

MINUTES

ALCOHOL AND ENTERTAINMENT
LICENSING COMMITTEE
FRIDAY, 5 OCTOBER 2012



COMMITTEE MEMBERS PRESENT

Councillor Mark Ashberry
Councillor Pam Bosworth (Chairman)
Councillor George Chivers
Councillor Breda Griffin

Councillor Reginald Howard
Councillor Vic Kerr
Councillor Bob Russell (Vice-Chairman)
Councillor Mrs Jean Taylor

OFFICERS

Licensing Officers (Pam Robinson, Richard Etherton)
Solicitor to the Committee (Paul Rushworth)
Democratic Officer (Lucy Bonshor)

13. APOLOGIES

Apologies for absence were received from Councillors' Broughton, Rowlands and Turner.

14. DISCLOSURE OF INTERESTS

Councillor Russell disclosed an interest in agenda item 5 as he is related to some of the senior management at Tesco, he therefore felt that in the interests of transparency and to avoid an appearance of bias it would be best to withdraw from the meeting before the item was discussed as it could be perceived that he was unable to fairly judge the public interest..

Councillor Howard sought clarification from the Solicitor to the Committee on whether he needed to declare an interest as he was a Town Councillor for Market Deeping as well as the current Mayor of the town. He believed that he had no personal or prejudicial interest but for the removal of doubt he wished for clarity from the Solicitor. The Solicitor replied that the new Code of Conduct referred to disclosable pecuniary interests and 'other interests' and the test in the current case was one of perception of the Councillor's ability to judge the public interest. The fact that the Councillor was a Town Councillor and the Mayor did not automatically preclude him under the new code.

15. MINUTES OF MEETING HELD ON 21 SEPTEMBER 2012

The minutes of the meeting held on 21st September were agreed as a correct record of the decisions taken subject to the word term being added at page 3 paragraph 3 as follows:

Members of the Committee then asked Mr Wycherley various questions about his long term plans for the future to which he replied.

16. LICENSING ACT 2003: REVIEW OF A PREMISES LICENCE - ZORBAS 4, BROAD STREET, STAMFORD

Decision:

That the premise licence for the sale of alcohol for the premises known as Zorbas 4, Broad Street, Stamford be revoked.

The Solicitor to the Committee introduced those present and confirmed who was to speak in connection with the application for the review. Emma Milligan (Lincolnshire Safer Communities Trading Standards), PC Figgitt (Licensing Officer Lincolnshire Police) and Mr Kaya (Premises Licence Holder).

The Licensing Officer presented report CSL018 which concerned an application for a premise licence review under Section 51 of the Licensing Act 2003. The premise under review was Zorbas 4, Stamford which held two premises licences, one for late night refreshment and one for the sales of alcohol. A review for the premise licence for the sale of alcohol had been submitted by Lincolnshire Safer Communities Trading Standards. The review had been asked for on grounds relating to the prevention of crime and disorder. In May 2012 the premises had been inspected by Lincolnshire Safer Communities Trading Standards and Lincolnshire Police. During the inspection two bottles of counterfeit Smirnoff Vodka and five bottles of Extra Vodka displaying invalid duty stamps had been found. The bottles were seized by Trading Standards as evidence and samples submitted to their public analyst. A certificate of analysis was received for the Smirnoff Vodka which stated that the sample was unfit for human consumption, failing to meet the food safety requirements under food legislation. The certificate of analysis for the Vodka Extra was received and no food safety concerns were raised. However, Bemrose Booth who were solely responsible for the UK duty stamps confirmed that the labels affixed to bottles three and four of those seized were counterfeit as the numbers were not registered on their data base. As well as witness statements from Lincolnshire Trading Standards, Lincolnshire Police had also submitted a representation supporting the review by Trading Standards.

Emma Milligan from Lincolnshire Safer Communities Trading Standards then presented their case. She briefly gave the Committee background information on the work that they undertook targeting stores which sold counterfeit alcohol

and referred to the extensive media campaigns about illegal alcohol and tobacco. She referred to the bottles of vodka that had been seized and the samples from the Smirnoff Vodka that indicated the presence of iso-propanal which was used as a denaturant and was not fit for public consumption. A sample had also been sent to the Trade Mark holder who had also confirmed that the product was not genuine and therefore was in breach of the Trade Marks Act 1994.

She then referred to the bottles of Vodka Extra which had been confirmed were displaying incorrect duty stamps. As the premise licence holder had not supplied receipts for these products it was assumed that the products were non UK duty paid. She asked the Committee to consider revoking the alcohol licence as evidence suggested that criminal activities were being carried out at the premises.

PC Figgitt from Lincolnshire Police confirmed the police's support of the review request from Lincolnshire Trading Standards, due to the seized counterfeit goods and the confirmed non duty paid on the bottles of Extra Vodka.

Questions were asked about the iso-propanal to which Emma Milligan replied. One of the Members present had worked with iso-propanal and said that it defats the skin and if swallowed would strip internal organs of fat.

For clarity the Solicitor to the Committee confirmed what items had been found as counterfeit (2 bottles of Smirnoff Vodka) and what items had non duty paid on them (5 bottles of Extra Vodka).

Mr Kaya the license premise holder then made his representation. He replied that during the period when the goods were found he was not at the shop due to personal reasons, he had left the management of the shop to his brother and a friend. The friend had indicated that his uncle owned a supermarket and he could get vodka cheaper. Mr Kaya was unaware that it was counterfeit. Mr Kaya had previously used a cash and carry and had kept all invoices, although none had been presented for the counterfeit goods.

Questions were then asked of Mr Kaya about the management of the premises, the menus showing the Extra Vodka and receipts for the goods to which Mr Kaya replied.

A Member asked if the premises had been visited before by Trading Standards to which Emma Milligan replied that this had been the first visit. PC Figgitt replied that the premises had been visited by the police but not in connection with this issue.

The Licensing Officer then gave her closing statement. She reminded Members of the options open to the Committee in relation to the review of Zorbas 4, Broad Street, Stamford. The Committee could:

- Modify the conditions of the licence
- Exclude a licensable activity from the licence

- Remove the designated premise supervisor
- Suspend the licence for a period not exceeding 3 months:
- Or revoke the licence

If the committee decided that none of the above steps was appropriate, then they need take no action. The Licensing Authority should as far as possible seek to establish the cause or causes of the concerns which the representations identified and the remedial action taken should generally be directed at those causes and should be no more than an appropriate and proportionate response.

Emma Milligan from Safer Communities Trading Standards then gave her closing statement. She said from the evidence presented to the committee the management had little or no control over the day to day running of the premise and the licence was being used to gain financially from crime and therefore were not promoting the licensing objectives. Iso-propanal which was found in the seized goods was used as a solvent and in cleaning fluids and the product would not have gone through any hygiene or quality control. The products also displayed illegal duty stamps and no duty paid receipts had been produced. The products were on a menu which had been for sale for between one and three months. She asked the committee to strongly consider revoking the licence in accordance with Section 11 of the guidance issued under Section 182 of the Licensing Act 2003.

For clarity the Solicitor to the Committee advised the Chair that as Lincolnshire Police were supporting the review by Trading Standards they would not usually have an opportunity to give a closing statement. Trading Standards had an opportunity as applicants for the review and the licence holder had an opportunity as respondent to the review but to allow Lincolnshire Police to make a closing statement in addition would tip the balance of fairness against the licence holder.

Mr Kaya, the premise license holder then gave his closing statement. He referred once again to his personal life and admitted that he had trusted the wrong people to manage his premise and that he should have paid more attention to what was going on at the premise.

(10.45am the Licensing Officers, Trading Standards and all interested parties left the meeting)

Members considered the information they had before them and the representations that had been made. Grave concern was expressed about the content of the seized goods and the damage they could have done. The Committee was concerned about public safety in addition to the prevention of crime and disorder. Following comments made by the Solicitor to the Committee that any decision should be appropriate and proportionate the Committee discussed a susoension of the licence. However in the particular circumstances and with regard to the evidence and representations received it

was proposed, seconded that the issue was so serious as to require a the premise licence for the sale of alcohol to be revoked. The Committee was particularly mindful of the risk of harm from the sale of spirits unfit for human consumption and the crime associated with the sale of counterfeit goods. The Committee did not find any mitigating circumstances which had affected the applicant and they thought a three month suspension was an inadequate remedy when considered against the promotion of the licensing objectives of public safety and the prevention of crime and disorder.

(11.06am the Licensing Officers, Trading Standards and all interested parties returned to the meeting)

The Solicitor to the Committee read out the decision. The Committee had considered all representations made by all parties. The Premise License holder had responsibility for the supervision and management for the goods on sale at the premise. The Committee were satisfied that there was evidence that counterfeit spirits and spirits for which the duty had not been paid were on sale at the premise, consequently the licensing objectives of the prevention of crime and disorder and especially public safety were being undermined and it was an appropriate and proportionate response in the circumstances, to revoke the licence. The licence holder was reminded that the decision was appealable to the Magistrates Court within 21 days of written notification of the decision.

17. LICENSING ACT 2003: APPLICATION FOR VARIATION OF A PREMISES LICENCE FOR, TESCO GENERAL STORE, GODSEY LANE. MARKET DEEPING

(11.08am meeting adjourned)

(11.18am meeting reconvened – Councillor Russell left the meeting)

Decision:

That the variation of the premises licence for Tesco General Store, Godsey Lane, Market Deeping be approved as applied for.

The Solicitor to the Committee confirmed who would be speaking in connection with the application. Juan Lopez (Advocate for Tesco's), Simon Priestly (Manager at Tesco's) and Mr Kevin O'neill who was against the application.

The Licensing Officer introduced report CSL021 which was for a variation of the premise licence to vary the times for the supply of alcohol and the hours the premises were open to the public for Tesco General Store, Godsey Lane, Market Deeping. He referred to an error at paragraph 3.2 which should have read 3hrs Monday to Saturday and 5½ hours Sunday. An objection had been received to the variation which related to public nuisance and public safety. The objection letter was accompanied by a petition and assorted documents signed by residents of Market Deeping. The Licensing Officer confirmed that due to the size of the documents these had been sent in PDF format but the

original was available for anyone to view. No objections had been received from any of the responsible authorities.

Juan Lopez, the Advocate for Tesco's then presented their case. He referred to the planning consent which was already in place with regard to the deliveries and traffic which addressed public safety. He then spoke about the robust training that took place within the premises with regard to the sale of alcohol. This covered both people who were underage and proxy buying. He referred to the management structure in place within the store and how protection protocols were in place and adequate at all times of the day. Challenge 25 was in place and this was backed up at management level. Tesco worked closely with PCSOs and the police so that youths were not attracted to the store. The variation in hours was modest and related more to convenience for their customers rather than the sale of alcohol.

Members asked questions about various aspects with regard to the variation and the sale of alcohol to which Mr Lopez replied that Tesco's were confident that they had the protocols and safeguards in place.

Mr O'Neill then presented his case. Although only one objection had been made it was backed up by a petition signed by 554 people. Mr O'Neill referred to the litter and bottles found in park land and hedges and the rowdiness of youths in the area with binge drinking and bottles found in Tesco carrier bags. He circulated a letter (with the agreement of the representatives from Tesco's) which he had received from the local MP. Mr O'Neill felt that the extended hours would contribute to more anti social behaviour, litter and more noise and also an increase in sales traffic. He then concluded by reading out a statement that had been made by a senior police officer in the country about the proliferation of off licences which were a serious threat to public order.

A question was asked to Mr O'Neil about why no other residents had attended if they felt that strongly about the variation. The Licensing Office advised that that in discussion with Mr O'Neill it had been made clear that only one objection letter had been received from Mr O'Neill which was backed up by the petition; if other people had attended they would not have the opportunity to speak unless they had submitted a relevant representation.

The Licensing Officer then gave his closing statement reminding Members to have regard to the representations they had received and the need to promote the four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

They could modify the conditions of the licence or reject the whole or part of the application.

Mr Lopez from Tesco's then gave his closing statement referring to guidance which suggested opening and trading times should be the same in principle. That litter patrols were carried out in the car park and immediate surroundings of the store. That there were regular patrols and no anti social behaviour was evident as the police had not made any objections to the variation. The statement made by the senior police officer was aimed more a small off licences rather than supermarkets.

Mr O'Neill then gave his closing statement referring to the people who had signed his statement so that he could take the issue on board rather than people journey up from Market Deeping. He felt that the senior police comment was valid and that the people who had signed the petition had genuine fears and concerns about the variation.

(12 noon Licensing Officers and all interested parties left the meeting)

Members discussed the representations they had received from all parties. The Committee was mindful that there was no representation from Lincolnshire police and no evidence that the licensing objectives were currently being undermined. The Committee was satisfied that Tesco's procedures, checks and safeguards were adequate in terms of promoting the licensing objectives if the modest variation was approved. It was proposed, seconded and unanimously agreed to grant the variation as applied for.

(12.15pm Licensing Officers and all interested parties returned to the meeting)

The Solicitor to the Committee read out the Committees decision. The Committee had considered the representations made by all parties, however they were satisfied that there was no evidence which suggested the undermining of the licensing objectives and they felt that Tesco's had robust processes in place and therefore the variation was approved as applied for. The Committee wished to remind Tesco to work with local residents to address concerns they had. He reminded those present that any problems in the future could be addressed by a responsible authority submitting an application for a review. The decision was appealable to the Magistrates Court within 21 days of written notification of the decision.

18. ANY OTHER BUSINESS WHICH THE CHAIRMAN, BY REASON OF SPECIAL CIRCUMSTANCES, DECIDES IS URGENT.

The Licensing Officer circulated to Members information on the Live Music Act 2012 which had come into effect on 1st October 2012. The Act dis-applied live music related conditions if certain criteria were satisfied. Live amplified music also ceased to be classed as regulated entertainment if the criteria were satisfied. The Act also created a general exemption that live unamplified music provided anywhere should not be regarded as the provision of regulated entertainment if it took place between 8am and 11pm, regardless of the number of people in the audience. However there were mechanisms for the protection

of residents and these were:

- Upon a review of the premises licence the Licensing Authority could determine that conditions on the premises licence relating to live music would apply even between 8am and 11pm.
- If the licence did not presently authorise live music the Licensing Authority could add conditions to the Premises Licence as though the live music were regulated entertainment authorised by licence, again to apply between 8am and 11pm.
- The Licensing Authority could determine that live music at the premises was a licensable activity and live music could no longer be provided without permission on the Premise Licence or a Temporary Event Notice.
- Other noise legislation, for example in the Environmental Protection Act 1990, would continue to apply. The Live Music Act did not allow licensed premises to cause a noise nuisance.

19. CLOSE OF MEETING

The meeting closed at 12.35pm.