

Licensing Act Sub-Committee - Record of Hearing held on Tuesday 20 March 2012 at 6.00pm

MEMBERS: Councillor Mrs Heaps (Chairman); Councillors Liddiard and Ungar.

1 Declarations of Interest.

None were received.

2 Review of Premises Licence – First Choice Supermarket Ltd, 2-9 Fife Court, 97 The Hydneye.

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

The Licensing Manager addressed the Sub-Committee regarding a request from Mr B Brown, Senior Trading Standards Officer to submit further evidence at the meeting. The Sub-Committee was advised that evidence produced at the hearing could only be considered if all parties were in agreement.

Mr Dadds, Legal Advisor to Mr Sahindal, Premises License Holder raised objections to the submission of additional evidence which had not been submitted within the required timescale. The Sub-Committee agreed that no further evidence would be considered.

The Licensing Manager outlined the report detailing the application for a review of a premises licence for First Choice Supermarket Ltd, 2-9 Fife Court, 97 The Hydneye that had been made by East Sussex County Council Trading Standards service on the 7th February 2012 under the prevention of crime and disorder licensing objective.

Mr B Brown addressed the Sub-Committee detailing the events of the 25th October 2011 following a visit to the premises. The visit had occurred due to a complaint being received from a member of the public who had purchased 2 bottles of Drop Vodka a month or two previously and had become concerned after watching a programme relating to bootleg and counterfeit alcohol.

East Sussex County Council Trading Standards service confirmed that analysis of samples taken had revealed that the vodka breached the Spirit Drink Regulations 2008, the Food Labelling Regulations 1996 and the General Food Regulations 2004.

Initial inspection of the bottle had identified concerns immediately to Mr Brown including the price which when compared to other bottles of 70cl spirits was priced higher than usual. The label quality and lack of any information that could trace the product to its supplier was also of concern. There were no batch codes or lot numbers on the labels which was required by the General Food Regulations 2004. The HM Revenue and Customs duty stamp on the bottle

which Mr Sahindal believed showed that the bottle was genuine also did not fluoresce which also indicated that it was indeed counterfeit.

Analysis of the vodka declared that the vodka was deficient to the extent of 9.6% vol which was 32 times the maximum permitted tolerance deficiency of 0.3% as prescribed by the Food Labelling Regulations 1996. It also contravened the minimum alcoholic strength as required by the Spirit Drink Regulations 2008.

Mr Sahindal was asked where he had purchased the vodka. He advised Mr Brown that he had bought it from a door to door salesman but was unable to produce any paperwork for the purchase such as supplier details or an invoice and could not therefore fulfil traceability requirements under the General Food Regulations 2004.

It was the opinion of East Sussex Trading Standards Service that the licensee had not exercised due diligence and the licensing objective for the prevention of crime and disorder had not been met. It was recommended that the premises licence be revoked.

Mr Dadds addressed the Sub-Committee on behalf of Mr Sahindal, the Premises License Holder. It was acknowledged that the vodka was indeed illicit however Mr Sahindal had purchased the 6 bottles believing that the product was genuine due to the duty free stamp. Reference was made to the huge product range available at the premises and that this was the first and only instance of a product sold at the premises in contravention of the General Food Regulations 2004.

Mr Dadds indicated that in his opinion the review had arisen in connection with an alleged crime and could not be directly connected to the crime and disorder licensing objective as no prosecution or judgement in court had been made.

The Council's legal advisor advised that the role of the licensing authority when determining a review is to ensure that the licensing objectives are promoted regardless of any judgment in the courts and to determine on the basis of the application for review and any relevant representations what action needs to be taken for the promotion of the licensing objectives.

Mr Dadds put forward conditions to be attached to the premises licence to support the licensing objectives. The premises license holder must not purchase any alcohol from a door to door salesman and that all alcohol supplies must be purchased from a cash and carry. The second condition related to ensuring that all alcohol purchased must have documentary evidence including receipts to allow the product to be traced back to its supplier.

Following questioning from the Sub Committee, Mr Dadds reiterated that Mr Sahindal had purchased the Drop vodka in good faith and his openness to the inspection from East Sussex Trading Standards was also an indication that he had no indication that the vodka was purchased and considered to be illicit.

Written representations in support of the premises had been received from 5 local residents as detailed in the report.

Mr Dadds spoke on behalf of the interested parties who were present at the meeting and the consensus was that Mr Sahindal was very helpful and hardworking and provided good customer service for his customers.

Mr Brown advised the Sub-Committee that despite the positive character references provided by the interested parties, the offence committed remained a serious breach of the licensing objective relating to the prevention of crime and disorder and the decision made by the Sub-Committee should not be a reflection on Mr Sahindal as a person but of his selling of illicit alcohol.

Following all the evidence presented to the Sub-Committee, Mr Dadds summarised on behalf of Mr Sahindal. Mr Dadds believed the conditions that he had presented to the Sub-Committee were easily enforceable and the fact that no other breaches had been made indicated that the purchase of illicit alcohol was an unfortunate mistake which had been accepted by Mr Sahindal.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives and the Council's Statement of Licensing Policy. Advice had been sought from the legal advisor regarding the powers of the Sub-Committee under the review process and the weight to be attached to the guidance and evidence submitted.

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

RESOLVED: That the premises licence in respect of First Choice Supermarket Ltd 2-9 Fife Court, 97 The Hydneye be suspended for a period of 3 months for the reasons as set out in the attached appendix.

The meeting closed at 8.05 p.m.

**Mrs C Heaps
Chairman**

Eastbourne Borough Council

Decision Notice

Licensing Act Sub-Committee held on Tuesday 20 March 2012

Premises Licence Holder:	Mr B Sahindal
Premises:	First Choice Supermarket Ltd, 2-9 Fife Court, 97 The Hydneye
Reasons for Hearing:	Relevant representations received from East Sussex Council Trading Standards Service under the prevention of crime and disorder licensing objective
Parties in attendance:	Mr B Sahindal (Premises License holder), Mr R Abbass and Mr D Dadds (Legal Advisor).
	Responsible Authorities – Mr B Brown (East Sussex Trading Standards Service)
	Interested Parties – Mrs A Nicholson, Mr J Smith, Ms H Ewen, Mr J Tyler and Mr and Mrs L Cary.
	Licensing Authority: Miss K Plympton (Licensing Manager), Ms D Bryant (Licensing Officer) and Mr G Johnson (Regulatory and Litigation Lawyer).
Decision made:	The premises licence is suspended for a period of three months.
Reasons for Decision:	The Sub-Committee has suspended the Premises Licence having given due weight to the evidence placed before it, as well as the regulations and guidance under the Licensing Act 2003, the Council's Licensing Policy and the Licensing Objectives.
	The Sub-Committee considered that East Sussex Trading Standards had provided sufficient evidence to show a serious failure on the part of the licence holder to promote the licensing objective relating to the Prevention of Crime and Disorder and that the only course available to them on the facts provided was to suspend the licence to ensure that the licensing objective was promoted.
	The Sub-Committee had particular regard to the evidence put before it regarding the purchase of the vodka in question and concluded that the licensee had not exercised proper control and supervision in the purchase and re-selling of the Drop Vodka.

Particular regard had been given to the evidence provided by Mr Brown of East Sussex Trading Standards regarding poor quality labelling; the lack of information and duty stamp; which when compared to legal and legitimate sources of vodka should have indicated to the Designated Premises Supervisor and their staff that the Drop Vodka was illicit. The lack of proper record keeping was also identified as a concern and an offence in itself.

The Sub Committee decided that to avoid any reoccurrence, the premises licence be suspended for a period of 3 months in order for all personal license holders and employees of First Choice Supermarket Ltd to undertake re-training in the selling of alcohol, and how to prevent a re-occurrence in the breakdown in the proper control and supervision of the site exercising due diligence. The Sub-Committee requested the Licensing Manager to monitor the training given to staff to ensure it is carried out to an appropriate level.

Date of Decision: 20 March 2012

Date decision notice issued: 11 April 2012

A written or electronic copy of this Notice will be publicly available to all Parties and published on the Council's website.

RIGHT OF APPEAL

Under the provisions of S.181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal against the decision of the Licensing Sub-Committee, should you be aggrieved at the outcome.

This right of appeal extends to the applicant for the review, the holder of the premises licence and any other person who made relevant representations in relation to the application.

Full details of all the rights of appeal can be found within Schedule 5 of the Act. If parties wish to appeal against the Sub-Committee's decision, this must be made to the Magistrates Court, Old Orchard Road, Eastbourne, BN21 1DB within 21 days of receipt of this decision notice.

