

Minutes of: LICENSING HEARING SUB COMMITTEE

Date of Meeting: 25th November 2024

Present: Councillor G McGill (in the Chair)
Councillors G Marsden and D Quinn

M. Bridge (Licensing Unit Manager)
M. Cunliffe (Democratic Services)
P. Llewellyn (Democratic Services)
R. Thorpe (Legal Services)

Also in attendance: Mr M Hamad (Applicant)
PC P. Eccleston (Greater Manchester Police)
K. Halligan (Trading Standards)
L. Jones (Licensing Unit)

Public Attendance: The Hearing was held virtually and interested members of the public were provided with a link to access the hearing online via Microsoft Teams or could be telephoned into the meeting via audio only. No other members of the public or press were in virtual attendance.

1 APOLOGIES FOR ABSENCE

Apologies for absence were submitted by Councillor I. Rizvi, C. Smith (Head of Public Protection) and B. Thomson (Assistant Director of Operations Strategy).

2 DECLARATIONS OF INTEREST

There were no declarations of interest made.

3 MINUTES OF THE LAST MEETING(S)

The minutes of the last Licensing Hearing Sub Committee meetings held at 1.30pm on the 5th August 2024 and 3.00pm on the 5th August 2024 were attached to the agenda.

Resolved:- That the minutes of the Licensing Hearing Sub Committee held at 1.30pm on the 5th August 2024 and 3.00pm on the 5th August 2024 be approved as a correct record.

4 APPLICATION FOR A PREMISES LICENCE TO BE GRANTED UNDER THE LICENSING ACT 2003 IN RESPECT OF KRAKOW GROCERY, 20 PARKHILLS ROAD, BURY, BL9 9AX

The Licensing Authority received an application for a Premises Licence to be granted under the Licensing Act 2003 in respect of Krakow Grocery, 20 Parkhills Road, Bury, BL9 9AX.

The applicant for the licence is Krakow Grocery 1 Limited, 20 Parkhills Road, Bury, BL9 9AX and the proposed Designated Premises Supervisor (DPS), in respect of the above premises, is Mr Dana Saeedi, Flat 20 Parkhills Road, Bury BL9 9AX. The application was attached at Appendix 1 in the agenda pack.

The Applicant had complied with all the necessary procedural requirements laid down by the Act.

The Licensing Unit Manager presented the report and as part of the statutory process the Responsible Authorities and interested parties are entitled to make representations in relation to the grant of a licence. Where representations are made and not withdrawn Members are required to determine them

Representations must be relevant to the licensing objectives defined within the Act.

The objectives are:-

- the prevention of crime and disorder
- public safety
- prevention of public nuisance and
- protection of children from harm

The application is for the grant of a Premises Licence under Part 3 of the Licensing Act 2003.

Opening Times:

Monday to Sunday – 09:00 till 23:00

Supply of Alcohol (off the premises only):

Monday to Sunday– 09:00 till 23:00

The conditions contained in the operating schedule submitted by the applicant were contained at Appendix 1 in the agenda packs.

The Licensing Authority in its capacity as a Responsible Authority had made representations against this application. The Licensing Authority would make those representations at the hearing. The representation was attached at Appendix 2 in the agenda packs.

One representation had been received from Trading Standards Service in their capacity as a Responsible Authority against this application. The Responsible Authority had been invited to make their representations at the hearing. The representation was attached at Appendix 3 in the agenda packs.

One representation had been received from Greater Manchester Police in their capacity as a Responsible Authority against this application. The Responsible Authority had been invited to make their representations at the hearing. The representation was attached at Appendix 4 in the agenda packs.

After hearing the representations made and the evidence presented, Members are obliged to determine the application with a view to promoting the licensing objectives and having regard to the Authority's Licensing Policy and National Guidance.

The Secretary of State's Guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The Guidance is therefore binding on all licensing authorities to that extent. However, the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

In making its decision with regard to this application hearing, the steps the Sub-Committee can take are:

- To grant the application in the terms requested
- To grant the application subject to conditions
- To amend or modify existing or proposed conditions
- To refuse the application

All licensing determinations should be considered on the individual merits of the application.

The Sub-Committee's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.

It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

The Sub-Committee was asked to determine what steps, as set out above, are appropriate for the promotion of the licensing objectives.

The Licensing Unit Manager provided clarification that 9.4 of the report should state grant rather than the word variation and within paragraph 9.8 of the report the numbering should state 9.4 and not 8.4.

Mr Mohammed Hamad addressed the Committee and stated the store used to have a licence but there had been an issue with Companies House and he was unaware the licence had ceased until the Council visited. He had not received any paperwork, telephone calls or emails for the company being dissolved and had tried to obtain another licence.

The Licensing Unit Manager clarified that under the licensing act if a company becomes insolvent then the licence lapses.

A Member of the committee asked why the business had been struck off Companies House and Mr Hamad explained that a letter had been forwarded to his accounting office and a form was amended by them. They then lost the paperwork which included material sent via WhatsApp and then forgot to inform Mr Hamad so the company become dissolved.

A Member of the committee questioned who was responsible for informing the business that the licence had been voided. Mr Hamad had not received anything from Companies House and the Chair enquired with all the administration errors, how would this situation not occur again. Mr Hamad explained he ran another business next door and it was a lot of pressure to

run 2 businesses. He would make sure he looked after the business properly and it would not happen again and was unaware that some vapes are illegal.

The Licensing Unit Manager stated that the applicant had held a licence previously and questioned how he would ensure the licencing objectives were upheld.

Mr Hamad responded by saying that he would focus all his efforts on this one business and was trying to get rid of the other fast food takeaway business as it takes a lot of his time up which he wants to spend with his family and daughter.

Laura Jones, Deputy Licensing Unit Manger explained that a premises licence had no expiry date on it but if a business became insolvent then the licence expires straight away, she reported:-

This premises has previously been licensed with the Premises Licence Holder being the limited company Krakow Grocery, the director of which was Mohammed Mamal Hamad. The licence was transferred to this limited company on 8 July 2022. However, this company was made insolvent on 14 November 2023. Under the Licensing Act 2003 when a company is made insolvent, the premises licence lapses.

This did not come to the attention of the Licensing Service until 7 August 2024 when a visit was made and advice given that all sales of alcohol must cease with immediate effect until such time that a new licence was obtained.

A new application for a premises licence was made on 27 August however this was later rejected due to failure to comply with the advertising requirements of the application. A temporary event was applied for allowing the sale of alcohol from 22 – 28 August. This application was made by Mr Hamad.

A further new application was made on 11 September 2024. Both of the new applications were made with Krakow Grocery 1 Ltd being the proposed Premises Licence Holder. Mr Hamad is the sole director of the new limited company.

The proposed Designated Premises Supervisor is Dana Saeedi.

I visited the premises alongside my colleagues Luke Solczak, Licensing Enforcement Officer and PC Pete Eccleston from Greater Manchester Police whilst carrying out evening enforcement visits on 20 September.

On entering the premises, I witnessed a male member of staff selling a bottle of vodka to a customer. Alcohol was on display in all the fridges and behind the counter. Mr Hamad was also present in the shop. We re iterated the advice that had been given on 7 August that no alcohol could be sold from the premises until the new licence had been granted unless a Temporary Event Notice was in force which there wasn't on that particular day.

I revisited the premises alongside Kelly Halligan from Trading Standards and PC Pete Eccleston from Greater Manchester Police on 26 September. Mr Hamad was again present in the shop alongside another male member of staff. He was joined later during our visit by the proposed DPS Mr Saeedi.

On this occasion the alcohol was covered so as not to be on display for sale. However, there were other issues that were raised by GMP and Trading Standards including the seizure of 147 illegal vapes.

On 1 October the application was again rejected by the Licensing Authority due to the failure of the applicant to comply with the advertising requirements. A new application was submitted on 1 October.

On the evening of Friday 11 October, I again visited alongside PC Pete Eccleston and Luke Solczak from Licensing. The alcohol was covered, and no further illegal vapes were being offered for sale.

The steps given in the operating schedule on the application form, as to how the licensing objectives will be met, are unrealistic and unenforceable.

The Licensing Authority have concerns as to how much of an understanding of the licensing objectives the proposed Premises Licence Holder and Designated Premises Supervisor have as they have already sold alcohol without a licence in force, despite being given clear advice

that this was not permitted and have undermined the prevention of crime and disorder objective by allowing illegal vapes on the premises.

The Deputy Licensing Unit Manger had suggested further conditions in the report. The Chair enquired if prior to this application there had been any concerns with the store and it was stated there had been no concerns since Mr Hamad had held the licence.

Kelly Halligan, Trading Standards Unit Manger reported:-

A new application for a premises licence was made on 27 August however this was later rejected due to failure to comply with the advertising requirements of the application. A further new application was made on 11 September 2024. Both of the new applications were made with Krakow Grocery 1 Ltd being the proposed Premises Licence Holder. Mr Hamad is the sole director of the new limited company.

The proposed Designated Premises Supervisor is Dana Saeedi.

I visited the premises alongside Laura Jones from Bury Councils Licensing Department and PC Pete Eccleston from Greater Manchester Police on 26 September 2024. Mr Hamad was present in the shop alongside another male member of staff, who worked there called Ali Amoudeh. He was joined later during our visit by the proposed DPS Mr Saeedi.

The alcohol was covered so as not to be on display for sale. However, there were other issues that were raised by GMP and myself from Trading Standards. The beer covered up did not all have English labelling, so therefore an allergen information was not easily identified. The same issue was identified with some food products, so the director Mr Hamad was directed to check all his products, remove from sale all those with no English labelling and get correction labels from the cash and carry's he purchased the products from. One the shelves behind the till we found 147 vapes that where above maximum capacity and therefore can not legally be sold in the UK. These were seized by myself. There where pricing signs on the shelves in front of the vapes and the prices of the vapes depended on whether you were purchasing for cash or on a card. When I explained, you couldn't legally do this I was told well we pay for our vapes in cash, so we really want to be paid in cash. I asked to see a receipt for the vapes purchased, but none could be found.

The weights and measures authority, have concerns as to how much of an understanding of the licensing objectives the proposed Premises Licence Holder and Designated Premises Supervisor have as they have already undermined the prevention of crime and disorder objective by allowing illegal vapes on the premises, they have numerous products without English labelling and want to differentiate in selling products by cash or card.

On 1 October the application was again rejected by the Licensing Authority due to the failure of the applicant to comply with the advertising requirements. A new application was submitted on 1 October.

Should Members choose to grant the licence, a number of suggestions were contained in the representations by Trading Standards.

For clarity Kelly Halligan confirmed that 147 vapes had been found and not 149 as detailed in the report. The Chair enquired if prior to this application there had been any concerns via Trading Standards with the store and it was stated there had been no concerns since Mr Hamad had held the licence.

PC Peter Eccleston, Greater Manchester Police reported:-

This was a formal representation from Greater Manchester Police with regards to the premises licence application in relation to Krakow Grocery, 20 Parkhills Road, Bury BL9 9AX.

A new premises licence application was made to Bury Council Licensing Department on the 27th of August, naming Krakow Grocery 1 Ltd as the proposed Premises Licence Holder (PLH) with Mr Mohammed Hamad being the sole director. A Mr Dana Saeedi was named as the

proposed Designated Premises Supervisor (DPS). This application was later rejected due to not complying with advertising requirements. A Temporary Events Notice made by Mr Hamad was also received requesting the sale of alcohol between the 22nd – 28th August. A further Premises Licence Application was made on the 11th of September with the same proposed PLH and DPS.

In the evening of Friday 20th September 2024, I along with Laura Jones and Luke Solczak from Bury Council Licensing Departments attended the above premises as part of our evening enforcement visits.

On entering the premises, I witnessed Mr Hamad inside the store and a member of staff selling a bottle of vodka to a customer. Further to that, alcohol was on display in the fridges and behind the counter. We explained that the new Premises Licence application was still within the 28-day representation period and that no alcohol could be sold from the premises until the new license had been granted or a Temporary Events Notice was in place to authorise the sale of alcohol in the absence of a premises license. Unfortunately, no Temporary events Notice had been submitted for this date.

During the visit, I also noticed a quantity of what appeared to be illegal vapes for sale behind the counter where the maximum legal capacity was exceeded.

Following the visit, information regarding the illegal vapes was relayed to Bury Council Trading Standards representatives and consequently, I along with Kelly Halligan from Bury Councils Trading Standards and Laura Jones from Bury Councils Licensing Department attended the premises on Thursday 26th September 2024 at 10:10 hours.

Upon entry to the premises, the director and manager, Mr Hamad was present along with the shop assistant, Mr Ali Amoudeh. The alcohol was still covered and the vapes were still on display behind the counter however they were being advertised at two different prices. There was a price per vape if paying by card and another if paying by cash. Kelly Halligan from Trading Standards inspected the vapes and in total 147 were seized as evidence due to not complying with UK standards.

Since the visit on the 26th of September, the Premises License Application was rejected again on the 1st of October due to failing to meet the advertising requirements and again, the new license application was resubmitted that same day.

I, along with Laura Jones and Luke Solczak from Bury Councils Licensing Department, reattended the premises on the evening of Friday 11th October. There were no further issues to report at the time and all alcohol remained covered and all vapes appeared to be legally permitted in the UK.

Having considered the application and the steps provided in the operating schedule, Greater Manchester Police have severe concerns as to how the licensing objectives will be met and the level of understanding both the Premises Licence Holder and Designated Premises Supervisor has in relation to those licensing objectives. The proposed steps are unrealistic and unenforceable, alcohol is being sold without a valid license or TEN and under the prevention of crime and disorder objective, this has already been undermined by allowing and offering for sale, illegal vapes.

In summary GMP had concerns on the proposals and licensing objectives being met. Should Members choose to grant the licence, a number of suggestions were contained in the representations by GMP.

The Licensing Unit Manager added that two previous applications had not been advertised correctly and this application had been conducted via the correct process hence why it was before the Sub Committee for consideration.

The Chair asked if communications had taken place with the applicant and the proposed conditions from the relevant authorities and it was stated no conversations had taken place.

The Council's Legal Advisor clarified that all three proposed conditions from the relevant authorities were the same with a slight change in the numbering from GMP.

The Sub-Committee then duly retired to consider the application.

The Members of the Panel were advised by the Legal Officer as to their duties under Section 4 of the Licensing Act 2003 to at all times consider the promotion of the Licensing Objectives, these being:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm

The Members were also advised of their duties in carrying out those functions in relation to the relevant provisions of the national guidance and the Council's licensing policy statement.

In addition, Members were advised to give appropriate weight to the steps that are appropriate to promote the licensing objectives together with relevant representations presented by all parties.

Delegated decision

All the evidence was considered with care, and it was established that having understood the application and equally noting and understanding the representations, the Sub-Committee found there were causes for concern so far as the promotion of the licensing objectives were concerned.

It was therefore agreed unanimously that the Sub- Committee **refuse the application for a Premises Licence.**

The Sub-Committee was therefore satisfied that on the balance of probability there was sufficient evidence presented that had demonstrated the following licensing objectives had not been met and failed the:-

- the prevention of crime and disorder

The reasons by the sub-committee, included:-

- Evidence from the Council's Licensing Unit, Trading Standards and GMP that on a number of occasions the licensing objectives had been undermined.
- The sale of alcohol without a licence.
- The sale of illegal vapes.
- Different sale prices if paying by cash or credit transactions.

The Sub-Committee had little confidence and felt the application did not take the licensing objectives seriously and the safety of people in the Borough was paramount. The evidence and supporting documents presented were deemed sufficient evidence to refuse the licence. Details on the right for an appeal were provided to the applicant.

COUNCILLOR G MCGILL
Chair

(Note: The meeting started at 10.00am and ended at 10.57am)