

# LICENSING SUB-COMMITTEE HEARINGS

## 6 SEPTEMBER 2013

*Present :-* Councillor Nick Cope (Chairman)  
Councillors Julia Havis and Michael Lilley

### 1. Appointment of Chairman

*RESOLVED* that Councillor Cope be appointed Chairman.

### 2. Declarations of Interest

There were no declarations of interest.

### 3. Applications under the Licensing Act 2003

The Head of Professional Services submitted a report, in relation to Trading Standards application to review a premises licence, for determination by the Sub-Committee in accordance with the provisions of the Licensing Act 2003.

#### • **C K Food & Wine, 6 The Willows, Mersea Road, Colchester, CO2 8PZ**

In Attendance

Mr Chaminda, Premises Licence Holder

Mrs Nunn, Premises Licence Holder's representative

Ms Webb, Essex County Council Trading Standards

Ms Harris, Essex County Council Trading Standards

Mr Prescott, HM Revenue and Customs

Mr Nelson, Food Safety & Licensing Manager, Colchester Borough Council

Mr Weavers, Monitoring Officer & Legal Services Manager, Colchester Borough Council

Mrs White, Licensing & Committee Co-ordinator, Colchester Borough Council

Mr Swain, Enforcement Officer

Ms Webb outlined the application and explained that Trading Standards had brought the review because Mr Chaminda had been found in possession of non-UK excise duty paid and counterfeit spirits and this was a potentially criminal matter which Trading Standards viewed very seriously. The application followed a visit by Trading Standards and HM Revenue and Customs to the premises on 3 May 2013 when a quantity of counterfeit and non-duty paid spirits were found. HMRC had seized 6.1 litres and Trading Standards had seized 4.2 litres of counterfeit and non duty paid alcohol. A bottle of the seized Selekt Vodka had been examined by a public analyst and found to contain industrial alcohol as opposed to agricultural alcohol.

In setting out Trading Standard's case, Ms Webb stated that the Colchester visit had been carried out as part of a joint operation with Suffolk Trading Standards who had visited the two C K Food & Wine stores in Ipswich. At these premises a total of 105.15 litres of non-duty paid and counterfeit spirits had been seized and these seizures were the subject of a separate review application by Suffolk Trading Standards. There had been seven previous excise seizures at these premises from 6 January 2010 to 4 July 2011.

In response to questions from the Sub-Committee Ms Webb explained what was regarded as counterfeit alcohol and the health implications. In cases such as this where counterfeit alcohol was seized, a sample was always sent to the public analyst for examination and in this case it was found to be not of the right composition and made of industrial not agricultural alcohol. Despite investigations Trading Standards had not been able to trace the suppliers.

Mrs Nunn, in presenting the case for Mr Chaminda stated that the facts were not disputed by Mr Chaminda and he apologised for the circumstances that had lead to the review. It was explained that the business was currently closed and was for sale. Buyers had been found for the lease and matters were due to be completed in about a week's time and at this point Mr Chaminda would have noting to do with the business. Mrs Nunn offered the Sub-Committee a further condition for imposition on the licence which was that Mr Chaminda be removed as DPS from the licence; this would remove all the links between him and the business. Mrs Nunn gave the Sub-Committee the details of the new potential owners and confirmed that they were completely independent and unrelated to Mr Chaminda.

The Sub-Committee were advised that Trading Standards sought the suspension of the licence for a period to enable the conditions they considered appropriate to be added to the licence. In the light of the impending sale of the business Mrs Nunn asked that the suspension be for a period of three months or until the lease had been assigned to the new owners of the premises, whichever was the sooner and this was agreed by Trading Standads.

## The Decision

RESOLVED that-

(i) That the reasons for the review brought by Essex County Council Trading Standards be upheld.

(ii) The Premises Licence be suspended for a period of three months or until the assignment of the lease of the Premises is completed whichever is the earlier.

(iii) The following conditions be applied to the Premises Licence –

- To only purchase stock from an authorised wholesaler and produce receipts upon request for inspection (an authorised wholesaler means an established warehouse or outlet with a fixed address and VAT registration).

- Not to purchase any stock from any mobile supplier calling at the business to offer their services, or from any trader operating from a van or temporary business accommodation.
- To keep alcohol and tobacco receipts on Premises for a minimum of six months to be produced to Essex Police, Essex Trading Standards, HMRC or Colchester Licensing Authority upon request.
- The CCTV will be of an agreed format that can be viewed on metropolitan police systems and shall be record all entrances and exits to the Premises at all times and should be capable of capturing the external areas of the business.
- At all times that licensable activity is being carried on, there shall be on the Premises a person able to both operate the CCTV system and to download footage on request onto either DVD's or a memory stick provided by the business.
- The Designated Premises Supervisor (DPS) must always be on the Premises while licensable activities are being carried out and in the event of the DPS being absent there will be at least one member of staff who holds a personal licence present at all times.

(iv) That Mr Chaminda be removed as the DPS from the Premises Licence.

#### Reasons for the Determination

The Sub-Committee carefully considered the options available to it under the Licensing Act 2003 and in arriving at its decision the Sub-Committee gave careful consideration to the arguments and evidence presented by all parties. It noted that the Premises Licence holder had accepted the facts as presented by Trading Standards and HM Revenue Customs and the conditions requested by Trading Standards to be imposed on the licence. It was noted that the premises licence holder had offered a further condition the Mr Chaminda be removed as DPS from the licence and in the light of this information it determined that its decision was both proportionate and appropriate. appropriate to revoke the licence.