

## LICENSING SUB COMMITTEE

27 APRIL 2016

Present: Councillor K Hastrick (Chair)  
Councillor I Brown

Also present: Detective Sergeant Rachel Brown, Hertfordshire  
Constabulary  
Joanne Tomkins, Hertfordshire Constabulary

Officers: Solicitor  
Senior Licensing Officer  
Licensing Officer  
Committee and Scrutiny Support Officer (AG)

### 43 COMMITTEE MEMBERSHIP/ ELECTION OF A CHAIR

The Committee and Scrutiny Support Officer confirmed that the Sub-Committee would comprise Councillors Hastrick and Brown.

The Sub-Committee was asked to elect a Chair for the Hearing.

RESOLVED –

that Councillor Hastrick be elected Chair for this Hearing.

### 44 DISCLOSURE OF INTERESTS (IF ANY)

There were no disclosures of interest.

### 45 APPLICATION FOR A NEW PREMISES LICENCE: SMAK, 77 MARKET STREET, WATFORD, WD18 0PR

The Sub-Committee received a report of the Head of Community and Customer Services setting out details of an application for a new premises licence for the above premises.

The Licensing Officer introduced the report. She explained that the Applicant had applied for a new premises licence for the sale of alcohol for consumption off the premises; with the licensable hours from 11.00 to 20.00 on Monday to Saturday and 11.00 to 18.00 on a Sunday. The Applicant was not proposing non standard or seasonal hours. The premises was located in Market Street, Watford; this is a Sensitive Licensing Area under Policy LP4 of the Council's

Statement of Licensing Policy. The premises was expected to volunteer measures to address street drinking and the sale of super strength alcohol. Representations had been received from two Responsible Authorities – Hertfordshire Constabulary and the Licensing Authority. The premises had been under investigation by Trading Standards with a court hearing taking place on 26<sup>th</sup> April resulting in a not-guilty verdict. The Sub-Committee was entitled to put what weight it saw fit to the submissions provided by the Responsible Authorities. She asked the Sub-Committee to note that that the Applicant's representative, Mr G Chipchase, had not received instructions to attend the hearing. Furthermore, the Applicant had communicated with the Licensing Officer today; explaining that she would not be attending the hearing and appreciating that a decision on the application could be made in her absence (the Licensing Officer circulated an e-mail received from the Applicant to that effect).

The Licensing Officer explained that the Sub-Committee should have regard to the four Licensing Objectives; and in making a determination it could grant the application in full - modify, alter or amend proposed conditions or reject the whole or part of the application.

The Chair explained that the hearing would proceed in the Applicant's absence. She invited Hertfordshire Police to address the sub-committee.

Detective Sergeant Brown explained that the Applicant was of good character and that conditions for the premises licence had been negotiated with her previously. Police had then become aware of the Trading Standards prosecution of Mikhail Lysak, who had operated the premises; that had resulted in the not guilty verdict. She outlined the history of the premises - it was not connected to crime and disorder; although there was intelligence about the apparent illegal sale of tobacco and of a racial incident. She asked that the conditions as shown on pages 27 and 29 of the agenda be applied and that three additional conditions of no single cans of alcohol to be sold (only in packs of four), no sale of alcohol to street drinkers and no sale of alcohol to persons as notified by Hertfordshire Constabulary be required. She gave an example to demonstrate how the latter condition would operate and of how the condition was specific to particular individuals.

The Chair invited the Licensing Authority to address the Sub-Committee.

The Senior Licensing Officer explained that the representations had been put forward in the knowledge of the pending prosecution by Trading Standards. It was not clear what association there was between the Applicant and Mr Lysak – hence why the Licensing Authority was objecting to the application. When Trading Standards had obtained evidence for the prosecution in August 2015; the Applicant was working on the premises. He therefore wondered why the present application was in her name. However, if it could be shown that the Applicant was not associated with Mr Lysak (his company also called Erdas Foods Limited) - the Licensing Authority would be satisfied with the application and the associated conditions.

He explained the history of the premises in relation to the apparent illegal sale of tobacco where warnings had been given by Trading Standards over a number of years; leading up to 2010. This seemed to have resolved the situation. However, further warnings were subsequently given leading to the prosecution this year. He drew the Sub-Committee's attention to an Appeal Court decision where it was ruled that a prosecution was not required to reject a licensing application; there simply needed to be a risk to the licensing objectives. He repeated that if Mr Lysak was still involved in the running of the premises the Licensing Authority would have concerns.

Detective Sergeant Brown explained that attempts had been made with the Applicant's representative, Mr Chipchase, to negotiate a condition that Mr Lysak would not be involved with the premises. However, this had not been agreed.

The Chair asked that had the Applicant been present at the hearing; what questions would the Licensing Authority have put to her. The Senior Licensing Officer explained that these would have been in relation to clarifying her role relative to the premises; whether an owner, manager or employee and whether Mr Lysak's company still have an interest in the premises. He added that it was interesting that the e-mail from the Applicant (as circulated at the hearing) indicated that Mr Lysak may still be involved as a 'director' of the business.

In response to a question from Councillor I Brown, the Senior Licensing Officer explained that the Licensing Authority did not have concrete information about Mr Lysak's involvement in the premises. However, the prosecution would not have been instigated lightly by Trading Standards. This had been under consumer legislation in that the products sold were allegedly not suitable in the UK. Consequently, he questioned whether the premises would sell bona-fide alcohol if granted a premises licence. The Licensing Authority was also concerned with how the premises would engage with the authorities – this was particularly relevant as it was located in the Sensitive Licensing Area. In addition, the premises had been the subject of repeated warnings about the apparent illegal sale of tobacco and there was intelligence about selling to persons under the age of 18. There was no suggestion that any of the intelligence provided between 2007 and 2010 was malicious. He concluded that the Licensing Authority would not have trust in the premises and that the operators would simply see the premises license as a 'piece of paper'.

Councillor I Brown discussed Policy LP4 - Sensitive Licensing Areas (as outlined in the Council's Statement of Licensing Policy) and the Chair asked what training the Applicant had had in relation to dealing with street drinkers. The Senior Licensing Officer explained that it was difficult to say whether or not she needed training as there were no issues with her background or character. However, confirmation was needed as to her association with Mr Lysak. He added that any training in relation to street drinkers would need the involvement of the police and the Licensing Authority. Detective Sergeant Brown drew the Sub-Committee's attention to page 20 of the agenda which contained a condition that the Applicant be trained in licensing law with regard to age verification so as to meet the licensing objectives. She concluded that the Applicant had not engaged greatly with the police thus far.

The Chair commented that it was unfortunate that the Applicant was not present at the hearing.

The Sub-Committee retired to consider their decision.

On the Sub-Committee's return, the Chair announced the decision.

RESOLVED –

Having taken in to account the application and information provided by the Applicant and having heard representations from the Police and Responsible Authority, the Sub-Committee rejects the application. In reaching this decision the Sub-Committee is of the view that the premises falls within the Council's Sensitive Licensing Area and that granting the application would undermine the licensing objective of prevention of public nuisance to protect the amenity of residents and businesses in the vicinity of licensed premises. For these purposes 'vicinity' is taken to mean the immediate area around licensed premises where the individual's residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside. The Sub-Committee has taken in to account the provisions of the Licensing Act 2003, the Council Statement of Licensing Policy 2013-2018 and the Secretary of State's guidance.

Chair  
Licensing Sub-Committee

The meeting started at 13.30 p.m.  
and finished at 14.45 p.m.