

## LICENSING SUB-COMMITTEE 1

Tuesday 7<sup>th</sup> February 2006 at 10.00 am  
in the Council Chamber, The Council House, Dudley

### PRESENT:-

Councillor Ryder (Chairman)  
Councillors Mrs Ameson and Mrs Coulter

### Officers

Assistant Director of Legal and Democratic Services (Legal Advisor) and  
Mrs K Farrington - Directorate of Law and Property

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### MINUTES

#### RESOLVED

That the minutes of the meeting of the Sub-Committee held on the 22<sup>nd</sup> November, 2005, be approved as a correct record and signed.

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### DECLARATIONS OF INTEREST

There were no declarations of interest from Members in accordance with the Members' Code of Conduct.

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### APOLOGY FOR ABSENCE

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

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### APPOINTMENT OF SUBSTITUTE FOR THIS MEETING OF THE COMMITTEE

It was reported that Councillor Mrs Coulter had been appointed to serve as a substitute for Councillor Tomkinson for this meeting of the Sub-Committee only.

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APPLICATION FOR A PREMISES LICENCE, THE RUSSELLS HALL SUPERMARKET, 3 MIDDLE PARK ROAD, RUSSELLS HALL ESTATE, DUDLEY

A report of the Director of Law and Property was submitted on an application received from Licensed Trade Legal Services Limited, on behalf of Jorge Antonio Da Silva Frutuoso, for the grant of a premises licence, in respect of premises known as The Russells Hall Supermarket, 3 Middle Park Road, Russells Hall Estate, Dudley.

The applicant, Mr Frutuoso, was in attendance at the meeting, together with Mr Khan, Lease Holder for the premises and Mr Underwood, Solicitor.

Also in attendance were three representatives from West Midlands Police, Ms E Gamble, Solicitor for the Police, PC D Smith, Licensing Officer for Dudley North and Police Community Support Officer (PCSO) Garbutt, for the Russells Hall Estate, whose written representations were attached at Appendix 2 to the report submitted.

A petition, of 121 names objecting to the application, was attached at Appendix 3 to the report and four of those named residents were in attendance at the meeting.

Following introductions, the Legal Advisor outlined the procedure to be followed.

Mrs J Elliott, Licensing Officer, Directorate of Law and Property then presented the report on behalf of the Council.

Ms Gamble then presented the case on behalf of the Police, stating that the premises had had their justices off licence revoked at Dudley Magistrates Court on 17<sup>th</sup> November 2005, on the grounds that the Licence Holder, Mr Khan, did not have day to day control of the premises. She explained that on many occasions youths would congregate outside the premises drinking alcohol, which had been purchased from the supermarket, which resulted in rude and abusive behaviour to local residents. She informed the Sub-Committee that attempts had been made to communicate with and to try to resolve these issues with the Licence Holder, but that these had failed as he was considered to be unco-operative with the Police.

She also state that the premises had a history of drug related problems resulting in a drugs warrant being executed in May, 2004, and the arrest of an employee for the possession of cannabis.

She then informed the Sub-Committee that staff at the premises had allegedly used obscene language towards the PCSO's when they were on patrol. Also, that a transit van, which was associated with the Supermarket, had slowed down to a crawling pace and the driver, who the PCSO's recognised as being an employee of the premises, shouted obscene language in the direction of the PCSO's. A strong smell of cannabis could also be smelt from the vehicle. The driver then drove off. The identity of the driver is still being investigated as employees of the Supermarket are continuing to be unco-operative.

She then concluded by stating that since the revocation of the justices off licence, the amount of anti-social behaviour that occurred outside the premises and in the vicinity had reduced considerably, but believed that if the premises licence was granted, the problems previously experienced would re-commence.

The objectors then set out their reasons for objecting to the application stating that their main concerns were the anti-social and drunken behaviour of youths congregating outside the premises causing disturbance to local residents. Concerns were also expressed about damage to residents' properties, drug abuse, general littering of the premises and surrounding areas with cans and bottles and the type of patron that would be attracted to the premises. The police had been notified of these continuing problems and attempts had been made to rectify issues with the Licence Holder, but had proved unsuccessful. The objectors, however, did state that things had greatly improved since the justices off licence had been revoked in November 2005. The Police and objectors then responded to questions asked by the Sub-Committee.

In responding to questions asked by Mr Underwood, PC Smith confirmed that Mr Frutuoso had no background convictions under the crime and disorder objectives.

Mr Underwood, Solicitor, then presented the case on behalf of the applicant and acknowledged concerns raised. He indicated that the applicant wanted to work with local residents and that any concerns should be taken up with Mr Frutuoso. He informed the Sub-Committee that Mr Frutuoso had also received an accredited certification after completing a licensing course. He stated that CCTV would be installed, with a recording facility, monitoring the inside and the outside the premises at all times.

As part of the case, Mr Underwood suggested that the following conditions should be included, should the licence be granted:-

1. That two adults with an accredited licence certificate be present at the premises at all times when alcohol is being served.
2. That a proof of age scheme be adopted, in that, no alcohol to be served to anyone under the age of twenty-one.

In responding to a question asked by Ms Gamble, Mr Frutuoso informed the Sub-Committee that at present, he was working in a factory, but if the licence was granted, he would be sited at the Supermarket full-time. Ms Gamble asked further questions with regard to how the premises would be run; who would have overall responsibility for the sale of alcohol and who would be employed at the shop. Mr Frutuoso responded stating that he would have overall responsibility of the day to day running of the premises and the staff already employed at the Supermarket. She also asked what experience he had with managing staff. Mr Frutuoso informed the Sub-Committee that Mr Khan had employed him part-time.

In responding to further questions asked by Ms Gamble, Mr Frutuoso stated that he would sell alcohol if he was the only accredited adult in the premises. Ms Gamble commented that his answer conflicted with the conditions Mr Underwood had suggested. After repeating the question, it was then that Mr Frutuoso stated that if there was only one accredited adult in the premises, then alcohol would not be sold.

In responding to a further question asked by Ms Gamble, Mr Frutuoso informed the Sub-Committee that if youths were causing a nuisance outside the premises, he would approach them, ask them to move on and if that did not work, he would then call the Police.

In responding to a question asked by Ms Gamble, Mr Khan confirmed that his son, Hameed Khan, who had been arrested for the possession of cannabis, no longer worked at the supermarket.

In responding to a question asked by the Legal Advisor, Mr Frutuoso informed the Sub-Committee, that if the licence was granted, the hours for the sale of alcohol would be as follows:-

Monday – Saturday	08.00 – 22.00
Sunday	10.00 – 22.00

At the conclusion of questions the opportunity was given to the respective parties to sum up. Ms Gamble indicated that the Police concerns were based on the residents concerns. The Police were of the opinion that Mr Frutuoso had no experience of staff management and that he did not have a good understanding of what would be expected of him if the licence was granted. She also commented that Mr Frutuoso had difficulty in understanding the questions asked, and at times, seemed to get a little confused. Concern was also raised about the staff in relation to their attitude towards the Police and the licensing laws.

In summing up, Mr Underwood acknowledged concerns raised by the residents, but highlighted that it was not Mr Frutuoso who had had his licence revoked and whatever had happened in the past was not his responsibility.

Prior to their withdrawal, the legal advisor indicated to the parties the details of the legal advice to be given to the Sub-Committee, which related to legal aspects of the application.

The Sub-Committee having made their decision all the remaining parties were invited to return and the Chairman then outlined the decision and the reasons for the decision.

## RESOLVED

That the application received from Licensed Trade Legal Services Limited, on behalf of Jorge Antonio Da Silva Frutuoso, for the grant of a premises licence, in respect of premises known as The Russells Hall Supermarket, 3 Middle Park Road, Russells Hall Estate, Dudley, be refused, based on the following reasons:-

### Reasons

These premises have a history of mismanagement and have contributed to significant levels of anti-social behaviour caused to residents by youths congregating in and around the premises.

The Justices Off Licence was revoked in November 2005 as a result of how the premises were conducted.

Since alcohol sales have been stopped, there has been a significant reduction in anti-social behaviour in the immediate vicinity of the premises.

We find Mr Khan to be an unreliable individual. His disrespect to the PCSO's and lack of co-operation with the Police is a major source of concern.

Mr Khan, his family and staff are directly responsible for the poor management of these premises. There are no intentions to change the staff under the proposed new Manager, Mr Frutuoso.

Mr Frutuoso has no experience of managing licensed premises and his understanding of his duties is unclear, as is evidenced by his intention to sell alcohol even when no other accredited adult would be present on the premises, in contravention of the proposed conditions of licence put forward by his Solicitor. We note he subsequently agreed that this would not occur however.

In all these circumstances, we feel that to grant a licence would have a significant negative impact on the prevention of crime and disorder and anti-social behaviour in the area.

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APPLICATION FOR AMUSEMENTS WITH PRIZES MACHINE PERMIT,  
THE FAIRFIELD, FAIRFIELD ROAD, HALESOWEN

A report of the Director of Law and Property was submitted on an application made by Premier Automatic Machines Limited, on behalf of a Mr S Morley, for the grant of a permit for three amusements with prizes machines, in respect of the Fairfield, Fairfield Road, Halesowen.

Mr S Morley, Licence Holder, was in attendance at the meeting.

There were no objectors to the application.

Following introductions, the Legal Advisor outlined the procedure to be followed.

Mrs J Elliott, Licensing Officer, Directorate of Law and Property, presented the report on behalf of the Council.

Mr Morley briefly commented on his application and informed the Sub-Committee that the gaming machine would be sited in the bar area, which is an entirely separate room to the lounge. He also mentioned that no children were allowed in the bar at any time. In view of this, it was

RESOLVED

That approval be given to the application made by Premier Automatic Machines Limited, on behalf of a Mr S Morley, for the grant of a permit for three amusements with prizes machines, in respect of the Fairfield, Fairfield Road, Halesowen.

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EXCLUSION OF THE PUBLIC

RESOLVED

That, under section 100A(4) of the Local Government Act, 1972, the public be excluded from the meeting of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12A to the Act, in particular the paragraph of part I of that schedule indicated below:-

<u>Description of Item</u>	<u>Relevant paragraph of Part I Schedule 12A</u>
Application for a Personal Licence – Mr DPC	4

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APPLICATION FOR A PERSONAL LICENCE – MR DPC

A report of the Director of Law and Property was submitted on an application received from John Gaunt and Partners, Solicitors, on behalf of a Mr DPC, for the grant of a personal licence.

The applicant was not in attendance at the meeting.

Mr Stuart Fox, Licensing Clerk, Halesowen Police, was in attendance at the meeting on behalf of PC Scott Turley, whose written representations were attached at Appendix 2 to the report submitted.

Mrs J Elliott, Licensing Officer, Directorate of Law and Property informed the Sub-Committee that the applicant had been written to on 23<sup>rd</sup> January 2006, informing him of the date of his hearing. She also stated that this was his second hearing, as the first hearing had been deferred because of his non-attendance.

In view of this the Sub-Committee agreed to hear the case in his absence.

Following introductions, the Legal Advisor outlined the procedure to be followed.

Mrs J Elliott, Licensing Officer, then presented the report on behalf of the Council.

Mr Fox then informed the Sub-Committee of a recent court case involving the applicant and circulated to members of the Sub-Committee a copy of the case summary of the applicant's convictions.

**RESOLVED**

That, in view of the convictions of Mr DPC, namely, that he had been convicted of two offences, one of sexual assault on a female and, the second, indecent exposure during the course of his employment as a licensee and the serious nature of these offences, the application made on behalf of Mr DPC for a personal licence be refused.

The meeting ended at 1.15pm.

CHAIRMAN

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