

Licensing Act Sub-Committee – Record of Hearing held on Wednesday, 29 July 2015 at 6.00 pm

Members: Councillor Dow (Chairman) and Councillors Blakebrough and Swansborough

1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct.

None were declared.

2 Review of Premises Licence - Ocean Gastronom, 9 Seaside.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Specialist Advisor outlined the report detailing the application for a review of the premises licence for HJ Food Ltd trading as Ocean Gastronom, 9 Seaside Road that had been made by East Sussex County Council Trading Standards service on the 23rd June 2015 under the prevention of crime and disorder licensing objective.

The reason for the review was that East Sussex County Council Trading Standards found illegal cigarettes stored on the premises that did not comply with the relevant tobacco products regulations and had no UK duty paid. Trading Standards also expressed concerns that the Designated Premises Supervisor (DPS) and premises licence holder, Miss Jenya Dimitrova was not acting suitably in regards to control of the premises. A copy of the review application was included at appendix 2 to the report.

During the statutory consultation process that had run from the 24th June 2015 to 21st July 2015 a further representation had been received from Eastbourne Borough Council's Licensing Team supporting the recommendation made by Trading Standards that Miss Dimitrova be removed as DPS. This was included at appendix 3 to the report.

A letter had been received from Miss Dimitrova confirming that she was unable to attend the hearing tonight. The letter also advised that a new sub-tenant had been found who was interested in taking on the property with the benefit of an existing premises licence. Miss Dimitrova asked the Sub-Committee to not revoke the premises licence. The Sub-Committee confirmed that they would take this into account when making its decision.

Mr Graham Wolstenholme and Mr Barnaby Brown representing East Sussex County Council Trading Standards addressed the Sub-Committee. They advised that the company HJ Food Ltd that was trading as Ocean Gastronom in Eastbourne also operated two other premises, in St Leonards on Sea and Tunbridge Wells which had been subject to investigation and review proceedings for similar offences.

Mr Wolstenholme reported that on 29th May 2014, HM Revenue and Customs (HMRC) seized illegal tobacco at Ocean Gastronom. Sussex Police then contacted Miss Dimitrova advising her of the severity of allowing illegal tobacco on the premises and how this undermined the licensing objectives, notably the prevention of crime and disorder. At this stage Miss Dimitrova declared that she was not aware of the illegal activity. Mr Wolstenholme also stated that the premises CCTV system was not operational at that time and the refusal book had not been updated in over a year, which were both statutory licence conditions.

On the 20th June 2014, 112 packs of non-duty paid cigarettes were seized from a store in Tunbridge Wells owned by HJ Food Ltd. Miss Dimitrova was the DPS and premises licence holder for the premises in addition to Ocean Gastronom in Eastbourne and Moscwichka in St Leonards on Sea. A review hearing took place and on the 27th August 2014, Tunbridge Wells Borough Council removed Miss Dimitrova as DPS from the licence.

Mr Wolstenholme then referenced the events on the 23rd October 2014, detailed in the report where 192 packets of illegal tobacco products that were not available within the legitimate UK market were found at Ocean Gastronom in Eastbourne. These products did not comply with the Tobacco Products (Manufacture Presentation and Sale) Regulation 2007 and were not duty paid in the United Kingdom. From a health and safety point of view, all cigarettes sold within the European Union must be reduced ignition propensity compliant so that they self-extinguish when left in an ashtray. The majority of illegal cigarettes that were seized did not conform to these standards.

On 4th November 2014, 306 packets (of 20's) of illegal cigarettes were found hidden throughout HJ Food Ltd trading as Moscwichka at 1a Pevensey Road, St Leonards on Sea. This was subject to a separate licence review with Hastings Borough Council. The Sub-Committee were notified that Moscwichka and Ocean Gastronom do not display legal tobacco. Large quantities of film DVDs containing no age certification were also discovered at Moscwichka, available to rent and the Sub-Committee was advised that this was a criminal offence under the Video Recordings Act.

Mr Brown added that the incidents described occurred whilst Miss Dimitrova was the DPS and premises licence holder for these premises and represented a consistent pattern of behaviour.

Miss Dimitrova was interviewed on 20th November 2014 regarding the seizure of illegal tobacco products at Ocean Gastronom, detailed in the report. She stated that she had minimal control over the premises similar to comments made at the Tunbridge Wells review hearing.

An interview with Mr Grigoryan, manager of Ocean Gastronom stated that Miss Dimitrova rarely attended the premises and was unaware of the sale of illegal tobacco products at the premises.

Mr Wolstenholme added that if Miss Dimitrova was unaware of the illegal tobacco products being sold at the premises, serious concerns would need to be asked over her suitability in the role of DPS at the premises in terms of promoting the licensing objectives.

Mr Brown added that Miss Dimitrova had appointed Mr Hovakimyan as the new DPS at the premises in Tunbridge Wells and he had been complicit in the selling of illegal tobacco at the premises in St Leonards on Sea.

Mr Brown referenced Miss Dimitrova's letter that had been submitted prior to the meeting and raised concerns about who the incoming tenant for the premises was and whether they had any connections with HJ Food Ltd who had been complicit in the selling of illegal tobacco.

It was the opinion of East Sussex Trading Standards Service that the offences found indicated that the licensing objective for the prevention of crime and disorder had been undermined and that Miss Dimitrova was not a suitable person to be a Designated Premises Supervisor and should be removed from the licence. Taken into account the investigations at other locations and lack of confidence in Miss Dimitrova or HJ Food Ltd, Trading Standards asked that the Sub-Committee consider revoking the premises licence.

The Sub-Committee asked about the potential profit from selling illegal cigarettes. Mr Wolstenholme responded that a legitimate business generated an estimated 18p profit where as illegal cigarettes that were not duty paid in the UK generated an estimated £1-2 profit per packet. The sale of smuggled tobacco not only damaged local traders who lost revenue from the sale of legitimate goods, but also undermined UK government's policy on smoking which set tax rates high enough to discourage people from smoking.

In a response to a question from the Sub-Committee, Mr Wolstenholme confirmed that all three premises were still operational.

The Sub-Committee asked why Trading Standards had recommended that the premises licence be revoked. Mr Brown responded that Miss Dimitrova was the licence holder and DPS at other premises that were subject to investigation and review proceedings, but this had still led to illegal cigarettes being discovered at Ocean Gastronom.

Additional documents were presented by East Sussex County Council Trading Standards to validate their representation including the seized cigarettes and pictures displaying where they were hidden on the various premises, witness statements following the seizure of these products, summary of interviews with Miss Dimitrova, Mr Grigoryan and Mr Hovakimyan, licence review application and decision notice of Tunbridge Wells Borough Council following their review hearing and list of HJ Food Ltd house directors.

Mr Adrian Albon, representing Eastbourne Borough Council's Licensing team addressed the Sub-Committee and reiterated his representation, included at appendix 3 to the report.

Following all the evidence presented to the Sub-Committee, the Sub-Committee retired to consider and determine the application having regard to the representations submitted, the regulations and guidance from the Home Office, the Licensing Act 2003, the four licensing objectives and the Council's Statement of Licensing Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: That the Designated Premises Supervisor be removed from the licence and the licence be revoked in respect of Ocean Gastronom, 9 Seaside Road for the reasons as set out in the attached appendix.

The meeting closed at 8.05 pm

Councillor Dow (Chairman)