

## **Licensing Sub-Committee**

**Tuesday, 19th December, 2023**

**PRESENT:** Councillor A Hutchison in the Chair

Councillor L Farley

Prior to the start of the meeting, a Sub-Committee member was unable to attend. Best efforts were made to seek a third member, but such attempts were unsuccessful. Given this situation and in line with Licensing Procedure Rule 6, parties present are to be provided with an opportunity to agree a quorum of 2 Sub-Committee members. When seeking agreement to proceed on that basis, all parties in attendance agreed a quorum of 2 Sub-Committee members. The meeting therefore proceeded.

### **1 Election of the Chair**

**RESOLVED** – To elect Councillor Hutchison as Chair prior to the start of the meeting.

### **2 Appeals Against Refusal of Inspection of Documents**

There were no appeals.

### **3 Exempt Information - Possible Exclusion of the Press and Public**

There were no exempt items.

### **4 Late Items**

There were no formal late items. However, supplementary information was circulated in relation to Agenda Item 6 – Review of the Premises Licence for M&S 24/7 Off Licence Shop and Agenda Item 7 – Baba Jaga 2. Minute No. 6 and 7 refer.

### **5 Declaration of Interests**

No interests were raised.

### **6 Review of the Premises Licence for M&S 24/7 Off License Shop, 128 Roundhay Road, Leeds, LS8 5NA**

The report of the Chief Officer (Elections and Regulatory) presented an application that informs the Licensing Sub Committee that West Yorkshire Police has served on the Licensing Authority an application under Section 51 Of the Licensing Act 2003 for a review of the premises licence in respect of M&S 24/7 Off Licence Shop, 128 Roundhay Road, Leeds, LS8 5NA.

The application to review the licence follows a visit by West Yorkshire Police and Leeds City Council's Entertainment Licensing Section. The visit resulted in the seizure of a large amount of nitrous oxide from the premises and found that the business was not operating in accordance with its Premises Licence.

Supplementary information in relation to this item was distributed to Sub-Committee Members as well as being published on the Council's website. This is in the form of

additional information received by West Yorkshire Police, Leeds City Council's Entertainment Licensing Section, and the licence holder.

The following were in attendance for this item:

- PC Neil Haywood, West Yorkshire Police – Review Applicant
- Carmel Brennand, Entertainment Licensing – in support of the application
- Chetna Patel, Public Health – in support of the application
- Merhawi Yowhase – Licence Holder
- Masood Hussain, Hayman's Solicitors – Licence Holder's Representative

The Licence Holder's representative made a submission for a further document to be considered as part of the document pack, in the form of a petition. Members agreed for this to be considered as a formal late item.

The Licence Holder's representative put forward an application to the Sub-Committee for the application to be deferred until a later date. He explained that he was instructed late on Wednesday, 13<sup>th</sup> December 2023, and had not been given a lot of time to read all of the relevant information. It was also noted that arrangements had been made for an interpreter to attend the meeting without success. It was confirmed that the licence holder can understand English, but it takes him longer to understand what is being asked of him. The applicant representative summarised by explaining they needed more time to prepare for the hearing. In considering this request, West Yorkshire Police, Leeds City Council's Entertainment Licensing and Public Health believed an ample amount of time had been given for all documentation to be considered and raised concerns regarding the safety of children and the public in deferring the hearing.

Deliberations took place for Sub-Committee Members to consider the application.

Upon returning to the room, Sub-Committee Members resolved to refuse the application to defer the hearing and felt that adequate time has been provided for the licence holder to instruct a solicitor. They felt that it was necessary and in-line with the licensing objectives to proceed with the hearing. Therefore, it was **RESOLVED** – That the meeting proceed on that basis.

The Legal Officer outlined the procedure for the hearing, and the Licensing Officer presented the application. The following was confirmed:

- Arrangements using the Council's Translation Services were in place for an interpreter to attend the hearing and despite receiving confirmation of the booking, the interpreter did not attend and did not provide advance notice. Further enquiries were made during the hearing however the Licensing Authority were unable to secure a replacement at short notice.
- The application has been lodged on the grounds of crime and disorder, public safety, and the protection of children from harm.
- The premises has a licence to operate 24 hours every day Monday – Sunday.

PC Haywood informed the Sub-Committee. The following was raised:

- Nitrous oxide is typically used in dentistry and aesthetics and has more recently exploded in popularity and sold in party and festival scenes. Nitrous

oxide is used at such events, to be inhaled to provide a 'high'. The substance is also used in the hospitality sector.

- When the nitrous oxide was seized, it was classed as a psychoactive drug, and it is now a controlled drug.
- The substance is considered dangerous and there is evidence that those under the influence can demonstrate dangerous behaviour.
- There was information in the West Yorkshire Police database that the premises was selling alcohol and laughing gas to children and that information led to the visit undertaken by the police and Entertainment Licensing.
- Further to the visit undertaken on Wednesday, 23<sup>rd</sup> August 2023, packets of balloons were found behind the counter and no other children's/party items were being sold other than the balloons. The rear of the shop is where Entertainment Licensing found the boxes of cannisters, approximately 86kg worth of nitrous oxide.
- The licence holder was interviewed on Wednesday, 20<sup>th</sup> September 2023, for the offence of being in possession of a psychoactive substance. The licence holder refused to answer any questions at the interview but provided a signed statement which is contained in the submitted agenda pack. The licence holder claims the delivery was in error, and he wasn't aware they were there. PC Haywood was of the opinion that delivery drivers would not place deliveries in the basement.
- The police and the licence holder have previously had many conversations in the premises, and it is believed that the licence holder does understand English.
- There is an on-going criminal investigation regarding the nitrous oxide, and the police consider there is a danger posed by the premises and a risk to children and the public. The police do not consider the licence holder has provided any plausible explanations.

Ms Brennan informed the Sub-Committee and provided the following information:

- The current premises licence holder has been the DPS since November 2019, with the licence being sent out in December 2019. The covering letter included with the premises licence is a standard template and explains to check the details of the licence carefully.
- It is noted that it is a requirement of the Licensing Act 2003 to display Part B of the premises licence and keep Part A on the premises. Part A of the licence was not on-site when the visit took place.
- A completed inspection sheet from the visit is appended to the report including details of breaches in regard to CCTV not working as it should. The licence holder has been made aware that it is an offence to sell alcohol without CCTV working properly.
- Further to the visit on 23<sup>rd</sup> August, boxes of nitrous oxide were delivered to the premises and balloons not on display were found behind the counter.
- Another visit was undertaken on 23<sup>rd</sup> September 2023 where the CCTV was still not working as it should. The licence holder wasn't aware of the code to access the system. Before leaving, the licence holder was informed that it is a requirement to comply with his licence and was provided with contact details.

- The licence holder wasn't aware of condition 24 of the premises licence in regards to the hatch. The solicitor responded by explaining the licence holder wasn't aware of the condition and he has since seized trading from the hatch.
- In September 2023, the agent applied online to change the name of the premises and a new premises licence was provided to the licence holder.
- Another visit was undertaken on 12<sup>th</sup> October 2023, and a warning letter emailed to the licence holder on 21<sup>st</sup> October 2023 after breaches were found during the visit. Further to this, another visit was carried out on 12<sup>th</sup> December 2023 where the CCTV issue was still not rectified. Since 23<sup>rd</sup> August 2023, the CCTV has not been operational.
- The licence holder has failed to grasp the importance of complying with the premises licence. Conditions of the premises licence were clearly explained to the licence holder, and he was still found with significant amounts of nitrous oxide in the premises.
- The licence holder has failed to demonstrate upholding the licensing objectives.

Ms Patel informed the Sub-Committee and provided the following information:

- Ms Patel referred to data used in Leeds City Council that estimates alcohol harm in specific areas and compares comparative data city-wide. It was noted that the Harehills area is rated very high risk in terms of alcohol related harm.
- The number of off-licences in the Harehills area is also rated high.
- The Harehills area is home to a lot of children under the age of 16 and it is considered that children growing up in an area with a lot of off-licences consider this normal behaviour - people buying and consuming alcohol. Further to peer reviewed evidence, an environment such as Harehills is having an influence on children in low income areas and data shows children in this area have low aspirations. There is also evidence that shows children in the most deprived areas are 5 times more likely to be exposed to alcohol sales.
- The premises is situated near many children's schools and children's centres. GIPSAL is also nearby, providing support and services for young children who are vulnerable.
- There are many children in the Harehills area not achieving in education such as Maths and English.
- Evidence shows that there is a high number of young children engaging in harmful behaviours and consuming alcohol and nitrous oxide as a means to 'get high'.
- The Government has recently announced a ban on the sale of nitrous oxide due to the number of risks associated with it in terms of health, behavioural impacts, and environment issues, such as littering. It is the third most used drug after cannabis and cocaine.
- There are a number of young people in the Harehills area already using nitrous oxide and creating noise and street nuisance.
- People across the Harehills community have raised concerns about bringing their children up in the area, and are concerned about the use of alcohol, tobacco, and other drugs.
- Public Health is part of a partnership meeting, working with West Yorkshire Police and other organisations to support communities and ensure that

children are being brought up in an area where they can grow and prosper. It is considered that the premises undermines work being done to improve current issues in the Harehills area.

- The Health and Wellbeing Strategy has recently been launched and the premises does not support its initiatives, nor does it protect children from harm.

The applicant's representative informed the Sub-Committee and provided the following information:

- The licence holder was working in the premises at the time the delivery took place and further to the pictures provided by West Yorkshire Police, as per the submitted agenda, the boxes were stacked by the delivery drivers and were not stacked near the rear exit due to it being a fire escape. It was confirmed that the licence holder was not aware of the delivery, attended to the delivery driver and his attention was diverted by serving a customer in the premises while the delivery driver dropped off the items.
- The licence holder, when asked by the police what the boxes were for, he presumed the nitrous oxide is used for cakes / baking. The boxes were closed, and he didn't have time to look what was inside them.
- The licence holder moved the boxes as the delivery driver blocked the exit.
- The licence holder was interviewed on a voluntary basis and was not placed under arrest.
- The licence holder has the ability to speak English, but it takes him a little bit longer to understand. The interpreter has not attended the meeting.
- The licence holder didn't have time to check the boxes. It was only when the police and entertainment licensing attended the premises that he saw the contents of the boxes.
- The licence holder hadn't got round to putting the balloons on display.
- The premises is one of the first in Leeds to obtain a 24/7 licence and this is the first application for a review.
- The representative referred to previous cases where the premises operated with the police to provide information regarding criminal cases in terms of statements and liaison. In doing so, the premises assisted with law and enforcement.
- There have been no issues in regard to underage sales and the licence holder has been running the premises for the last 4 years.
- The licence holder understands the seriousness of issues associated with nitrous oxide and no deliberate breaches of the conditions were made and he tried his utmost to deal with the matters when questioned by the police.
- The licence holder did not have the ability to operate the CCTV system on previous occasions. The CCTV has since been moved from the basement to the shopfloor and the licence holder has undertaken training on how to operate the system.
- It is considered that revoking the licence is a harsh route to take, especially given there is no evidence in relation to underage sales. There are other premise reviews where evidence has found illicit products being stored and sold in other premises.

- The representative asked the Sub-Committee to consider imposing firmer conditions on the premises licence. Or failing that, consideration of removing the DPS.

Further to questions from Sub-Committee Members, the following information was confirmed:

- One of the boxes of nitrous oxide was found opened and the rest were sealed.
- The police were unable to confirm whether any of the cannisters had been used as investigations are ongoing.
- The licence holder has passed relevant training and courses and is aware of the conditions on the Premises Licence. The licence holder has recently received relevant training regarding the operation of CCTV, and it is now operational. A company on Harehills Road provided the training. The licence holder explained he has the ability to access CCTV footage via a code.
- The licence holder did not have an interpreter present during his DPS course and he understood the course.
- The licence holder does not usually receive deliveries and tends to obtain stock himself.
- The licence holder sells balloons for kids parties and sells packs of balloons for £2.
- The licence holder denied comments being made about the cannisters being used for cakes / baking. He confirmed he was not aware of nitrous oxide being used for baking.
- The licence holder explained he was unaware of any deliveries being made and did not sign for any acceptance of a delivery when the cannisters were delivered.
- The licence holder also explained he wasn't aware of issues associated with nitrous oxide.
- The licence holder passed his DPS course in 2019.
- The visit from the police was intelligence led and due to ongoing investigations, they are unable to confirm where the information came from.
- No test purchases were conducted in relation to the premises. Again, investigations are ongoing.
- The licence holder is unaware of any challenge policies for people purchasing alcohol.

In summarising, PC Haywood explained that he didn't believe the licence holder was demonstrating language barriers, but the inability to explain what happened. PC Haywood and Ms Brennan have had several conversations with the licence holder, and he didn't seem to struggle having those conversations. It isn't believed that the cannisters had just been delivered before the visit, as 1 box was open and the location in the basement where the boxes had been found. PC Haywood explained the licence holder seemed to understand his question when asked about the cannisters and it is believed the stock was there to be sold and possibly distributed. The balloons were the only children's item at the time to be found in the premises and when a follow-up visit was undertaken, the licence holder then stocked candles and other party items. It is considered there is no reasonable explanation.

At this point in the meeting, the Sub-Committee went into private session to deliberate on the application. Upon returning, it was **RESOLVED** – To revoke the licence.

## **7 Review of the Premises Licence for Baba Jaga 2, 12 - 14 Strathmore Drive, Harehills, Leeds, LS9 6AB**

The report of the Chief Officer (Elections and Regulatory) informed the Sub-Committee that West Yorkshire Police has served on the Licensing Authority an application under Section 51 of the Licensing Act 2003 for a review of a premises licence in respect of Baba Jaga 2, 12-14 Strathmore Drive, Harehills, Leeds, LS9 8AB.

The grounds for review relate to the seizure of illicit tobacco, non-duty paid alcohol, illegal vapes and two failed test purchases, where the premises sold alcohol to persons under the age of 18 years old.

Recent applications have been made to transfer the premises licence, to specify a new individual as designated premises supervisor (DPS) and to apply additional conditions to the licence.

The following were in attendance for this item:

- Carmel Brennand, Entertainment Licensing – in support of the application
- Chetna Patel, Public Health – in support of the application
- Patrick Robson, John Gaunts & Partners – Licence Holder's Representative
- Nabaz Ibrahim Karim – Licence Holder

It was confirmed that the applicant, West Yorkshire Police, were not attending the hearing and it was explained in an email that they were content for the hearing to be 'dispensed' with. Further to this, the representative from Entertainment Licensing confirmed that further to the decision to grant the applications to transfer the licence and to specify a new DPS, Ms Brennand withdrew her representation.

The representative from Public Health confirmed she would like the hearing to proceed, and her representation remains outstanding. On that basis, the Sub-Committee Members agreed to proceed with the hearing.

The Legal Adviser outlined the procedure for the hearing and the Licensing Officer provided an overview of the application. The following was confirmed:

- At the time of the offences the director of the company that held the licence and the DPS was Omar Rashka. More robust conditions have been agreed in that Mr Rashka will be excluded from holding the licence, acting as DPS, and being involved in day-to-day running of the business. The minor variation application adding further conditions was granted as applied for on 25<sup>th</sup> November 2023.
- Representations remain outstanding from Public Health and the local ward councillors.
- Supplementary information has been circulated and published on the Council's website in the form of additional information provided by the licence holder and a copy of the decision notice following the successful applications to transfer the licence and to specify a new individual as DPS.

Ms Patel informed the Sub-Committee and provided the following information:

- Public Health object on all grounds of the licensing objectives. The premises sold a number of non-duty paid goods and illicit tobacco to underage children, and failed test purchasing. This does not promote the licensing objectives.
- There is a high number of off-licences in the Harehills area currently and the area has a high alcohol risk rating.
- There is a high number of children in the Harehills area.
- The premises is near a number of children's school and centres. GIPSIL is also located nearby who work with a number of vulnerable children. It is considered that vulnerable children are those most likely to use alcohol and other substances to cope with what is going on in their life.
- Children and young people are impacted the most by off-licences and typically witness street drinkers, and the behaviours of those consuming alcohol. Children will grow up to believe this is a normal behaviour.
- There is a high number of children in the Harehills area not achieving education, particularly in Maths and English.
- Information in the submitted agenda pack, includes information from West Yorkshire Police and Trading Standards regarding complaints received regarding tobacco and vape visits. Vapes are being sold illegally, which the premises has done.
- The NHS are already struggling with winter pressures and the call-outs for alcohol related incidents will add to the existing pressures they're facing.
- Sales of illicit alcohol and tobacco add to the existing issues that Harehills faces and there is already a high number of anti-social behaviour related issues in the area. Local residents are currently facing a number of issues relating to littering, noise nuisance and environmental concerns.
- Public Health are involved with the Harehills Community Partnership in liaison with the police and other organisations, where the initiative is to help support the police, elected members and ensuring that Harehills is a better place to live and grow. It is considered that Baba Jaga undermines this.
- Public Health spoke with a GP in the local area and he raised concerns of underage children drinking and the health implications associated with children in the area. It is believed that the consumption of alcohol early on, leads to dependency later on in life.

Ms Brennand acknowledged her withdrawal of her representation but proceeded to ask for more stringent measures and conditions to be attached to the Premises Licence.

The applicant's representative informed the Sub-Committee and provided the following information:

- The review applicant has not attended the meeting.
- Mr Karim is an experienced businessman and was an employee and manager in London from 2010-2014. Mr Karim took on the opportunity to lease the premises as it meant he was situated closer to his family.
- The submitted agenda pack includes a letter from his previous employer which states Mr Karim is a diligent employee.



- An email from Northamptonshire police states that there is no known criminal activity associated with Mr Karim.
- Mr Karim took on the lease of the premises not knowing to its full extent the issues associated with the premises. Such issues were downplayed when the premises was sold.
- The premises is to be mainly a grocery store, with a part of it being for tobacco and alcohol.
- The bank has confirmed that Mr Karim is to be the sole person on the business account and shareholder for the licence.
- The closure notice submitted by Leeds City Council went through a series of adjournments before finally being withdrawn. No further issues were presented after the transfer of the licence or the change of DPS. During the time of the closure notice being served, and the adjournments, Mr Karim took it upon himself to not sell alcohol during this time.
- There were no previous conditions regarding CCTV and alcohol challenge polices. Further to this, Mr Karim applied for a minor variation application to tighten up conditions and impose new ones. This was successfully granted.
- Staff have been put through robust training.
- Representations have not been submitted by Leeds City Council's Trading Standards team or anti-social behaviour team.
- Mr Karim has an unblemished record and there is no evidence to state Mr Karim has been involved in any criminal activities.
- The issues associated with the premises were connected with the previous DPS and not Mr Karim.
- The CIA is considered a general concern, but it is not a consideration for an existing licence subject to review proceedings.
- Mr Karim has had no issues since he has been in charge of the premises. Robust conditions have been implemented as well as robust staff training. The conditions put forward were to ensure the historic issues associated with the premises were dealt with.

Further to questions from Sub-Committee Members, the following was confirmed:

- The previous DPS does not receive any financial benefit from the operation of the business. Mr Rashka was a lease holder, and that lease has since seized.
- Mr Karim is not from the local area and unaware of why the premises has changed business names a number of times.
- Mr Karim is happy to consider the removal of imagery from the frontage of the premises in relation to alcohol pictures and references.
- There were no issues with Mr Karim's previous businesses.
- Mr Karim has no business involvement with Baba Jaga 2.
- Mr Karim was not aware of the issues associated with Baba Jaga 2 when he took over the lease. Mr Rashka explained there were small issues with the police and Mr Karim would not have taken over the premises if he knew how serious the issues were.
- Mr Karim is not related to Mr Rashka, nor are they friends or associates. Mr Karim purchased a car from him in October 2023 and he was made aware at that point the sale of the lease of the premises.
- Connections between Mr Rashka and the landlord are not known, but it is believed they were landlord / leaseholder relationships.

In summarising, Ms Patel explained that the Cumulative Impact Area Policy is not a catch-all system to stop new licences but provides the local authority with the responsibility to help stop certain types of licences being granted. Ms Patel highlighted the importance of complying with any conditions that may be imposed, to protect children from harm.

In summarising, the applicant's representative explained that the new licence holder is a responsible businessman, and he has run previous businesses with no issues. There is no evidence of Mr Karim being involved in any criminal activities. Previous issues that were attached to the premises have since been remedied. It was also acknowledged that the review applicant is not in attendance and has not provided any further information or evidence. It is therefore considered that no further conditions are required, and the licence holder is content to prohibit images of alcohol on the frontage of the premises.

At this point in the meeting, the Sub-Committee went into private session to deliberate on the application. Upon returning, it was

**RESOLVED** – To modify the conditions of the licence as follows:

- After condition 17, insert: in that Mr Rashka will not receive any financial gain or otherwise in the operation of the business; and
- To add the following new conditions to the licence as follows:
- The name of the premises shall not contain any reference to alcohol.
- There will be no internal or external window displays, posters, advertisements or other imagery depicting or referring to alcohol and neither shall any such displays, posters, advertisements, or other imagery be placed on the shop frontage or in front of the premises.