the Snowden Parade area which the residents had attributed to young people drinking alcohol having purchased it at Capitol Express.

In February 2017 a test purchase was made by a 15 year old volunteer who managed to successfully buy a single can of beer from Mr F Ok even though he had challenged him about his age and the test purchaser could not provide any ID.

PC Barnes and himself attended the premises soon after and spoke to Mr F Ok. Photographs were taken of the refusals book and training records. Photographs were also taken around the store to show that Challenge 25 posters were no longer on display.

Whilst in the store their attention was drawn to a number of bottles of spirits which showed signs of duty evasion due to labelling inconsistencies or extremely poor quality on other labels. A total of 28 bottles of spirits were seized for further investigation.

A follow up visit was made by Trading Standards and Kent Police in April 2017. The visit was undertaken to check compliance with the conditions of the current premises licence.

A number of points were noted in relation to the conditions of the licence which were in contravention.

KCC were seeking for the licence to be revoked as this was not the first occasion that an incident of this type had taken place and the Trading Standards department had no faith in the owners of the premises safeguarding children. Furthermore the smuggling of goods was a crime and disorder matter. In view of all the evidence put before the Committee, the Trading Standards department recommended that the Council revoked the premises licence.

The footage from the hidden camera was shown to the Committee at that point.

The Chairman invited the respondents, Mr F Ok and Mr B Ok, to address the Committee.

Mr B Ok made the following points:-

- That the youths congregating in the area might be there because of the take away food outlets and strongly denied that alcohol had been provided to underage drinkers.
- That in relation to 'smuggled goods' his position and that of Mr F Ok was that they had purchased the items in good faith from a 'cash and carry' outlet and had taken reasonable steps to ascertain that they were genuine. However, they were unable to show a legitimate source for the goods and accepted that this made it more likely that the goods were not legitimate. They both ultimately accepted that the goods were not genuine.
- Mr B Ok stated that in respect of the refusals book, this had not been fraudulently altered, he had simply used a previous sheet because he had no other sheet available and he was not aware of what else he should do.
- He observed that both Mr F Ok and himself were not criminals.
- He disagreed that the electronic warning alert on the till would be a quick fix.

Determination:

The Committee determined that the premises licence be revoked.

Reasons for determination:

Prevention of Crime and Disorder – The Sub-Committee heard from PC Neil Barnes that the premises were associated with crime and disorder on the basis of the evidence set out in Appendix B of the Committee papers.

The Sub-Committee did not find that the presence of youths around the shop involved in anti-social behaviour or the presence of 'smuggled goods' was, given the available evidence, on the balance of probabilities a breach of the Objective of Preventing Crime and Disorder, but notwithstanding that, the Sub-Committee determined that the premises were associated with Crime and Disorder due to the convictions following guilty pleas in the Medway Magistrates Court on 11th September 2017.

The Sub-Committee were also dissatisfied that the lack of an audit trail for the purchase of alcohol and the explanation given for the amendment of the refusals book.

The Sub-Committee noted that the Section 182 Guidance states at paragraph 11.28 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.

Protection of Children from harm – The Sub-Committee heard from Mr Oliver Jewell from Kent County Council Trading Standards that the premises had failed to promote the licensing objective of protecting children from harm on the basis of the evidence set out in Appendix A of the Committee papers.

In response Mr B Ok noted that a sale of the business was in motion and that taking action against the licence at this point might jeopardise that sale. Mr B Ok stated that the issues around the premises were the fault of Mr F Ok and that he should be able to carry on the business. Mr B Ok also stated that the previous test purchase failure when he had made an underage sale was unfair and inconsistent with Trading Standards Guidance. Mr. Jewell denied this and the Chairman of the Sub-Committee rejected this assertion.

The Sub-Committee determined that the DPS made a sale to an underage person where, not only was the sale made, but a deliberate attempt was made to conceal it. Further to that, as part of the investigation following the sale it came to light that there was not adequate record keeping either in respect of refusals or having an audit trail for their purchases of alcohol.

The Sub-Committee noted that the Section 182 Guidance states at paragraph 11.30:-

However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under Section 147A or a closure notice has been given under Section

169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

Conclusion:

The Sub-Committee noted that there was a clear overlap between the licensing objectives of Preventing Crime and Disorder and Protecting Children from Harm in this case.

The Sub-Committee were not satisfied that taking no action until the proposed sale had completed was appropriate in a case where there had been two underage sales leading to criminal convictions and there was evidence of weak management processes in the premises.

For the reasons given above the appropriate and proportionate action as to revoke the premises licence.

38. EXCLUSION OF THE PUBLIC AND THE PRESS

RESOLVED: That the press and the public be excluded from the meeting due to the possible disclosure of exempt information.

39. LICENSING ACT 2003 - APPLICATION FOR A REVOCATION OF A PERSONAL LICENCE

The Sub-Committee heard from the Senior Licensing Officer, Lorraine Neale relating to the evidence as set out in the exempt Appendix of the Committee papers.

Determination:

The Sub-Committee revoked the personal licence.

40. DURATION OF MEETING

10.00 a.m. to 3.00 p.m.