

# COLCHESTER BOROUGH COUNCIL

## LICENSING SUB-COMMITTEE

30 November 2018

### MINUTES OF PROCEEDINGS

At a meeting of the Licensing Sub-Committee held on 30 November at 10.00am in the Grand Jury Room, Colchester Borough Council, Town Hall, High Street, Colchester

Present: - Councillor Cope  
Councillor Crow  
Councillor Young

#### 1. Membership

*RESOLVED* that Councillor Young be appointed Chairman.

#### 2. Minutes of Previous Meeting

*RESOLVED* that the minutes of the hearing held on 17 October 2018 be approved as a correct record.

#### 3. Licensing Application

The Assistant Director, Environment, submitted a report in relation to the following premises.

- **Big Up Off Licence, 118 Ipswich Road, Colchester, CO4 0AE**

#### In Attendance

Mr Dadds, Counsel for Mr Afrooz  
Mr Afrooz, Premises Licence Holder and Designated Premises Supervisor of the Big Up  
Mr Richards, Essex Trading Standards  
Ms Booth, Licensing Enforcement Officer  
Mrs Gentry, Democratic Services Officer  
Mrs White, Licensing Officer  
Mr Wilkins, Legal Services Manager

Mrs White outlined the case and explained that the review of the premises licence had been requested by Essex Trading Standards on the grounds that the licensing objective of the prevention of crime and disorder was being undermined by the persistent selling and/or possession of illicit/smuggled tobacco.

Mr Richards, Operational Manager of Essex Trading Standards, addressed the Sub-Committee and gave background information to evidence why the Review was necessary. Mr Richards informed the Sub-Committee that on the 7 November 2017 a quantity of illicit tobacco was found on the premises and a warning was given but when a re-visit was made on the 21 August 2018 a further seizure of illicit/smuggled tobacco was found. Mr Richards also submitted a further witness statement from HM Revenue & Customs dated the 27 October 2018 detailing a further seizure of tobacco and alcohol from the premises.

In response to questions from the Committee, Mr Richards informed them that they were not intending to prosecute because of the relatively small volume of tobacco found at the premises; the decision had been taken to pursue a Review of the premises license. Mr Richards also advised the Sub-Committee that it was his understanding that there was no pending prosecution by HM Revenue & Customs.

Mr Dadds, Counsel for Mr Afrooz, addressed the Sub-Committee and explained that Mr Afrooz had not been in charge of the daily running of the Big Up Off Licence since 2016 even though he was the Premises Licence Holder and Designated Premises Supervisor. Mr Dadds informed the Sub-Committee that Mr Afrooz had a business partner, Mr Ali Shahijan, and that Mr Shahijan was in charge of the daily running of the premises and was present at the times Trading Standards visited. Mr Dadds then circulated a letter from HM Revenues & Customs indicating that for the purposes of tax Mr Afrooz and Mr Shahijan had a business partnership.

In response to questions from the Committee Mr Dadds informed them that Mr Afrooz was aware of the initial inspection in 2017 having found the letter but after discussing the issue with his business partner, he trusted Mr Shahijan and believed that it would not happen again. Mr Dadds also informed the Sub-Committee that after speaking to Mr Shahijan, the business partner had accepted responsibility in relation to the non-duty paid tobacco and the business partnership was being dissolved because of the issues giving rise to this Review. No written evidence was presented to the Sub-Committee to substantiate the extent of the partnership in relation to the day to day operation of the business. Mr Shahijan was not in attendance at the hearing to provide evidence of his alleged acceptance of responsibility or to answer questions in relation to the business operation of the premises and/or in relation to the respondent's lack of knowledge or awareness about the illicit/smuggled tobacco.

**RESOLVED** - to accept the submission by the respondent and agree to impose the conditions offered by the respondent; namely -

- All staff are regularly instructed that no counterfeit products are brought and/or sold on to the premises.
- Mr Ali has no future involvement in this licensed premises.
- Tobacco should only be sourced from Bookers.

In addition the Sub-Committee was not prepared to agree the 6 week suspension offered by the respondent because of the severity of the breaches and instead the Sub-Committee impose a suspension of the premises license for 3 months.

### **Reasons for the determination**

In arriving at the decision the Sub-Committee considered the evidence and submissions of all parties and gave consideration to the Licensing Act 2003, the Section 182 Guidance, and the Licensing Authority's own Statement of Licensing Policy.

Based on the submissions made and the evidence presented the Sub-Committee had doubt about the actual knowledge the respondent had about the excise duty evaded tobacco or the level of his awareness which is why the Sub-Committee accepted the

submission made by respondent's legal representative that it would be disproportionate to revoke the premises licence.

On balance the Sub-Committee's view was that the respondent had a level of awareness that made it proportionate to accept the conditions offered by the respondent's legal representative and to suspend the premises licence for the maximum period of three months instead of the six week period offered because of the reoccurrence of illicit/smuggled tobacco on the premises.