

London Borough of Hammersmith and Fulham
Decision of the Licensing Sub-Committee ("Committee")
17 June 2020

AB Wines, 218 Uxbridge Road, London.W12 7JD ("the Premises")

The Committee has considered an application for the review of a premises licence under the Licensing Act 2003 ("the Application").

The Committee has considered the committee papers and the submissions made by all of the parties, both orally and in writing. In reaching its decision the Committee has had regard and has taken into account the relevant legislation, the Secretary of State's Guidance ("Guidance") and the Authority's Statement of Licensing Policy ("SLP").

The Committee has decided, after taking into account all of the individual circumstances of this case, that it is appropriate for the promotion of the licensing objectives to:

1. Amend the hours for sale of alcohol off the Premises as agreed by the Licence Holder as follows:

Monday- Saturday 11:00-23:00
Sunday 11:00-22:30

2. Delete condition 10 from the licence as suggested by the Applicant

3. Amend condition 11 of the Licence to now state:

11. No beer or cider shall be sold unless they are marked with the name of the premises.

4. Delete condition 16 of the Licence and replace it with the following:

"All staff responsible for selling alcohol shall receive biannually training of how to identify drunk or drug impaired customers as well as in the Licensing Act 2003 in terms of the licensing objectives, offences committed under the Act and conditions of the Premises Licence. Written records of this training shall be retained and made available to police and authorised officers of the Licensing Authority on request."

5. Impose two conditions proposed by the Applicant as referred below:-

1.Strong beer, lager, cider and Stout above 5.5% ABV will not be sold

2. Alcohol shall not be sold or supplied unless it is paid for before or at the time when it is sold or supplied

6. Impose two conditions proposed by the Trading Standard Officer as referred below:-

3. The licensee will report to Trading Standards any instance of a caller to the shop attempting to sell alcohol or tobacco products within 24 hours.

4. No spirits shall be purchased in a resealed box, without thorough checks being made to ensure it is legal to sell

Procedural Matters

1. The application to review the Premises Licence ("the Licence") was submitted by Police Constable, Kris Cardwell on behalf of Metropolitan Police, on the grounds of the prevention of crime and disorder and the prevention of public nuisance.
2. One representation in support of the Application was received by Mr. Doug Love on behalf of the Trading Standard Department. Mr. Love recommended to the Committee to consider either revocation or suspension of the Premises Licence as the sale of smuggled alcohol was detected at the premises. Mr. Love attended the hearing.
3. Representations in support of the Application were received by 5 local residents. None of them attended the hearing. The local residents supported the Application on the grounds of prevention of crime and disorder and prevention of public safety because of the problems associated with street drinkers.
4. Representations against the Application were received by 2 local residents. None of them attended the hearing. The local residents objected to the Application as according to them there was no evidence to link the Premises to the problems in the area with street drinking.
5. The Applicant was represented by PC Cardwell. PC Stuart McKee Shepherd's Bush ward officer also attended the hearing.
6. Lexcom Management Services Ltd the Premises Licence Holder was represented at the hearing by Mr. Rajesh Shah the director of the company.
7. At the hearing the Licensing Officer explained to the Committee that an email was received by Mr. Love a few hours before the hearing, informing the Licensing Authority that an appendix was missing from his representation.
8. The Committee noted that the Applicant and Committee members have not seen this information. The licence holder confirmed he was aware of the information as it was an email correspondence between him and Mr. Love.
9. Based on the fact that all interested parties were made aware of this administrative error only two hours before the hearing, the Committee asked for clarification on whether the parties would object to the introduction of this new information. The licence holder and the Applicant both agreed to the introduction of the appendix.
10. Considering the fact that both the Applicant and the Licence Holder were happy for the hearing to go ahead the Committee decided that the evidence could be submitted and allowed a short adjournment for all parties to consider the new evidence all parties.

Reasons

11. The Committee recognises that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. Representations must relate to the particular premises in question and must be relevant to the promotion of the licensing objectives.

12. Under the Act any responsible authority may apply for a review of a premises licence if they are concerned about licensed activities at premises and want to intervene early without waiting for representations from other persons and where it considers that this step is necessary for the promotion of the licensing objectives.
13. In deciding which of these powers to invoke, the responsible authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
14. The Committee is entitled to and has taken into account local knowledge in reaching its decision.
15. Mr. Adrian Overton from the Licensing Department provided a summary of the case for the Committee. He confirmed that there have been previous licence enforcement issues at this premises and an interview under caution took place in February this year following the seizure of non- duty paid alcohol and in relation to an alleged alcohol sale to a drunk customer.
16. The Committee noted that in 2014 the Applicant submitted an application for a review of the licence on the grounds of the prevention of crime and disorder, the protection of children from harm, promotion of public safety and the prevention of public nuisance. The Police requested the hours the premises are open to the public be changed and that 15 conditions be added to the licence. The request for reduction of the hours were dropped at that hearing however the Committee imposed 11 conditions to the Licence
17. The Committee heard that Applicant requested a review of the licence on the grounds of prevention of crime and disorder and prevention of public nuisance. The Applicant was concerned that the premises were not operating in such a manner as to promote the licensing objectives. The police evidence suggests that the Premises has become an attraction for the street drinkers due to the fact that high strength beers, lagers and ciders were sold at the Premises. There was evidence that the Premises were selling alcohol to drunk customer which was witnessed by a police officer. Moreover the Applicant was also concerned that the premises was operating a credit system to sell alcohol.
18. The Committee noted that the Premises was located in Shepherds Bush Green, a CIP area which has problems with street drinking and anti-social behaviour associated with it. It was noted that the fact that the Premises is located in a CIP zone is not a relevant consideration for the review.
19. The Applicant explained to the Committee that the behaviour of street drinkers has a detrimental effect on the local residents who have complained of people urinating in the streets, fighting and that the area has become unpleasant to live in and that they also feel threatened and intimidated by drunk people gathering near their properties.
20. The Committee noted that the local residents in support of the Application were also concerned about the problems of street drinking associated with the Premises, Their main concerns were noise and nuisance from street drinkers and people smoking cannabis, problem with litter and also issues with people being sick and urinating in their front gardens. The local residents felt intimidated and threatened at their homes by large groups of drunk people congregating near the Premises and near the residential streets
21. The Committee heard that the Licence Holder has been aware of these issues. The proposed conditions by the Applicant during the consultation process were not accepted by the licence holder because the addition of these conditions in the licence would not resolve the issues with street

drinkers . The Applicant believes that the premises licence holder is more concerned about revenue and not the effect that the issues have at the local community.

22. The Applicant proposed the removal of condition 10 and 11 from the Licence and imposition of 2 new conditions which will address with credit sales and sale of high strength alcohol as referred above.
23. At the hearing the Committee asked clarification from the Applicant regarding removal of condition 10 of the licence which state : “No single cans of beer or cider over 5.5% ABV shall be sold unless it is a brand agreed in writing with the police”.
24. The Applicant explained that the condition imposed by the Police in 2014 allows customers to buy more than one can of high strength alcohol. In order to promote the licensing objective of prevention of crime and disorder and prevention of public nuisance the Applicant has proposed to remove this condition and replace it with a new one as stated below:
 - a. Strong beer, lager, cider and Stout above 5.5% ABV will not be sold
25. At the hearing the Applicant clarified for the Committee that imposition of the above condition at various premises licences near this area has proven to deal with the issue of street drinking, and that they have seen a reduction of street drinkers attending these premises.
26. The Committee asked the Applicant to also clarify the removal of condition 11 from the licence which restricts the sale of single cans of beer or cider unless they are marked with the name of the premises. It was the view of the Committee that the removal of this condition will not assist the Applicant in their attempt to promote the licensing objectives. The Applicant agreed at the hearing that the condition 11 of the Licence should remain. The Committee decided that in order to deal with the concerns of the Applicant and the local residents as well promote the licensing objectives condition 11 should be amended as referred at paragraph 3 above.
27. Mr. Shah confirmed that they have started to deal with the problem of street drinkers since 2014 when Police requested a review of the Licence. Some of the measures they have taken included identifying the street drinkers and banning them from the premises, putting the price of the alcohol up, ceasing the sale of strong ciders. However it was pointed out that street drinkers have recently started coming to the area from nearby towns which made it difficult to identify the usual street drinkers.
28. The Committee noted that the Applicant referred in the representation to some footage recorded on the police body worn video showing a drunk customer buying alcohol at the Premises. Mr. Shah explained that this customer was not drunk and if he was that would have been obvious to the member of staff who served him at that time. According to Mr. Shah the Premises is very small and a drunk customer would not be able to manage his way through the shop without falling or bumping into shelves .
29. The Committee took into consideration the representations of the local residents who objected to the Application. They confirmed in their representation that the licence holder and their staff were working hard to keep drunk customers away from the premises and that they have not witnessed any sale of alcohol to drunk customers.
30. The Committee took into consideration the concerns of the local residents and the Applicant regarding all the above as well as the representation of local residents in objection to the Application, and decided that in order to promote the licensing objectives of prevention of public nuisance and prevention of crime and disorder it was necessary for condition 11 not to be deleted from the Licence.

31. It was the Committee's opinion that Condition 11 was necessary and helpful to both the relevant authorities and licence holder in order to prevent issues arising in the area with street drinkers as well as to identify where the street drinkers were buying their strong alcohol.
32. The Committee agreed with the Applicant's concerns that Condition 10 in the original Licence was not appropriate in promoting the licensing objectives as it allowed the purchase of more than one can of high strength alcohol to customers. The Committee decided that it was appropriate and proportionate to restrict the sale of strong beer, lager, cider and Stout above 5.5% in order to deal with the problem of street drinkers.
33. The Committee asked for clarification from the Applicant regarding the proposed condition regarding credit sales. The Applicant clarified that it was clear from CCTV footage showing a customer obtaining 6 bottles of alcohol without paying that the Premises were operating a type of credit sale system to help street drinkers purchase alcohol. The Applicant clarified that in conjunction with other conditions of the Licence the proposed condition banning credit sale of alcohol was enforceable and appropriate.
34. Mr. Shah explained that the Premises do not operate a credit system and that the video footage that the Applicant was relying upon, related to only one time when a customer forget his money to pay for his purchase.. The Committee heard that the licence holder cannot afford to operate a credit system as it was not financially viable.
35. The Committee took into consideration the concerns of the Applicant that by allowing the Premises to operate a credit system made it attractive to street drinkers. It was the Committee's opinion that in order to promote the licencing objective of prevention of public nuisance it was appropriate and proportionate to add to the Licence condition 2 as referred at paragraph 5 above.
36. The Committee asked for clarification of the licence holder's understanding of licensing objectives and how often does training of the staff takes place at the premises. Mr. Shah confirmed that all the personal licence holder and the DPS are trained on aspects of licensing and have an experience of operating on this type of business for over 10 years.
37. The Committee noted that the DPS and licence holder have tried to identify all street drinkers and banned the from the premises. However the Committee took into consideration the concern's of the Applicant that during a visit at the Premises it was made clear that the DPS was not operating according to the conditions in the licence and in particular in relation to selling singe cans of beers to drunk customers.
38. The Committee noted the Applicant's concerns that the licence holder did not agree to the Applicant's conditions and they were more concerned of the effect that these conditions will have on the business rather than the effect that the way the Premises were operating was affecting the area and local residents and the impact on the licensing objectives and in particular the prevention of crime and disorder and prevention of public nuisance.
39. The Committee asked the licence holder to confirm what will they do in order to promote the licencing objectives. Mr. Shah explained that the hours the Premises is operating under the existing licence are 08:00-23:00. Mr. Shah confirmed that some of the problems they have experiencing with street drinkers were happening in the morning. Therefore in order to stop street drinkers from approaching the Premises at rush hour when children were going to school a decision has been made not to open the Premises before 09:00. However Mr. Shah stated at the hearing that he was prepared to amend the hours for sale of alcohol until 11am in order to promote the licensing objectives and deal with street drinkers.

40. The Committee took into consideration the above and in order to promote the licensing objectives agreed with Mr. Shah's proposal to change the hours for the sale of alcohol as follows:

Monday to Saturday 11:00 - 23:00
Sunday 11:00-22.30

41. The Committee took into account the fact that the Licence Holder has taken some steps to deal with street drinkers and noted that a condition existed at the Licence regarding training however this condition was only in relation to induction training for legality and procedure of alcohol sales.
42. The Committee took into consideration the concerns from the Applicant and local residents regarding the fact that in several occasions the staff had been selling alcohol to drunk customers and decided that in order to further promote the licensing objectives of prevention of crime and disorder and prevention of public nuisance it was appropriate for all staff responsible for selling alcohol to receive biannually training of how to identify drunk or drug impaired customers as well as in the licensing objectives as referred at paragraph 4 above
43. The Committee took into consideration the representation in support of the Application by the Trading Standard Officer Mr. Love. The Trading Standard Department was supporting the Application on the grounds of prevention of crime and disorder as well as the prevention of organised crimes in the sale of illicit alcohol, however it was noted that the Trading Standards had different concerns regarding the operation of the Premises than those highlighted by the Applicant.
44. The Committee heard that during an inspection at the Premises Mr. Love identified that several illegal bottles of spirits were sold at the Premises. The illegal bottles seemed to have been bought by a calling in the Premises. The Committee heard that Mr. Shah has provided contradictory information regarding the illegal spirits. Initially he confirmed to Trading Standards that he became aware of the origins of bottles only after they were seized. However three months later after during the interview under caution he stated that he instructed DPS not to sell these bottles but the DPS had ignored his instructions.
45. The Committee noted that Mr. Love during the inspection at the Premises also noticed that several brands of wine and beer were unfamiliar brands or were on sale for less than expected, It was believed that these items may not have come from a registered suppliers as the prices were either the same or slightly just above wholesale prices. Some of the invoices provided suggest that these types of strong alcohol beers were being sold at a loss by the Premises of which were requested by Mr. Love.
46. The buying of illicit alcohol undermines the prevention of crime and disorder objective as these are distributed and managed by organised crime bands. The sale of illicit alcohol also endangers public safety therefore Mr. Love requested the Committee to revoke the licence in the first instance as suggested by the revised guidance when the sale of smuggled alcohol is detected. Trading Standards asked the Committee to focus on the acknowledged origin of some of the spirits and the likely explanations for the presence of certain alcohol.
47. If the Committee should not choose to revoke the licence, Trading Standards requested suspension of the premises licence for a period of time to allow the licence holder to review their business model, how they operate and to improve their procedures.
48. The Committee heard that Trading Standard Officer was also concerned about the role of the Premises DPS, Mr. Sultan, as he was identified by the Police as the person selling strong beers and ciders to drunk customers, that he was responsible for leaving an untrained members if staff in charge of the Premises as well as the person who was aware that the illegal spirits came from an unauthorised seller and did nothing to prevent them being sold. It was also noticed that the Premises was in breach of several licensing condition.

49. Taking all into account Mr. Love stated that if the Committee will not consider to revoke the licence than it should consider appropriate for the DPS to be removed. He suggested the imposition of two conditions to the Licence as summarised below:
- The licensee will report to Trading Standards any instance of a caller to the shop attempting to sell alcohol or tobacco products within 24 hours.
 - No spirits shall be purchased in a resealed box, without thorough checks being made to ensure it is legal to sell.
50. Mr. Shah explained to the Committee that spirits sized by Trading Standard were delivered at the Premises at the time he was away for a week and when a temporary member of staff was left by himself at the Premises while the DPDS was taking some food orders. The Committee heard that the DPS thought that these bottles of spirits were maybe part of the old stock and that the box with the spirits had a UK duty paid stamp which seemed to be legal stock. With regards to selling strong beers at a low prices Mr. Shah said that they have taken the decision to sale these types of beers at the same price as the suppliers in order to avoid losing customers.
51. The Committee asked for clarification of why Mr. Love requested revocation of the Licence when it was the Applicant's opinion that their proposed conditions would be sufficient to deal with concerns regarding street drinkers and prevention of crime and disorder and prevention of public from harm.
52. It was noted that the issues with illicit alcohol came to the attention of Trading Standard after they were made aware that the Applicant was considering a review. The Trading standard concerns were different from those of the Applicants, they were mainly regarding sale of illicit alcohol and an Application for review would have been submitted by Trading Standard if the Applicant was not going to submit one.
53. The Committee took into consideration the concerns of the Trading Standard Officer regarding the way the Premises were operating as well the fact that the licence holder has a duty to promote the licensing objectives however it noted that there was not enough evidence to suggest that strong beers and wines that were bought from unauthorised suppliers to justify the revocation or suspension of the licence.
54. The Committee took into consideration the request to remove the DPS however it was noted that there was not enough evidence to suggest that he was involved in the sale and purchase of illicit alcohol. The Committee agreed that more work needed to be done by the licence holder to promote the licencing objectives and decided that the imposition of the training condition referred at paragraph 41 above.
55. The Committee decided that the conditions proposed by the Trading Standard Officer together with those proposed by the Applicant, the amendments to the existing condition 11 of the licence, the change of the hours for the sale of alcohol and the training condition would be sufficient to promote the licensing objectives of prevention of crime and disorder and protection of public safety.
56. The Committee took into consideration the fact that some illicit alcohol was sized at the premises due to a member of staff buying it from a person calling at the Premises but decided that based on the evidence presented at the hearing the revocation or suspension of the licence was not proportionate or appropriate.
57. If any of the parties are unhappy with the decision they are entitled to appeal to the magistrates' court within 21 days from the date of notification of this decision. This determination does not have effect until the end of the period given for appealing against the decision, or if the decision is appealed against, until the appeal is disposed of.

