

### LICENSING SUB-COMMITTEE 3

Wednesday 21<sup>st</sup> December, 2011 at 10.30am  
in The Council Chamber, The Council House, Dudley

#### PRESENT:-

Councillor Mrs Dunn (Chairman)  
Councillors Mottram and Ryder

#### Officers

Mr R Clark (Legal Advisor), Mrs J Elliott (Licensing Officer) and Ms K Farrington (Directorate of Corporate Resources).

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#### 12. APOLOGY FOR ABSENCE

An apology for absence from the meeting was submitted on behalf of Councillor Barlow.

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#### 13. APPOINTMENT OF SUBSTITUTE MEMBER

It was noted that Councillor Ryder had been appointed as a substitute member for Councillor Barlow, for this meeting of the Sub-Committee only.

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#### 14. DECLARATIONS OF INTEREST

No member declared an interest in accordance with the Members' Code of Conduct.

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#### 15. MINUTES

##### RESOLVED

That, the minutes of the meeting held on 11<sup>th</sup> October, 2011, be approved as a correct record and signed.

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#### 16. APPLICATION FOR REVIEW OF PREMISES LICENCE – SANGHA SUPERMARKET, 101 – 102 CINDER BANK, NETHERTON

A report of the Director of Corporate Resources was submitted on an application for the review of the premises licence in respect of Sangha Supermarket, 101 – 102 Cinder Bank, Netherton.

Mr B Kent, Licensing Consultant and Mr J Gregory of Lockett & Co were in attendance at the meeting.

Also in attendance were Mr M Chambers, Trading Standards Manager, Ms L Ingram, Enforcement Officer and Mr C King, Principal Trading Standards Officer, all from the Directorate of the Urban Environment.

It was reported that Mr Sangha, (senior), Premises Licence Holder had taken his wife to an hospital appointment, which could not have been rearranged and was unable to attend to the meeting and that Mr Sangha, (junior) was managing the premises.

Following introductions, the Chairman outlined the procedure to be followed.

Prior to the presentation of the Council report, Mr Kent requested clarification on a number of preliminary issues to be considered at the meeting. He outlined the requirements of the Licensing Act 2003 in relation to a review of a premises licence outlined in subsections 51(1) to 51(3).

Mr Kent indicated that he had no objection to the content of the report and appendix submitted to the meeting and acknowledged that the regulations in relation to serving appropriate notice detailing the nature of the application to all interested parties and the procedure followed to advertise the application and invite representations was properly carried out. He also accepted that the notice outlined the period during which representations should be made by all parties. A copy of that notice was submitted as Appendix 1 to the report.

Mr Kent indicated that on the 13<sup>th</sup> December, 2011, his client had received an amendment to the review of the premises licence from Trading Standards, which stated that only two of the four licensing objectives would be pursued at the Licensing Sub-Committee meeting, namely, public safety and protection of children from harm.

He further stated that on 14<sup>th</sup> December, 2011, his client had been served with a thirty-one page document relating to the review and argued that the paperwork received should not be considered at the meeting as it was issued after the prescribed time as outlined in the notice of review. He referred the Sub-Committee to the Albert Court Residents Association -v- Westminster City Council case and questioned the validity of the representations received. The legislation stated that representations to an application could only be made within the 28 day consultation period and "late" representations could not be considered. Mr Kent indicated that because the additional paperwork was not received within ten working days of the hearing, sufficient time had not been given for him to notify the Local Authority of any witnesses his client wished to invite to the meeting.

A brief discussion then took place in relation to the definition of working days.

In responding to the representations made by Mr Kent above, Mr Chambers indicated that the additional information submitted personally to Mr and Mrs Sangha on 14<sup>th</sup> December, 2011 had been witness statements from the officers involved in the incidents in support of the representation originally made by Trading Standards and not additional representations.

Members of the Sub-Committee expressed concern in relation to the seriousness of the two incidents and the non-attendance of the applicants.

Prior to the withdrawal of parties, the Council's legal representative stated that the Sub-Committee would determine in private the representations made by all parties.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the representations made.

The Sub-Committee having made their decision, invited the parties to return and the Chairman then outlined the decision.

#### RESOLVED

That, having considered the representations of all parties, the Sub-Committee determined to proceed with the meeting.

#### REASONS FOR DECISION:-

- (1) Three pages of representations were presented by Trading Standards at the time when the Notice of Review was given.
- (2) No time limits are provided for by the Regulations for mutual service of documents but natural justice will always prevail.
- (3) The Sub-Committee finds that there is no prejudice in allowing the information in the supporting documents to be considered at the meeting.
- (4) Regulation 18 allows the Authority to take into account documentary information presented before the hearing.

Mrs J Elliott, Licensing Officer, Directorate of Corporate Resources, presented the report on behalf of the Council.

Mr Chambers presented the representations of Trading Standards and in doing so highlighted that the grounds for review had been based on the serious undermining of the two licensing objectives, namely, public safety and protection of children from harm. It was noted that all documentation in relation to the two incidents, which had taken place, had been circulated to all parties prior to the meeting.

Mr Chambers informed the Sub-Committee that on 18<sup>th</sup> August, 2011, officers from Trading Standards seized three bottles of Arctic Ice Vodka from Sangha Supermarket. The analysis on one of the bottles found that the contents were not genuine vodka contrary to section 14 of the Food Safety Act 1990 and that the bottle did not comply with the Food Labelling Regulations 1996. It was also noted that Arctic Ice Vodka was not duty paid contrary to the Alcoholic Liquor Duties Act 1997.

Mr Chambers also indicated that on 31<sup>st</sup> August, 2011 a fifteen year old child test purchaser purchased alcohol, namely a 70cl bottle of VK Blue with 4% alcohol by volume, from the premises by an unsupervised child, contrary to section 146(1) and section 153 of the Licensing Act 2003.

On 18<sup>th</sup> August, 2011, an officer from Trading Standards carried out a visit to Sangha Supermarket and spoke to Mrs Sangha who had told him that she owned the premises along with her husband. The purpose of the visit was to offer her advice and guidance in relation to preventing underage sales of age restricted products, including alcohol and supplied her with an information pack, which included an advice booklet, a Challenge 25 poster, a refusals register, a poster about proof of age and a sample Proof of Age Standards Scheme. She was also informed that test purchasing was carried out on premises that sell age restricted products and the possible consequences for underage sales. It was reported that during the course of the visit, Mrs Sangha signed a form confirming that she had understood the age restrictions for products including alcohol and to acknowledge receipt of the information pack.

During the visit, three bottles of Arctic Ice Vodka were identified as matching the description of an illicitly produced product. The three bottles were seized and one of them was sent to the Public Analyst for analysis. The results showed that the contents of the bottle were not consistent with genuine vodka and shown to contain t-butanol, an industrial solvent commonly found in paint stripper. The bottle did not comply with regulations relating to labelling and the duty mark on the bottle appeared to be counterfeit. Witness statements from the officers that were involved in the incident had been circulated to all parties prior to the meeting.

Mr Chambers stated that following the joint visit on 31<sup>st</sup> August, 2011, Trading Standards together with West Midlands Police carried out a test purchasing exercise to determine compliance with the law on the sale of alcohol to children. On that occasion, a fifteen year old female child test purchase volunteer purchased a 70cl bottle of VK Blue, 4% alcohol by volume. Following the sale, officers visited the premises and discovered that the individual who had sold the alcohol to the test purchaser had been a thirteen year old boy. When questioning Mrs Sangha, she stated that she had left her son in the shop while she went to the living quarters at the rear of the shop to heat up some soup. It was then explained at length to Mrs Sangha that it was illegal for someone under the age of eighteen to sell alcohol, unless an authorised person approved each transaction over the age of eighteen. Mrs Sangha stated that her son knew that he must ask for identification from customers attempting the purchase alcohol who did not appear to look over the age of eighteen and she did not seem to understand that it was a problem to leave her son alone to serve alcohol. Mrs Sangha was then issued with an £80 fixed penalty notice for allowing the sale of alcohol to a person under the age of eighteen. Witness statements from the officers that were involved in the incident had been circulated to all parties prior to the meeting.

On 22<sup>nd</sup> September, 2011, Mr Sangha attended the Trading Standards offices for a formal interview in relation to the illicit spirits that were found on the premises on 18<sup>th</sup> August, 2011 and the underage sale that took place on 31<sup>st</sup> August, 2011. Mr Sangha indicated that the illicit vodka had been given to him by someone who was unknown to him, as a sample, and that he did not have any details of the supplier. Following further questioning, Mr Sangha stated that he had not carried out any checks on the supplier to ensure that the vodka was legitimate, even though it was a brand he had never heard of. Mr Sangha was then informed of the danger of selling illicit products and that it was his responsibility to ensure that products sold in his shop were legitimate.

During questioning in relation to the underage sale of alcohol that took place on 31<sup>st</sup> August, 2011 Mr Sangha confirmed that his son had not received any training with regard to selling alcohol or underage sales because he had never been left unsupervised in the shop. He indicated that it was the first time his son was left unsupervised at the shop when the test purchase took place and that it had been a coincidence that the test purchase happened to be carried out at that time.

In concluding, Mr Chambers stated that should the Sub-Committee be minded not to revoke or suspend the premises licence, they consider including additional conditions to the licence to prevent a similar incident occurring in the future. A full list of the proposed additional conditions had been circulated to all parties prior to the meeting.

In responding to a question Mr Chambers confirmed that child volunteers were trained to always tell the truth if asked their age and not to carry identification with them. He also confirmed that if the sale of alcohol was refused, the child volunteers, under no circumstances should try and talk the member of staff into selling them alcohol, they should leave the premises immediately.

In response to a question in relation to whether the Fixed Penalty Notice issued to Mrs Sangha in relation to allowing the sale of alcohol to a person under the age of eighteen had been paid, Mr Chambers indicated that the notice had been issued by the Police.

Mr Chambers clarified that Trading Standards had issued Mr Sangha with an officer warning, which would be kept on file, as he had been found guilty of attempting to sell counterfeit vodka contrary to section 14 of the Food Safety Act 1990.

Mr Kent then presented the case on behalf of his clients and indicated that Mr Sangha had been in the retail business for seventeen years and was considered to be a very responsible and experienced retailer. In referring to the incident on 18<sup>th</sup> August, 2011, Mr Kent informed the Sub-Committee that it was not uncommon for representatives of manufacturers to visit the premises promoting new products. He stated that the alleged representative had visited the shop and portrayed the Arctic Ice Vodka as a new brand. Mr Sangha agreed to accept three free bottles of the Vodka to place on sale to ascertain how popular the brand would be with his customers before committing to an order. He indicated that the bottles contained the standard duty mark and Mr Sangha had not received any correspondence from Trading Standards warning him that the Arctic Ice brand of Vodka was counterfeit. It was noted that Trading Standards had issued a warning in the Autumn edition of Trading Standards News warning premises licence holders of the counterfeit product, however, unfortunately for Mr Sangha, it was too late.

In continuing, Mr King indicated that Mr Sangha had been honest and had given a full account of the incident to officers of Trading Standards at a meeting held under caution. Following that meeting, Mr Sangha received a letter from Trading Standards dated 27<sup>th</sup> September, 2011, a copy of which was circulated to the Sub-Committee prior to the meeting, which stated that although he had committed an offence under section 14 of the Food Safety Act 1990, Trading Standards did not propose to institute legal proceedings on that occasion and issued him with a warning.

In referring to the incident on 31<sup>st</sup> August, 2011, Mr King confirmed that Mr and Mrs Sangha's son was thirteen years of age when he sold alcohol to the child test purchaser. He stated that Mrs Sangha had left the shop to warm up soup in the living quarters and had left her son alone to manage the shop for a very short period of time. Mr King indicated that although he did not dispute that an illegal sale had taken place, he stated that Mrs Sangha had been unaware of the sale until officers attended the premises to inform her of the incident. As a result, Mrs Sangha was issued with a Fixed Penalty Notice of £80. Mr King stated that although Mrs Sangha had accepted and paid the fine, the details recorded on the Notice were incorrect in that it stated that Mrs Sangha allowed the sale of alcohol to a minor contrary to section 146(1) of the Licensing Act 2003. He reported that Mrs Sangha did not allow the sale as she had been unaware of the incident, therefore she had not committed an offence and the Fixed Penalty Notice was flawed as it had been issued under the wrong section of the Licensing Act 2003.

Mr King then indicated that since the incidents had taken place, Mr and Mrs Sangha had adopted new practices to ensure that the business was conducted in a professional manner. He stated that Mr and Mrs Sangha's son did not now serve behind the counter, a Challenge 21 policy was now in operation at the premises and that CCTV had been installed and that all images would be made available for inspection by any responsible authority. He further stated that Mr and Mrs Sangha had taken and passed tests to allow them to become personal licence holders and that in the near future, one of them would become the premises licence holder of Sangha Supermarket.

In concluding, Mr King informed the Sub-Committee that no further incidents had taken place at the premises since August, 2011.

Concerns were expressed by the Sub-Committee in relation to Mr Sangha accepting a "new" product from an alleged representative who did not carry any identification and placed the products on the shelf to sell to customers without carrying out proper checks to ensure that the product was legitimate. Concern was also expressed that Mrs Sangha had no reservations in leaving a thirteen year old boy to manage the premises alone.

In responding to a question, Mr Chambers indicated that it was normal practice for Trading Standards to issue premises licence holders with a warning for attempting to sell a small amount of counterfeit products. He also indicated that despite what was recorded on the Fixed Penalty Notice in relation to the failed test purchase exercise, the Sub-Committee should only consider the facts of the incident. He stated that the Police had issued the Fixed Penalty Notice and should have been challenged prior to the fine being paid.

In summing up, Mr Kent indicated that Trading Standards had taken a lenient view in relation to the seizure of the counterfeit products and asked that the Sub-Committee do the same. He stated that Mr and Mrs Sangha were committed to working with the responsible authorities to ensure that the licensing objectives and conditions of the licence were adhered to. He further stated that his clients would be willing to accept the additional conditions to the licence, as set out in the representations from Trading Standards, should the Sub-Committee deem them appropriate. In concluding, Mr King indicated that Mr Sangha had successfully operated the premises for seventeen years with no previous complaints made against him and again asked the Sub-Committee to be lenient when determining any action taken against his clients.

Following comments from all parties, the Legal Advisor stated that the Sub-Committee would determine the application made on the information submitted and comments made at the meeting by all parties.

The parties then withdrew from the meeting in order to enable the Sub-Committee to determine the application.

The Sub-Committee, having made their decision, invited the parties to return and the Chairman then outlined the decision.

## RESOLVED

That following careful consideration of the information contained in the report and evidence submitted, and representations made at the meeting, the premises licence in respect of Sangha Supermarket, 101 – 102 Cinder Bank, Netherton be revoked.

## REASON FOR DECISION:-

The concern of the Sub-Committee is that Trading Standards presented Mrs Sangha with an information pack on 18<sup>th</sup> August, 2011 and she acknowledged by signing for the receipt of the pack. At the same time, Trading Standards seized three bottles from the shelf, which were analysed and found to contain substances, which are hazardous to health, and the bottles failed to comply with the Food Labelling Regulations in that they did not contain details of manufacturer, packager or seller. This should have rung alarm bells with a responsible licence holder.

Within two weeks, Mrs Sangha left her thirteen year old son in charge of the premises, which she could have closed, and that her son sold alcohol to a fifteen year old. The Sub-Committee appreciate that Mr and Mrs Sangha have attended training but they are not the licence holder. The premises have been run for seventeen years and they have only recently received training in the sale of alcohol. Even as at 22<sup>nd</sup> September, 2011 when Mr Sangha was being interviewed by Trading Standards, it was apparent that he had not been made aware of and/or read the information pack delivered on 18<sup>th</sup> August, 2011.



The Sub-Committee views this matter particularly seriously because it involves the sale of alcohol to a minor, by a minor, who was left unsupervised in the shop.

Mr Kent was informed that his clients did have a right to appeal the decision of the Sub-Committee within twenty-eight days of the meeting.

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The meeting ended at 12.55pm.

CHAIRMAN