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1. REVIEW APPLICATION

On the 5th May 2020, an application for a review of a premises licence under section 51 of the Licensing Act 2003 was served by Mr Adrian Overton on behalf of the Licensing Authority. The review application is in respect of the premises known as Broadway Food and Wine, 51 Fulham Broadway, London, SW6 1AE. At the time the application was received, Mr Thayalan Ratnam was the licence holder.

The application for a review of the premises licence was made on the grounds of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm following continuous breaches of licence between January 2020 and March 2020.

This is the second review submitted by the Licensing Authority in relation to this premises. The first review was submitted in October 2018 due to persistent breaches of licence conditions in 2017 and 2018. Additionally, during this period the premises was found to have sold alcohol to a child and was also found with non-duty paid alcohol on the premises. Consequently, the licence was revoked on the 5 December 2018 by the Licensing Sub-Committee.

An Appeal was lodged against this decision and subsequently discussions were held between all parties. The Licensing Authority were advised that the occupiers (Mrs Nageswary Shanmugaratnah and Mr Suganthan Sinnathurai) who had committed the offences in 2017 and 2018 would no longer be involved in the business in the future. As a result of this agreement, the Licensing Authority agreed for a consent order to be drafted with a number of conditions attached. One specifically prohibited a number of individuals having any involvement in the businesses in the future.

A visit was undertaken at the premises on the 21st January 2020 and it was noted that Mrs Nageswary Shanmugaratnah was seated behind the counter at the premises. Mr Murigesu, who was said to be in charge of the premises at the time of this visit was unable to demonstrate that the CCTV system was operational. This is contrary to condition 6 of the premises licence. An inspection sheet was left at the premises as a warning letter.

On the 6th February 2020, a further inspection was carried. At the time of the visit Mr Kirubahapan Murigesu was responsible for the premises. Mr Murigesu was still unable to use the CCTV system. The licensing officers accessed the CCTV system themselves and noted that on the 21 January 2020, Mrs Nageswary Shanmugaratnah was behind the counter and seen serving customers.

Additionally, the footage showed Mrs Shanmugaratnah purchasing alcohol over the counter from an unknown individual whom the police subsequently confirmed to be known as a shop lifter in the Fulham area. Mr Murigesu confirmed that Mrs Shanmugaratnah worked at the premises. An inspection sheet was left at the premises as a warning letter.

Breaches of conditions 15, 16, 17 and 23 were subsequently identified as having taken place on the 21st January 2020. Subsequently, Mr Ratnam was requested to attend a meeting on the 10th February 2020 and to bring CCTV footage for the 14th , 21st, 24th and 25th January 2020. Mr Ratnam was additionally requested to bring to the meeting all signed and dated records demonstrating staff training outlined in the condition.

On the 10th February 2020 Mr Ratnam attended the meeting without the CCTV footage and satisfactory training records. This is contrary to conditions 6 & 19 attached to the licence.

Further requests for CCTV footage were made for additional dates in February. To date the CCTV footage has not been received.

The licensing authority is of the view that this premises appears to operate with a complete disregard for the law and the licensing objectives. Additionally, it appears that the previous occupiers are still involved in the premises contrary to the consent order and condition 23 attached to the licence. The premises are situated in the Cumulative Impact Area and the continued operation of this premises is having an adverse impact on the licensing objectives.

The Licensing Authority therefore recommends that that the Premises Licence be revoked.

A copy of the review application and supporting documentation can be seen on pages 11-21 of this report.

2. CURRENT LICENCE

The premises currently operate under a premises licence which permits the following licensable activities:

Sale of alcohol – Off the premises

Monday- Sunday 08:00 -23:00

Hours the premises are opened to the public

Monday- Sunday 08:00 -23:00

A copy of the current premises licence can be seen on pages 22-29 of this report.

3. BACKGROUND

Records show that in respect of the premises, the premises licence was granted on the 14th April 2011. At the time, the premises licence holder was Convenience Store Retailing Ltd.

On 3rd February 2015 Mrs Thurka Jeyakumar submitted an application to transfer the premises licence from Convenience Store Retailing Ltd to Mrs Thurka Jeyakumar and submitted an application to vary the Designated Premises Supervisor (DPS) to Mrs Thurka Jeyakumar on 5th February 2015.

On 28th November 2017 Mr Suganthan Sinnathurai submitted an application to transfer the premises licence from Mrs Thurka Jeyakumar to Mr Suganthan Sinnathurai and submitted an application to vary the Designated Premises Supervisor (DPS) to Mr Suganthan Sinnathurai.

On the 12th October 2018, The Hammersmith and Fulham Council Licensing Authority called the premises licence for review on the grounds of the prevention of crime and disorder, the protection of children from harm and public safety. The Committee revoked the premises licence. A copy of the review and subsequent Committee decision can be seen on pages 42-79 of the report.

On 04 September 2019, Ms Gill Sherratt of Licensing Matters Limited, submitted an application to transfer the premises licence from Mr Suganthan Sinnathurai to Thayalan Ratnam and submitted an application to vary the Designated Premises Supervisor (DPS) to Thayalan Ratnam.

The premises operate as a convenience store. The main access to the premises is located on Fulham Broadway. A plan of the premises can be seen on page 29 of this report.

The premises are located in Fulham Broadway in the cumulative impact area. There is a mixture of both residential and commercial premises within the area. A map showing the location of the premises and neighbouring licensed premises can be seen on pages 33-34 of this report.

There are several options for transport away from the area including buses and taxis which run from in and around the Fulham Broadway area. Fulham Broadway tube station is one-minute walk away from the premises.

4. CONSULTATION

A public notice was displayed by the Council near the premises. A further public notice was displayed by the Council at Hammersmith and Fulham Town Hall. Details of the application were also published on the Council's Web Site and also sent to the local Ward Councillors.

A notice of review was served on the premises licence holder and all the statutory responsible authorities as required by regulation.

4.1 Relevant Representations

The licensing section received a representation in support of the review application from Mr Doug Love, Senior Trading Standard Officer. Mr Love undertook a check of the premises alcohol stock on 28th January 2020 and noted that there were several types of wine that were supermarket own brands. At the meeting on 10th February 2020 Mr Love stated that he handed a letter to Mr Ratnam requiring invoices to be produced for the 'own brand' wines that he had seen. At the point of writing his comments Mr Love stated that he had not received the requested invoice.

Mr Love recommends that the premises licence be revoked.
A copy of this representation can be seen on pages 35-38 of this report.

The licensing section received a representation in support of the review application from PC Tom Stewart, London Metropolitan Police . PC Stewart was also on the visit made to the premises on 21st January 2020. PC Stewart states that following intelligence received that items stolen from Wilko were believed to be sold to the premises, his colleagues PC Alex Kalisz and PC Day-Smith attended the premises on 4th March 2020. During the visit to the premises, officers noted several products on the shelves that had security stickers attached to them including washing tablets/powders and fabric softener. The location of the tags matched the same location that Wilko placed the security tags on the same products.

PC Stewart recommends that the premises licence be revoked.
A copy of this representation can be seen on pages 39-41 of this report.

5. OTHER INFORMATION

5.1 Enforcement History

See review application and appendices.

5.2 Temporary Event Notices ("TENs")

No TENs have been submitted in respect of this premises in the past twelve months.

6. POLICY CONSIDERATIONS

- 6.1 It is the Council's duty under the Licensing Act 2003 to determine the review with a view to promoting the four licensing objectives; Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance and the Protection of Children from Harm.
- 6.2 In reaching a decision, the Council must have regard to the Council's adopted Statement of Licensing Policy ("SLP") and the guidance issued by the Secretary of State under section 182 Licensing Act 2003.
- 6.3 The revised guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 ("the Guidance") contains advice in paragraphs 11.16 to 11.28 in relation to the review of a premises licence. Paragraphs 11.16 to 11.28 of the revised Guidance can be seen on pages 82-88 of this report.
- 6.4 The Council's own SLP gives guidance concerning the review of a premises licence.
- 6.5 Section 21.1 page 36 of the SLP states that the Act describes two "groups" that may make representations to applications and may apply for an existing premises licence or club premises certificate to be reviewed by the Licensing Authority. These groups are Responsible Authorities and "Other Persons".
- 6.6 Section 21.2 page 36 of the SLP states that "Other Persons" means any individual, body or business who is affected by the operation of a licensed premises regardless of their geographical location. Although they may be in any geographical position, any representation they make must be relevant to one or more of the licensing objectives, and must not be considered to be frivolous or vexatious in nature. Additionally, any application to review a premises licence must not be repetitious.
- 6.7 Section 21.3 page 37 of the SLP states that the Licensing Authority will, however, look at the geographical location of the author of any representation or review application received. Where the author lives or works a significant distance from the premises subject of an application or

review, this Authority will examine the content of the representation particularly closely to ensure that it is valid and complies with the requirement of the Act.

6.8 Section 21.5 page 37 of the SLP states that at any stage, following the grant of a premises licence, a Responsible Authority, such as the police or the fire authority, or other persons, may apply for a licence to be reviewed because of a matter arising at the premises in connection with any of the four Licensing Objectives.

6.9 Section 21.6 page 37 of the SLP states that a licence may be reviewed where it is alleged that the Licensing Objectives are not being promoted and there is evidence to show this. The Licensing Authority will regard applications for the review of any premises licence particularly seriously where they involve evidence of:

- Incidents of disorder;
- Instances of public nuisance where warnings have been disregarded;
- Serious risks to public safety which the management is unable or unwilling to correct; and
- Frequently operating outside permitted hours.

7. THE REVIEW HEARING

In determining this application, the Committee must have regard to the representations and take such of the following steps as it considers necessary for the promotion of the licensing objectives. The steps are:

- (a) Take no further action.
- (b) Modify the conditions of the licence.
- (c) Exclude a licensable activity from the scope of the licence.
- (d) Remove the Designated Premises Supervisor.
- (e) Suspend the licence for a period not exceeding three months.
- (f) Revoke the licence.

Where the Committee takes a step mentioned in (b) or (c) above, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

In making its decision, the Committee must act with a view to promoting the licensing objectives:

- the prevention of crime and disorder
- the prevention of public nuisance
- public safety

- protection of children from harm

It must also have regard to its own SLP and the Guidance.

If the Committee is minded amending the licence, conditions may be attached to the licence to alleviate the concerns raised through representations; nevertheless, this is a matter for the Committee to determine in light of the above matters, and any others it considers material.