

WEST OXFORDSHIRE DISTRICT COUNCIL

Record of a meeting of the **LICENSING PANEL**
Held in the Council Chamber, Council Offices, Woodgreen, Witney, Oxon
at 10:00am on Tuesday 15 January 2019

PRESENT

Councillors: Norman MacRae MBE (Chairman); Steve Good and Ted Fenton

I. APPLICATION FOR THE REVIEW OF A PREMISES LICENCE UNDER THE LICENSING ACT 2003 – WITNEY POLISH DELI, 62 CORN STREET, WITNEY

The Chairman of the Panel welcomed those present to the meeting. Councillor MacRae then set out the procedure by which the hearing would operate. Councillor MacRae stressed that the Licensing Authority did not have the power to judge the criminality or otherwise of any issue and its role when determining the review was not to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

Mr Russell Sharland, Tobacco Control Officer with Oxfordshire County Council introduced himself to the meeting and registered his intention to speak. Mr Sharland introduced his colleague, Mr Michael Phillips, and Health Improvement Practitioner, Ms Katharine Eveleigh.

In response to a question from the Chairman, the applicant, the Council's Licensing Officer confirmed that the review application had been properly advertised.

Mr Robert Wroblewski, the new premises licence holder, then registered his intention to address the Panel in support of the retention of a Premises Licence.

No other interested parties or Responsible Authorities registered a wish to address the meeting.

The Chairman explained the order of business for the meeting. He advised that the Panel Members were familiar with the written representations submitted and requested those addressing the Panel to highlight any specific points they wished to raise, which should relate to the Licensing Objectives.

Councillor MacRae made reference to the additional information circulated to all interested parties prior to the meeting and explained that new evidence could only be considered with the consent of all parties present and asked if any further such evidence was to be introduced. There was no new evidence presented and no questions were raised regarding the procedure by which the meeting would operate.

The Council's Legal Adviser then outlined the Review Process

He explained that the proceedings set out in the 2003 Act for reviewing premises licences represented a key protection for the community where problems associated with the licensing objectives occur after the grant of a premises licence.

In every case, any application for a review must relate to particular premises in respect of which there is a premises licence and must be relevant to the promotion of one or more of the licensing objectives.

The 2003 Act provided a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

The Licensing Authority could decide that the review did not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there was nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time.

Where the licensing authority considered that action under its statutory powers was appropriate, it could take any one of the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alternation or omission of an existing condition);
- Exclude a licensable activity from the scope of the licence;
- Remove the designated premises supervisor (for example, because they consider that the problems are the result of poor management);
- Suspend the licence for a period not exceeding three months;
- Revoke the licence.

The Council's Legal Adviser indicated that, in deciding which of these powers to invoke, it was expected that licensing authorities should so far as possible seek to establish the cause(s) of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigate the review.

He advised that reviews may arise in connection with crime that was not directly connected with licensable activities. Licensing authorities did not have the power to judge the criminality or otherwise of any issue, this being a matter for the courts. The licensing authority's role when determining such a review was not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

Where conducting a review on the grounds that the premises have been used for criminal purposes, its role was solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective.

In conclusion, the Council's Legal Adviser advised that the guidance stated that there was certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These included the use of the licensed premises for the sale or storage of smuggled tobacco and alcohol.

It was envisaged that the law enforcement agencies which are responsible authorities (e.g., the police and the Home Office (Immigration Enforcement)), would use the review procedures effectively to deter such activities and crime. Where reviews arose and the licensing authority determined that the crime prevention objective was being undermined through the premises being used to further crimes, it was expected that revocation of the licence – even in the first instance- should be seriously considered.

The Licensing Officer presented the report outlining the application. She advised that applications to transfer the premises licence and to appoint a new designated premises supervisor had been received during the review consultation period. As no objections had been made to either application by the Police or the Home Office, those applications had been granted. A summary of the meetings which representatives of Oxfordshire County Council Trading Standards had subsequently had with the new licence holder, Mr Wroblewski, and the new designated premises supervisor, Mr Roman Mirecki, had been circulated to all interested parties prior to the meeting.

The Licensing Officer reiterated the options open to the Panel as outlined by the Council's Legal Adviser

Mr Sharland then addressed the meeting setting out the grounds for the review as detailed in the application.

Mr Phillips then advised that, whilst three individuals were under criminal investigation, statutory guidance stated that applications for review should be considered without delay. The pending criminal investigation was not a reason to delay consideration of the review.

Mr Sharland then went on to present the supporting evidence as detailed in the application.

With regard to the recent transfer of the premises licence and the appointment of a new designated premises supervisor, Mr Sharland advised that Trading Standards was unable to object to the transfers. However, it was important to understand the background and skill level of the new licence holders and, to this effect, meetings had been held with both of those parties, details of which were summarised in the additional information circulated prior to the meeting.

Mr Sharland contended that, given the history of the premises, it required an experienced, 'hands on' licence holder and designated premises supervisor. Trading Standards were concerned that it appeared that the previous licence holder, Mr Jan Mazurek, and the existing staff were to be retained.

In conclusion, Mr Sharland indicated that the Licensing Authority could impose conditions governing the manner in which the business was to operate. It was Trading Standards contention that the licence should be revoked as doing so would enable the new licence holder, Mr Wroblewski, to purchase the business, obtain a personal licence and employ new staff and to apply for a premises licence in his own right.

Should the Panel consider revocation of the licence to be inappropriate, Mr Sharland suggested that the conditions proposed in the review application should be applied. Such conditions had been employed elsewhere and had not been found to be unduly onerous.

Mr Wroblewski then addressed the meeting in support of the retention of a licence. He stated that, whilst he could not dispute what had happened in the past, it was his intention to take over the business and operate it properly. He indicated that the current staff would not be involved in the business in the future and that it would be operated with new management and staff.

In response to a question from Councillor MacRae, Mr Wroblewski confirmed that the summary of his meeting with Trading Standards was correct.

Councillor Good indicated that the primary motivation in business was to make a profit and, in doing so, an owner had to balance investment and risk. As Mr Wroblewski had no previous experience in this field, Mr Good asked why he had chosen to purchase the business. In response, Mr Wroblewski advised that, whilst he was currently in the taxi trade, he had previously been employed in the hotel and hospitality industry. The business offered an opportunity although he would have to learn the trade from scratch.

Councillor Fenton noted that there was a degree of inconsistency regarding the future employment of the existing staff and sought clarification of Mr Wroblewski's intentions. Mr Wroblewski confirmed that the previous licence holder, Mr Mirecki would stay on for the time being to assist him in running the business.

Provided that no further issues arose, Mr Wroblewski would retain Mr Mirecki's services as it would be helpful for him to have his guidance.

Ms Eveleigh then addressed the Panel and drew attention to the letter from the County Council's Public Health Directorate which appeared as Appendix Dii.

In conclusion, Mr Sharland stated that the Panel had heard the issues and, whilst it was not its role to establish the guilt or innocence of any individual, Trading Standards had concerns that the business was still owned by Mr Mirecki and that he would still be involved in its operation along with the existing staff. Whilst there had been a change of responsibilities on paper, this was not a reflection of the reality and Mr Sharland invited the Panel to determine the review on the basis of how things were, not how they were proposed to be.

The Panel then retired to consider the application and submissions made at the hearing.

Having considered the report, together with all representations made in writing and at the meeting the Panel concluded that the premises had been used for illegal activity (that is the sale and storage of illegal tobacco) and that this undermined the prevention of crime and disorder licensing objective. Accordingly it was:-

RESOLVED: that, notwithstanding the subsequent transfer of the Premises Licence and the appointment of a new Designated Premises Supervisor, the Premises Licence be revoked.

The hearing closed at 11:15am