

Licensing Sub-Committee

Meeting held on Wednesday, 24 July 2024 at 10.30 am. This meeting was held remotely.

MINUTES

Present: Councillors Danielle Denton, Ian Parker and Appu Srinivasan

PART A

31/24 **Appointment of Chair**

It was **MOVED** by Councillor Parker and **SECONDED** by Councillor Srinivasan and **RESOLVED** to appoint Councillor Denton as Chair of the meeting.

32/24 **Disclosure of Interests**

There were none.

33/24 **Urgent Business (if any)**

There were no items of urgent business.

34/24 **Licensing Act 2003 - Application For A Review Of A Premises Licence at at 15 Central Parade, New Addington, Croydon, CR0 0JB**

The Chair outlined the procedures for the Licensing Hearing in line with the Licensing Act 2003 and the Council's protocol.

The applicants, Caroline Dawson and Trish Burls were present.

The premises licence holder, Mr Vijay Komar and his representative, Surendra Panchal, were also present.

The Head of Environmental Health, Trading Standards and Licensing introduced the application to the Sub Committee.

The Head of Environmental Health, Trading Standards and Licensing explained that once a licence was granted, if one of the responsible authorities or a member of the public believed that the operation of the

premises licence had compromised one of the licensing objectives then they could seek a review of the premises licence.

The Head of Environmental Health, Trading Standards and Licensing stated that when an application for review was made, other responsible authorities could make representations, as could the premises licence holder. The application was advertised in a similar fashion to an application for a license which brought the application to the attention of the public, who could also make representations on a review if they wished.

The Head of Environmental Health, Trading Standards and Licensing explained that the application had been made by the Council's Trading Standards Department, who were considered as a responsible authority under the Licensing Act. The Head of Environmental Health, Trading Standards and Licensing informed the Sub Committee that the premises licence had been granted to Mr Komar by way of transfer on 25th of June 2019, and the police were the only party who were able to comment on an application for a transfer.

The Head of Environmental Health, Trading Standards and Licensing explained that the recommendations were for the Sub Committee to consider the application for a review of the premises licence at 15 Central parade and whether to take steps to ensure the promotion of the licensing objectives, the recommended steps were to modify the conditions of the licence; to exclude a licensable activity from the scope of the licence; to remove the designated premises supervisor; to suspend the licence for a period not exceeding 3 months or to revoke the licence.

The Head of Environmental Health, Trading Standards and Licensing stated that Members needed to focus on whether the licensable activities at the premises had compromised on or more of the four licensing objectives.

The premise licence holder's representative was given the opportunity to speak. Surendra Panchal advised:

- That Mister Kumar is Kumar's company Waheguru International Limited were prosecuted at the court hearing on 11th May.
- Mr Komar did not possess a criminal record.
- Mr Komar had paid most of the fine which had been issued to Waheguru International Limited and there were only two or three instalments left to be paid.
- Several site visits by officer from the Council had been made and test purchases had been conducted at the shop which had been passed by Mr Komar.
- Mr Komar was happy to be removed as the DPS of the premises as per the recommendation from trading standards.
- They were waiting for a personal licence to be granted for Julie Davy, who was going to take over as the new DPS of the premises.

In response to questions from the Sub-Committee the premise licence holder advised that he understood the responsibility he had as a premises licence holder for the illegal activities occurring on his premises.

In response to questions from the Sub-Committee the premises licence holder advised that as soon as the court case had occurred

The applicant was given the opportunity to speak and advised:

- On 25 March 2024, Waheguru International Limited was convicted under the tobacco and related products regulations 2016 for the possession or exposure for supply of large quantity of single use nicotine inhaling devices known as vapes.
- Mr Komar was the sole director of Waheguru International Limited who was the premises licence holder and the DPS of 15 Central Parade.
- The offences concerned the possession for the supply of 671 non-compliant vaping products, all of which were oversized in terms of tank size. Some of the vapes contained nicotine levels in excess of what was permitted and some of the vapes did not display appropriate health warnings.
- None of the vapes were registered on the government portal and did not have appropriate traceability details of the manufacturer, importer or the distributor.
- Disposable vapes containing nicotine must contain a maximum tank volume of no more than two millilitres and they often displayed a typical number of puffs on the packaging.
- A typical two millilitre disposable vape would provide 600 puffs, which was the equivalent to around 20 cigarettes.
- Illicit vapes from 15 Central Parade included vaping products which ranged from 1,500 to 10,000 puffs.
- The court heard that the trading standards officers visited the shop on the 18th of April 2023 and 671 vapes were seized from the shelves in store and from the stockroom.
- The majority of the vape seas were found in baskets with discount price labels such as “sale £2.99 each” and “four for £9.99” and “sale £3.99 each” and “three for £9.99”.
- In an interview under caution, Mr Vijay Coma admitted he was unable to provide invoices to show where the Bates had been obtained from as they had purchased them from an unknown door to door seller on a sale or return basis.
- That seizure and subsequent prosecution followed an initial seizure on the 11th May 2022, of around 2,811 vapes. As well as 320 toys and 493 counterfeit mobile phone covers and counterfeit Air pods. On that occasion, the company was issued with a formal warning and was given in depth business advice on the requirements of the law in this area.
- The repeated possession for sale of illegal goods in a retail outlet were an indicator not only of criminal activity, but also overall poor management and lack of control showing no concern for public health,

welfare and wellbeing within the community. It also contributed toward increasing crime and disorder within the community and funded those who illegally imported and produced such products.

- Mr Kumar's repeated actions indicated a complete and blatant disregard of the law, the company for which he had sole responsibility had been convicted of consumer protection offences.
- The responsible authority did not believe that the licensing objectives were being continually upheld at the premises and deemed it both proportionate and necessary to invite the Committee to consider a review of the premises licence, and to further to further limit criminal activity by this licence holder and to act as a deterrent to other operators considering such illegal conduct.
- Therefore, the responsible authority recommended that Mister Vijay Kumar be removed as the designated premises supervisor at this premises.

In response to questions from the Sub-Committee the applicant advised that they focused on the illicit and unsafe vapes rather than the objective pertaining to the protection of children from harm. The applicant explained that officers did recognise that a lot of vaping products were appealing to children but they had focused more on general crime and disorder in this instance.

In response to questions from the Sub-Committee the applicant explained that officers had conducted a test purchase to see whether an illegal vape would be sold to a person, and the applicant confirmed that an illegal vape was not sold to the person.

In response to questions from the Sub-Committee the applicant informed the Sub Committee that officers had conducted a number of visits to all premises across Croydon to inspect their vapes to ensure they were compliant as they were aware that there were a large number of illegal vapes in the UK market.

Surendra Panchal stated that they agreed with the recommendation to remove Mr Vijay Komar as the DPS and Mr Vijay Komar would ensure that he was replaced with a more responsible individual. Surendra Panchal informed the Sub Committee that they would submit their application for a new DPS as soon as possible and the new DPS would ensure that no such breaches occur in future.

After the hearing the Sub-Committee withdrew to the virtual deliberation room and **RESOLVED** to **TAKE NO FURTHER ACTION**. The reasons for this decision are set out in the Statement of Licensing Sub Committee decision as follows:

The Licensing Sub-Committee considered the Application for a review of a Premises Licence at **15 Central Parade, New Addington, CR0 0JB**, the representations received as contained in the report of the Corporate Director Sustainable Communities, Regeneration and Economic Recovery and

supplementary information received from the Applicant Trading Standards for review prior to the commencement of the review hearing.

The Sub-Committee considered the written representations and further information provided by the Applicant in support of the review. The Sub-Committee also heard the verbal representations made on behalf of the premises license holder.

The Sub-Committee, having reference to the licensing objectives under the Licensing Act 2003 (“the Act”), Statutory guidance under Section 182 of the Act and the Council’s Licensing Policy 2023-2028, considered whether it was necessary for the promotion of the Licensing Objectives to take any of the following steps: to modify the conditions of the licence; exclude a licensable activity from the scope of the licence; remove the designated premises supervisor; suspend the licence for a period not exceeding 3 months; to revoke the licence or to take no further action. The Sub-Committee **RESOLVED to take no further action** on the basis that the premises license holder had offered to be removed as the designated premises supervisor (DPS) and would be making the relevant application to have a new DPS appointed, which was the measure which the Sub-Committee considered was appropriate to promote the Licensing Objectives in the circumstances.

The reasons of the Sub-Committee were as follows:

1. The Sub-Committee noted the premises license holder was also the designated premises supervisor, and sole director of Waheguru International Ltd which owns and runs a licensed premises at 15 Central Parade, New Addington, CR0 0JB (called “AM To PM”).
2. The Sub-Committee noted the concerns raised by the Applicant in relation to a previous formal warning given to the premises license holder in May 2022, and a subsequent successful prosecution brought by the Applicant against the company on 25th March 2024 for the possession or exposure for the supply of non-compliant vapes contrary to the Tobacco and Related Products Regulations 2016. Following the prosecution, the Applicant lacked confidence in the ability of the premises license holder, as sole director of the company, to promote the Licensing Objectives in his operation and management of the business.
3. The Statutory guidance at paragraph 4.61 provides that, *“Every premises license that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises license holder.”* Therefore, unless and until a DPS is in place at a licensed premises, it would not be permitted to undertake the sale of alcohol.
4. During the hearing, the Sub-Committee noted that the premises license holder had offered to be removed as the DPS as recommended by the Applicant and indicated that he was in the process of making an application for the appointment of a new DPS.

5. In considering whether the offer made by the premises license holder to be removed as the DPS and to apply for the appointment of a new DPS, were appropriate for the promotion of the Licensing Objectives, the Sub-Committee had regard to the following paragraphs in the Statutory Guidance:

“9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority’s determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that any condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business.”

6. Whilst the Sub-Committee considered the licensing objectives of prevention of crime and disorder, promotion of public safety and protection of children from harm, were relevant and engaged, the Sub-Committee were clear that the offence in respect of which there had been a successful prosecution, did not fall within the “relevant offences” under the Licensing Act 2003. Further, the Sub-Committee noted that the personal license holder’s representative confirmed that the conviction was in respect of the company and not the personal license holder who did not have any previous criminal convictions and there were no issues arising from his DBS (Disclosure and Barring Service) checks. The premises licence holder’s representative also submitted that the sale of vapes was not a licensable activity under the Licensing Act 2003.
7. Notwithstanding that the offence did not fall within the list of “relevant offences” under the Licensing Act and that the sale of vapes is not a licensable activity under the Act, the behaviour of the premises license holder nevertheless raised serious concerns about their ability and

willingness to properly manage the premises and to uphold the licensing objectives.

8. The Sub-Committee noted that the premises license holder's representative confirmed that since the prosecution on 25th March 2024, there have been no further sales of non-compliant vapes and Trading Standards officers had also subsequently visited the premises to carry out test purchases of vapes and no non-compliant vapes had been found. This was also confirmed by the Applicant.
9. The Sub-Committee acknowledged that the premises license holder's representative expressed that lessons had been learnt by the premises license holder and that he understood that selling non-complaint vapes was illegal and gave an assurance that it would not happen again.
10. The Sub-Committee noted that the location of the premises was within one of the areas in which the Cumulative Impact assessment adopted by the Council is in place. However, the Sub-Committee were clear that the cumulative impact considerations were not relevant to the application for a review as it was not in respect of a new premises license but for an existing license.
11. Taking into account the relevant representations made by the Applicant and those made on behalf on the premises license holder, the Sub-Committee considered it appropriate to take no further action and agreed that it would be appropriate for promotion of the licensing objectives for the premises license holder to be removed as the DPS and for the appointment of new DPS.

The Sub-Committee wished to thank all participants for the manner in which they engaged with and supported the hearing in providing information to allow the Sub-Committee's consideration.

35/24 **Exclusion of the Press and Public**

This was not required.

The meeting ended at 11.11 am

Signed:

Date:

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