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| Meeting | Licensing/Gambling Hearing |
| Date | 5 September 2024 |
| Present | Councillors Melly, Cuthbertson, and Knight |
| Officers in attendance | Helen Sefton – Senior Licensing Officer Sandra Branigan – Senior Lawyer Jodi Ingram – Legal Advisor |

19. Chair (10:17am)

Resolved: That Councillor Cuthbertson be elected to act as Chair of the hearing.

20. Introductions (10:17am)

Introductions were made.

21. Declarations of Interest (10:18am)

Members were invited to declare at this point in the meeting any disclosable pecuniary interest or other registerable interest they might have in respect of business on the agenda if they had not already done so in advance on the Register of Interests. None were declared.

22. Exclusion of Press and Public (10:19am)

Resolved: That the press and public be excluded from the meeting during the sub-committee's deliberations and decision making at the end of the hearing, on the grounds that the public interest in excluding the public outweighs the public interest in that part of the meeting taking place in public, under Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005.

23. The Determination of Section 52(2) Application by Lesley Cooke, Licensing Manager for the Licensing Authority, City of York Council for Review of a Premises Licence in respect of Slavic Foods, 47A Crichton Avenue, York, YO30 6EF (CYC-069000) (10:20am)

Members considered an application by the Licensing Manager, City of York Council, for a Review of Premises Licence for Slavic Foods, 47A Crichton Avenue, York.

In considering the application and the representations made, the Sub-Committee concluded that the following licensing objective(s) were relevant to this Hearing:

- 1. The Prevention of Crime and Disorder**
- 2. Public Safety**
- 3. The Prevention of Public Nuisance**
- 4. The Protection of Children from Harm**

In coming to their decision, the Sub-Committee took into consideration all the evidence and submissions that were presented, and determined their relevance to the issues raised and the above licensing objective, including:

1. The application and supporting documents.
1. The Senior Licensing Officer's report and her comments made at the Hearing. She outlined the report noting reasons for the application for the review of the licence and the information contained within the annexes to the report. She explained that between December 2023-2024 illegal vape products were sold at the premises, as well as people working without the legal right to work in the UK. She advised that cautions had been provided by North Yorkshire Police in relation to some licence breaches, and that there was an ongoing review by the trading standards team into the sale of tobacco products on the premises. She highlighted that there was a representation received from North Yorkshire Police, as a responsible authority, in Annex 3.

In response to questions from Members it was confirmed that the correct notices for details of the review hearing were served within the correct deadlines to the premises licence holder.

2. The Applicant's representations of Ms. Waudby on behalf of the Applicant at the Hearing.

Ms. Waudby made the following points:

- Multiple licence breaches were found following five separate inspections of the premises.
- Alcohol was on display without trained staff on each inspection.
- Evidence had been gathered on an inspection demonstrating an individual who was working without the right to work in the UK.
- On 22 February 2024 a male was arrested on the premises for not disclosing his identity when asked by the Police, and it was found that he was the same person who was working without right to work in the UK on the property during the previous inspection. On this occasion the male did not know that he had the right to work and so his employer could not have known that he had the right to work in the UK.
- In January 2022 the premises licence was transferred from the original licence holder to the current licence holder, without the Local Authority being notified of a transfer of the licence.
- The Designated Premises Supervisor (DPS) was in attendance at previous inspections when breaches of the licence were witnessed, and the current licence holder has not engaged with this licencing review process.
- On an inspection on 4 December 2023 illicit tobacco and vapes were on sale on the premises. On an inspection on 22 February 2024 illicit vapes were seized on the premises.

In response to questions from the Sub-Committee, Ms Waudby confirmed that:

- The receipt shown in Exhibit SB/1, on page 193 of the agenda, was evidence demonstrating employees working without the right to work in the UK. Working without right to work in the UK was an offence under the Licensing Act.
- There was information on City of York Council's website on transferring a licence to another person, and it was the responsibility of the person taking on the licence for this to be done properly.

5. The representations made by a Responsible Authority.

Police Sergeant (PS) Jacqueline Booth, North Yorkshire Police, stated that the current DPS had become so in December 2023 and was in attendance when alcohol was being sold on the premises. She also advised that the licence holder was requested to submit the relevant documents to the Licensing Authority to confirm their identity.

PS Booth stated that the Police interviewed the DPS under criminal offences contrary to licensable activity, and the statement which was presented was included within Exhibit SB/3, page 196 of the agenda. The DPS received a caution. Further investigation took place, and the Police found that there was no working CCTV, and no staff training records. They were asked to notify the licence holder of these issues.

PS Booth indicated that on 4 December 2023 the licence holder arrived at York Police Station and requested the keys to Slavic Foods as he had bought the premises. Upon a request by the Police to provide proof of identity the licence holder did not return, but upon re-inspection the Police found that the premises was open to the public without the licence holder having accessed the keys from the Police.

PS Booth stated that she believed that the failure to do proper checks on who was working at the premises, failure to comply with official communication, and the sale of illicit tobacco put into question the suitability for the licence holder to comply with the licence conditions.

In response to questions from the Sub-Committee, PS Booth confirmed that:

- The receipt shown in Exhibit SB/1, on page 193 of the agenda demonstrated that the person who made the sale did so without adequate training and was able to sell alcohol without the licence holder being present.
- Unsolicited tobacco and vapes were seized in December 2023, and liaison took place with trading standards officers to prosecute in response to licensable activity offences. E-cigarettes were still found on a subsequent visit.

On behalf of the Applicant, Ms Waudby was then given the opportunity to sum-up. Ms Waudby concluded that there had been multiple failures by the licence holder to comply with the conditions of their licence, and that the licence holder had not engaged with the process and no assurances had been made to suggest that the nature of the premises would be improved.

PS Booth was then given the opportunity to sum-up and concluded that North Yorkshire Police supported the application to revoke the licence. The prevention of crime and disorder licensing objective was being seriously undermined and the Police had no confidence that the licence holder or the DPS would adhere to the licence conditions or promote the licensing objectives.

Having regard to the application and the relevant representations, the Sub-Committee had to determine whether to take any of the steps mentioned under Section 52(4) that it considered necessary for the promotion of the licensing objectives. Taking into consideration the above evidence and submissions received, the Sub-Committee deliberated the different options available to them and agreed to reject the following options:

Option 1: To modify the conditions of the licence (i.e., to alter, omit or add any new condition).

Option 2: To exclude a licensable activity from the scope of the licence.

Option 3: To remove the Designated Premises Supervisor.

Option 4: To suspend the licence for a period not exceeding three months.

The Sub-Committee noted that it also had the option to decide that no action is appropriate in order to promote the licensing objectives. The Sub-Committee agreed to reject this option.

The Sub-Committee's decision was to accept the following option:

Option 5: To revoke the licence.

Having heard the application for a review of the premises licence at Slavic Foods, the Sub-Committee resolved to revoke the licence for the premises (Option 5) on the grounds that the premises is not upholding the licensing objectives of the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm.

Reasons

1. In reaching its decision, the Sub-Committee gave due consideration to:
 - The promotion of the licensing objectives as set out in the Licensing Act 2003, in particular the prevention of crime and disorder and public safety.
 - The Council's Statement of Licensing Policy.
 - The Home Office Guidance issued under section 182 of the Licensing Act 2003.
 - The Licensing Sub-Committee agenda pack for the application.
 - The oral representations made during the hearing.
2. The Sub- Committee considered the following parts of the section 182 Guidance:

2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is 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. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

11.18 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times.
- 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.

11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- For the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime.
- For the sale and distribution of illegal firearms.
- For the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected.

- For the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people.
- For prostitution or the sale of unlawful pornography.
- By organised groups of paedophiles to groom children.
- As the base for the organisation of criminal activity, particularly by gangs.
- For the organisation of racist activity or the promotion of racist attacks.
- For employing a person who is disqualified from that work by reason of their immigration status in the UK.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. 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.

3. The Sub-Committee received evidence of multiple breaches of the licence conditions on multiple occasions over a 9-month period. Breaches included CCTV not recording, lack of training records and lack of refusals process. The Sub-Committee considered that the persistent and significant breaches of the premises licence undermine the licensing objectives.
3. The Sub-Committee noted that there was evidence of an individual working in the premises without the right to work in the UK. The Sub-Committee viewed the employment of an illegal worker as a serious matter which would clearly undermine the licensing objective of prevention of crime and disorder. An incident involving the employment of an illegal worker on licensed premises would normally result in revocation of the premises licence.

4. The Sub-Committee received evidence that illicit vapes and tobacco have been seized from the premises. It considered that this undermines the licensing objectives, in particular prevention of crime and disorder and public safety.
5. The Sub-Committee noted that the DPS had been present at the time of breaches of the licence and had accepted a caution in respect of the breaches identified on 22 February 2024. The same DPS was present when the Police again identified licence breaches on 8 August 2024. Given those failings the Licensing Authority and the Police have no confidence in the DPS to manage the premises to ensure that the licence conditions are adhered to, and the licensing objectives are upheld.
7. The Sub-Committee put weight on the fact that despite a stepped approach by the Police to give the management of the premises an opportunity to reform and comply with licence conditions, there had been no engagement with the Responsible Authorities by the premises licence holder.
8. The Sub-Committee considered all the options open to them and noted that whilst the Sub-Committee had to consider what appropriate steps to take on review, such steps taken must also be proportionate. It recognised that a request for revocation of a licence was a major and severe step that had to be treated seriously and would be likely to harm the business and its employees, and that they had to consider whether there were alternative measures such as imposing conditions or adopting another sanction using its powers available to it under section 52 (4) of the Licensing Act 2003.
9. They noted that the premises licence holder and the DPS had failed to comply with licensing conditions over a lengthy period. They felt that given the repeated failings at the premises (including significant breaches of conditions, the seizure of illicit vapes and tobacco and the presence of an illegal worker) the premises suffers from either a lack of regard or poor management control and they had no faith in the premises licence holder or the DPS to operate the premises in a responsible manner so as to uphold and promote the four licensing objectives in the future, and

particularly prevention of crime and disorder and public safety. The Sub-Committee had received no assurances from the licence holder that he has the ability to appropriately control and manage the premises licence as he has not engaged with the review process.

10. Due to the gravity of the situation and taking into particular account the promotion of the crime prevention objective, including acting as a deterrent, the Sub-Committee believed that other sanctions including the imposition of further or amended conditions or a suspension of the licence would be ineffective in the promotion of the licensing objectives.
11. Accordingly it was determined that the premises licence should be revoked.

Cllr Cuthbertson, Chair

[The meeting started at 10.17 am and finished at 11.15 am].