

London Borough of Hammersmith & Fulham

Trading Standards
Hammersmith Town Hall, W6 9JU

To: LBHF Licensing Team

Date: 08/12/22

Please ask for: Doug Love

LICENSING ACT 2003: REPRESENTATIONS BY RESPONSIBLE AUTHORITY

Broadway Food & Wine, 51 Fulham Broadway, SW6 1AE Trading Standards representation to new application

1. Following the application for a new premises licence made by Prabakaran Shanmugaratnam, I wish to make the following representation to outline Trading Standards' knowledge of the (current) business and to request conditions to be added, if the Licensing Sub-Committee choose to vary the licence.
2. It is my understanding that the applicant wishes any post-grant business to be seen as a different entity to the business currently trading there, as he will be fully involved in the management of the business whereas, previously, he has only been financially involved. Whether this is realistic, given that he is related to the existing managers and has had a financial interest may be something the Committee will take their own view on.
3. The section below, gives a history of Trading Standards' dealings with the premises.

Statement of facts

4. On 3rd September 2018, a test purchase was undertaken at the premises by a 16-year-old volunteer working with Trading Standards. An employee sold her a bottle of wine without asking any questions. It was clear that the employee had been poorly trained. Suganthan Sinnathurai, then PLH and brother-in-law of the applicant, attended Trading Standards training course for managers and staff of Age-restricted Goods retailers in October 2018.
5. On 12th September 2018, I undertook an inspection for illicit goods. I seized a large amount of illicit alcohol - 45 bottles of vodka and 127 bottles of wine.
6. Nageswary Shanmugaratnam, who is to this day the sole director of the company that owns the business, admitted she had purchased the vodka from someone calling at the shop, without proper paperwork. She stated that the wine came from a cash and carry business, but could / would not produce invoices.
7. Trading Standards submitted a representation supporting a review bought by the Licensing Authority in November 2018 and the licence was revoked by the LS-C shortly after, before a consent order was signed.

8. In January 2020, visiting the business after reports that the shop had been buying stock from known shoplifters, I detected several types of own brand wine. Invoices were requested – the then PLH was required by a licence condition to produce them upon request – but could /were not produced.
9. Trading Standards submitted a representation supporting a review bought by the Licensing Authority in May 2020 and the licence was revoked by the LS-C shortly after.
10. Mr Shanmugaratnam, who is the son of Ms Shanmugaratnam, applied for a new licence towards the end of 2021. He spoke well when I and other officers met with him. He stated that although he had had a financial interest in the business he had not to that date been involved in day-to-day management, but said he would be from that point. The Licensing Sub-Committee chose not to grant the application.
11. On 19th August 2022, a Challenge 25 test purchase was made at the business. An employee, Jeeva Nathan, sold a disposable e-cigarette to a male volunteer, aged 20. He told the officer leading the operation that he did not ask for ID because he thought the volunteer looked old, stating he believed him to be 26 (most people the volunteer encountered put his age much lower – seven out of 10 estimated his age between '15-16' and '22-23'). An invite to attend the Trading Standards training for managers and employees of age-restricted goods retailers was extended, but no-one from the business booked onto the course.
12. On 12th October 2022, Mr Nathan failed an underage test purchase, selling an e-cigarette to a female volunteer, 17, who was accompanied by another 17-year-old female volunteer. On this occasion he did ask for ID, but accepted a photo of ID shown to him on the phone of the second volunteer. The pictured ID was of her genuine ID and showed her date of birth to be in April 2005, confirming she was 17, but was accepted by Mr Nathan who later said he'd misread it through the COVID screen as '2003'. He did not require ID from the person who was paying.
13. We strongly advise businesses never to accept ID pictured on a phone, as it is too easy to fake, and to take ID from customers, so it can be properly examined. It is not acceptable that ID should be sought from someone accompanying the buyer, but not also from the buyer.
14. The business did contact TS to book Mr Nathan on a training in November. However, they did not pay the fee, Mr Nathan did not turn up, and the business did not take advice that the person responsible for the training was the best person to attend. It was not clear who I was corresponding with at the business, but it was via the same e-mail address that I am aware Mr Sinnathurai has used when dealing with a colleague about the underage sale.
15. My colleague who investigated the underage sale offence received answers to written questions from the same e-mail address and the writer confirmed himself to be 'Sinna thurai'; that he was managing the shop as 'the owner' had been on holiday for three months; and that he was "supervisor (arranging and managing staff and delivery and supervision)". I attach the written questions and the correspondence as Appendices 1A & 1B respectively.
16. The history of for age-restricted test purchases at the business in addition to those mentioned above is as follows: the only Challenge 25 test purchase was for alcohol in August 2021 and resulted in a sale without ID being required; underage test purchases of alcohol were passed in December 2018 and October 2021.

Recommendations

As mentioned above, when I met the applicant at the end of 2021, I was quite impressed with his words.

I have met (virtually) with him again during the consultation period. He was, again, impressive, and gave some confidence when he was pledging to ensure staff were properly trained and that he would have robust expectations for their work.

However, I do have some ongoing concerns.

- The first application from Mr Shanmugaratnam was received only days before the Council's decision to revoke the previous licence was upheld on appeal. I commented in my representation to that application that it may be thought strange that despite his financial involvement in the business and could have been assumed to have been aware of previous problems at the business, the responsible authorities only became aware of him when he made the application.

For this application, he says that he has still has no involvement in the management of the business, but that he will consider buying his mother out of the business, manage it, replace the staff and insist on high standards, if the licence is granted. Had he been in a position to demonstrate this improved approach – which is clearly what the business needs - prior to making the application, I may have been in a position to recommend that it was granted,

- The answers to written questions (in Appendix 1B) suggest that, currently, staff training covers the right sort of areas – although I was disappointed not to see the ASSESS-CHALLENGE-CHECK steps process explicitly mentioned, or anything about the difficulty in assessing age.

However, there were two recent sales made by the same person. The first was not an offence but should have warned the business and the employee that they may not be getting it right. The second, when an offence was committed (and is currently under investigation), revealed the seller had made three mistakes: to accept 'phone ID'; to fail to check it carefully; and to not require ID from the person actually buying the item. This would suggest that neither the business nor seller did heed the warning.

Unless the applicant were to totally change the staff at the premises, there may be a lot of corrective action needed and I wonder whether a licence should be issued before this has been achieved.

- The same concern arises from the indication that Mr Sinnathurai has been managing the business for three months. Mr Sinnathurai was, on a previous licence, prohibited from being employed by or being involved in the management of the business.
- A similar licence condition, to prohibit named individuals from the business, is proposed with this application. However, a feature of the second review application, leading to revocation, was that the similarly prohibited Ms Nageswary Shanmugaratnam was seen behind the counter, and alleged to be purchasing stolen wine. Should there a concern about compliance with this proposed condition?

In summary, there is a track record of serious non-compliance at the premises and previous PLH's have a record of breaching conditions, including those that have been put on the licence in an attempt to guard against recurrences of that non-compliance.

I appreciate the applicant is in a difficult position – not wishing to take on the costs and responsibility of running the business, unless he has a premises licence that would go a long way to ensure its profitability, but consequently being unable to demonstrate effective and responsible running of the business – and it would not surprise me if his words are genuine and the business was responsibly run were the application to be granted. However, I am not convinced that this is a decision I can recommend to the Committee.

If they choose to grant the application, I ask that it is time limited, so that when they apply again, there will be more known about how the business is managed

Doug Love
Senior Trading Standards Officer