

LICENSING SUB COMMITTEE

25 FEBRUARY 2021

Present: Councillors Edwards (Chair), Roberts, Sinden and Cox (in reserve).

53. APPOINTMENT OF CHAIR FOR THIS MEETING

In accordance with the terms of reference of the Licensing Committee, the council solicitor invited nominations for the appointment of Chair for the duration of the meeting. Councillor Sinden proposed that Councillor Edwards should take the Chair, seconded by Councillor Roberts.

RESOLVED (unanimously) that Councillor Edwards be appointed as Chair for the duration of the meeting.

54. APOLOGIES FOR ABSENCE

None.

55. MINUTES OF PREVIOUS MEETING

RESOLVED (unanimously) that the minutes of the meeting held on 12 February 2020 be approved as a true record.

56. DECLARATIONS OF INTEREST

None.

57. NOTIFICATION OF ADDITIONAL URGENT ITEMS

None.

58. REVIEW OF PREMISE LICENCE. THE FOUR SEASONS HASTINGS LTD

Councillor Edwards set out the procedure that the Sub-Committee would adopt (in accordance with standard practice).

The Lead Licensing Officer, Mr Bryant, presented the report to consider an application to review the premises licence as a result of representations received from East Sussex Trading Standards under the licensing objectives "prevention of crime and disorder".

Mr Bryant said that a formal application was received on 8th December 2020 from East Sussex County Council Trading Standards Department to review the premises licence of the Four Seasons Convenience Store, under Section 51 of the Licensing Act 2003.

The premises is operated as a convenience store which has been in operation since 2008. In March 2016 the licence was transferred to The Four Seasons Hastings Ltd with Ms Thushya Inthirakumar as the sole director.

The application for review was considered by the Hastings Borough Council Licensing Team and deemed valid and in line with government guidance. The review asks for

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revocation of the licence due to the seriousness of counterfeit alcohol and its potential link to organised crime.

Mr Bryant reminded the Committee that before a review hearing can be held the Licensing Authority is required to place a copy of the review notice on the premises and the public notice board situated at Muriel Matters House. These notices were all correctly served and no further representations were made to the Council during the 28-day consultation period.

The licence holder's legal representative, Mr Ganesan, asked Mr Bryant to clarify the number of bottles of wine seized by Trading Standards. Mr Bryant said he believed 4 bottles were seized.

Mr Davison, Enforcement and Investigations Manager, East Sussex County Council Trading Standards, presented the application for review of the licence. Mr Davison said that 7 bottles of Zinfandel wine were seized, with 3 taken for sampling and the other 4 seized on suspicion of being counterfeit.

During the early part of 2020 it was apparent that counterfeit wine was prevalent in certain parts of Hastings and St Leonards. As a consequence, inquiries were conducted by Trading Standards and test purchases took place. On 10th June officers from Trading Standards attended the Four Seasons Convenience Store and conducted an inspection. The inspection took place in the rear store cupboard, and it was noted that no wine of the type seized was available for purchase in the store. The member of staff present informed Trading Standards that the bottles had been removed from sale by the manager as a customer had said that it had tasted funny. Of the 4 bottles seized for trademark infringement 3 were confirmed to be counterfeit. The bottles seized for sampling proved not to be genuine. Whilst it was determined that the bottles examined were not dangerous to consume Mr Davison said that there can be inconsistency with how counterfeit products are produced.

Traceability of the products was requested and no response was received. In subsequent correspondence the licence holder informed Trading Standards that the products were received at the time they took control of the premises.

It became apparent during an interview with the licence holder that an interpreter would be required. A decision was made due to Covid-19 guidelines that a question and answer under caution letter would be sent to the licence holder instead of a further face-to-face interview. No response was received to the letter.

Mr Davison said the application for revocation rests on the fact that traceability was not possible. Mr Davison proposed that the Committee also consider suspension of the licence in order for procedures to be put in place to allow for traceability. Mr Bryant asked if the licence holder raised any concerns about the alcohol being counterfeit. Mr Davison said they did not.

Councillor Edwards asked if a physical interview took place. Mr Wolstenholme, Senior Trading Standards Officer, said a formal interview did not take place as it became apparent on meeting the licence holder that her English was not sufficient to ensure a fair interview.

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Councillor Roberts asked why this particular store was visited. Mr Wolstenholme said that Trading Standards were acting on information from another criminal investigation.

Mr Ganesan spoke on behalf of Ms Inthirakumar and said that the forensic analysis of the seized bottles is not disputed. The licence holder wants to ensure she does not get into the position of holding counterfeit items. On the date in question she and her husband were not in the store due to Covid-19. A response to questions was sent by email, although there was a misunderstanding of what information was requested. Exact traceability is not available for the bottles on question but invoices have been disclosed for bottles bought in 2017 and 2018.

Mr Ganesan said that the products were determined not to be dangerous and it is hoped that the Committee will take this into account. The overall volume of counterfeit product was small and it was removed from sale.

The other determining factor raised by Mr Ganesan was the record of the licence holder, who has not been the subject of any previous matters of this nature. The licence holder accepts the seriousness of the matter, but asks the Committee to find a more appropriate response which would be less severe than revocation. Mr Ganesan suggested an appropriate remedy would be a suspension of the licence and also proposed that the Designated Premises Supervisor be changed.

The Licensing Officer asked Mr Ganesan why, when the items in question were taken out of circulation, were there no questions to the supplier as to why the wine was of poor quality? Mr Ganesan responded that because of Covid-19 the traceability exercise and physical examination of the bottles was compromised.

Mr Wolstenholme asked who would have been coming to inspect the product. Mr Ganesan said it would have been the licence holder investigating.

The Licensing Officer, licence holder and applicant summarised their positions.

Councillor Roberts proposed a motion, as set out below, seconded by Councillor Sinden.

RESOLVED (unanimously):

1) To remove the Designated Premises Supervisor

2) To suspend the licence for a period of three months (to enable full traceability procedures to be put in place)

Reasons:

The Committee have listened to the evidence before it very carefully. It considers the matter to be a very serious one in line with the Section 182 guidance issued by the Secretary of State. However, it believes that revocation of the licence would be disproportionate in the circumstances.

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The Committee has no confidence in the current management of the premises therefore it believes that removal of the DPS is a necessary and proportionate response.

It hopes that the period of suspension is used to enable the licence holder to put in place rigorous procedures to enable traceability of goods in line with legislative requirements (on demand) It is hoped that the Licence holder will take professional advice.

The Committee is pleased however that the licence holder is now engaging with Council's licensing services and trading standards.

(The Chair declared the meeting closed at. 3.14 pm)