

# LICENSING COMMITTEE HEARING

FRIDAY, 27 SEPTEMBER 2019 - 11.00 AM



**PRESENT:** Councillor M Humphrey (Chairman), Councillor A Maul, Councillor M Tanfield and Councillor N Meekins,

**OFFICERS IN ATTENDANCE:** Linda Albon (Member Services & Governance Officer), Michelle Bishop (Licensing Manager) and Colin Miles (Legal Representative)

**OBSERVING:** Councillor Rob Skoulding

**LH6/19**      **DETERMINATION OF AN APPLICATION FOR THE REVIEW OF A PREMISES LICENCE MADE UNDER THE PROVISIONS OF THE LICENSING ACT 2003 - HARANS, 10/11 NORFOLK STREET, WISBECH, PE13 3LD**

Members considered an application for the review of a premises licence under the provisions of the Licensing Act 2003 in respect of Haran's Supermarket, Wisbech.

The Chairman paused the hearing whilst the Licence Holder spoke to his legal representative outside of the hearing. They both entered the room at 11.06am and the Legal representative apologised for the delay. The Chairman introduced the Panel and others present were:

Joseph Keegan, Public Health for Cambridgeshire County Council  
Kirsty Draycott, Trading Standards for Cambridgeshire County Council  
Mr Kanapathipillai Kumaravel Thivakaran, Licence Holder  
Sarah Clover, Legal Representative for Mr Thivakaran

The Licensing Manager, Michelle Bishop, outlined her report. She advised that the two responses received in favour of the review application at Appendix D of the report had since been withdrawn as evidence had been submitted confirming a trade waste agreement is in place. She stated that a petition was received after the consultation period ended, hence not in the agenda pack, which she was willing to submit to the Panel today. However, the Chairman disregarded the petition as it was received beyond the consultation period deadline.

The Chairman invited questions relating to the report, of which there were none. He then invited Kirsty Draycott to make her representation.

Kirsty Draycott thanked the Chairman and outlined her representation on behalf of Trading Standards for Cambridgeshire County Council. The Chairman then invited Joe Keegan to make his representation on behalf of Liz Robin, Director of Public Health and in support of the findings by Trading Standards.

The Chairman thanked both responsible authorities for their reports and asked Sarah Clover if she had any questions, to which she replied she had none.

The Chairman then invited questions from the Panel.

Councillor Tanfield asked Kirsty Draycott why nothing happened after the test purchase on 17 January 2018. Kirsty Draycott responded that it was not undertaken by Trading Standards but was

a test purchase by a representative of one of the tobacco manufacturers. Councillor Tanfield asked if it was known who actually sold the tobacco. Kirsty Draycott replied that she had now received a statement from the tobacco industry. Sarah Clover interjected that she was concerned to hear this as she had previously asked for evidence of the sale on 17 January 2018, which was disputed and it was not accepted as a fact that this sale had taken place. Kirsty Draycott said that she had not received any request. Michelle Bishop clarified that prior to the original hearing date on 2 September 2019, which was then adjourned to today, Corrigan Lockett had made a request but she was unavailable; but no subsequent request for evidence had been received since the adjournment. Sarah Clover said that she had the evidence of request for disclosure in front of her and, in any event, to present fresh evidence at this hearing would be against regulations. The Chairman said in that case, as the additional evidence was being challenged, and we have been informed in the report simply that there was a test purchase, the hearing should continue without presentation of the further evidence. Sarah Clover thanked the Chairman.

The Chairman invited Sarah Clover to put her case in defence of Mr Thivakaran. She said that there are several strands of evidence in the review which fall away when examined. For example, with regard to the reports in Appendix D, allegations had been based upon the visit in June 2019 that her client was operating without a trade waste agreement in place. This was supposition as at the time nobody had checked; however when they did finally check, Mr Thivakaran was found to have a trade waste arrangement in place after all.

Michelle Bishop pointed out that she had already said that those representations have been withdrawn. Sarah Clover replied that the point she was making was that accusations against her client were being made by the responsible authorities without being checked and, when checked, they were not correct and this was part of the context of the case, despite the Chairman stating that this evidence would not be considered.

Sarah Clover further said that the second visit in June 2019 does not fall within the remit of the Licensing Act 2003, which relates to four licensing objectives. She said that Miss Draycott indicated that the review was brought on the basis of a breach of licensing conditions, but it is not. There is no allegation of a breach of a licensing condition in this case; what Miss Draycott intends to convey is a breach of licensing objectives, the only one of which is engaged in this case is that of the prevention of crime and disorder.

Sarah Clover further stated that both responsible authorities were incorrect to assert that public safety as a licensing objective was being engaged. She argued that public safety as an objective exclusively relates to any potential danger that a licensed premises poses to the visiting public, for example uneven steps, faulty bannisters, broken glass etc. Alcohol or tobacco may be injurious to health but does not fall within that licensing objective. The dangers that smoking may pose is not relevant within this context.

Sarah Clover further pointed out that the cigarettes found in June were found in a locked store room which was not accessible to the public. They were not on sale and there was no evidence of an imminent sale. This is not a licensable activity in itself and as such she said the Licensing Act 2003 is being misused; Sarah Clover further pointed out that the Committee are being asked to police the alleged sale of illicit tobacco, for which Trading Standards have their own powers and it is starkly notable that they have not sought to use them in this case. If Mr Thivakaran is guilty of any offence relating to illicit tobacco found in private quarters in a locked room, not accessible to the public, then he can be pursued and prosecuted under those powers but cannot be addressed under the Licensing Act 2003.

Sarah Clover further pointed out that the boxes of cigarettes were for personal and private consumption; they were sealed and dusty and had obviously not been moved. She stated that it was wrong for Trading Standards to present a hypothesis that small quantities on the premises meant there was surreptitious activity being undertaken with the likelihood that a bigger quantity of

items are likely stored nearby. She also pointed out that cigarettes could not have been sold on the date in January 2018 as Mr Thivakaran was travelling and the shop was not open all day on that day. Evidence should have been provided regarding the alleged time of the sale; was the shop open then, was it even the correct shop and was the day right? These things are not known by the Committee because they have not been told and it is unacceptable for Trading Standards to say that they can get the evidence if it is required when the evidence should have been provided.

Furthermore, Sarah Clover said that nobody had asked Mr Thivakaran why the storage area was in a mess. She pointed out that the reason was because of a difficult time he was having in his life and the death of his father. It would also be expected that a responsible authority would engage in mediation or discussion before commencing proceedings. However, nobody had done so and nobody took the trouble to find out. She also pointed out that Mr Thivakaran has a Food Standards Agency rating of 5 which shows that he is compliant in his regulatory responsibilities. It was also encouraging to see that Mr Thivakaran had so much support from members of the public, some of whom are present at today's hearing. It is very unusual for people to take the time and trouble to write in, no less attend a committee hearing whereby it is more usual to receive an outcry against premises if they are doing what they should not.

Sarah Clover summed up that the presence of illicit tobacco was a hypothesis only, with no basis to allege sales of alcohol to underage customers. She added that it was an achievement that Mr Thivakaran had customers in support of the shop and who were prepared to vouch for him based on their personal knowledge. The cigarettes found were for private and personal use in a locked and untidy store room, with the reasons for the untidiness being due to unfortunate personal circumstances as already stated. She said that to bring the matter to the Committee under the Licensing Act 2003 was not only misconceived but wrong.

The Chairman thanked Sarah Clover and invited questions.

Councillor Tanfield said that upon the site inspection she was quite shocked to see how messy the store room was. She understood that Mr Thivakaran had been through a difficult time personally and was sorry to hear of his bereavement. However as a business owner herself, she understood the importance of keeping stock up to date and still found it strange that the items in question were in dusty black bags and that there were so many of them and they were everywhere. Mr Thivakaran replied that he purchased the cigarettes for his own use but gave up smoking. The bags had not been touched for some four or five months and he could not remember that he had the tobacco and when it was found, he was shocked. He regularly sells duty paid tobacco on his premises and that is not dusty. Mr Thivakaran said if he was going to sell tobacco illegally, he would have kept it somewhere else and not in his office where he knew it could be found.

Councillor Tanfield said that there is so much tobacco everywhere, also outside of the office, piled on the shelves and on the floor. Mr Thivakaran stated that he did not have a proper cabinet to keep it hence it is kept in the bags. He takes what he needs from the bags but that in the office is his own.

The Chairman accepted that Mr Thivakaran had been through personal difficulties but the point that was being made was that there had not been much improvement between the site visit and now. The Chairman said that Mr Thivakaran's legal representative had claimed that the shop was not open on 17<sup>th</sup> January 2018 and asked what evidence he had of this. Mr Thivakaran replied that he had been to Malaysia and had a stamp on his passport to verify this. He had no-one to manage the shop in his absence and it had been closed for a month until 16<sup>th</sup> February.

The Chairman asked Mr Thivakaran if this was the only shop he owned to which Mr Thivakaran replied that it was.

Councillor Maul asked who had access to Mr Thivakaran's office. Mr Thivakaran replied that only

he had access. Councillor Maul asked In the event that you are not about, how can staff replenish stock if you are not about. Mr Thivakaran said the stock could not be replenished until he was back but in any case he is at the shop, seven days a week.

Councillor Tanfield asked about Mr Thivakaran's staff to which he replied he had two members of staff, one part-time and the other was now at university. Councillor Tanfield said she found it unusual that in a shop selling cigarettes and alcohol there was not much stock on the shelves in the store yet so much had been found upstairs and wondered if he is the only person with a key and it seemed unusual that no staff member can assist. Mr Thivakaran stated that the store was low on stock as he had been attacked on 30<sup>th</sup> August, and had been unable to leave his home for two weeks.

Councillor Maul asked what evidence Mr Thivakaran had of training for his part-time staff. Mr Thivakaran replied that they had underage sales and licensing training which he delivered himself. The Chairman asked how often the training is delivered. Mr Thivakaran replied that unfortunately staff turnover is high, with some only staying two or three months, with his longest staff member having worked for three years.

The Chairman stated that he was happy to hear from those at the Hearing who had made written representations in support of Mr Thivakaran.

The witnesses at the Hearing who had made written representations were:

Ema Metcalfe, Ray Johnson and Craig Rea.

Ema Metcalfe introduced herself, stating that she had previously worked for Mr Thivakaran for three years and currently helps out when needed. She stated that when she started she was given training on Think 21, now Think 25, along with a questionnaire and undertook some tests and a role-play. She confirmed that the training was delivered by Mr Thivakaran. The Chairman thanked Ms Metcalfe.

Craig Rea introduced himself stating that he had been a customer of Mr Thivakaran for five years. He was a regular purchaser of cigarettes at the store and had never been offered cheap cigarettes. He regularly had long chats with Mr Thivakaran as a frequent customer to the store and found him to be a good and honest man; he felt strongly that Mr Thivakaran would never sell cheap cigarettes and the idea seemed ridiculous. The Chairman thanked Mr Rea.

Ray Johnson introduced himself as Mr Thivakaran's landlord and had known him for many years. He stated that he has seen Mr Thivakaran refuse to serve people who have come in under the influence of alcohol and ask them to leave. The Chairman thanked Mr Johnson.

The Chairman invited concluding remarks.

Kirsty Draycott had nothing further to add other than all the information was in her representation and illicit tobacco was found on the premises.

Sarah Clover summed up that although responsible authorities do have a duty, they have not used their own powers in this case. Their method in using the Licensing Act, which could potentially remove someone's livelihood and ruin their life, is draconian. It is clear that Mr Thivakaran works very hard and has had a very tough year; some of the findings in the reports are issues that can be dealt with by giving advice where necessary.

The Panel adjourned at 12.10 for deliberation and reconvened at 12.49 and the Chairman made the following statement:

The Sub-Committee convened to make a decision under the Licensing Act 2003 following a Review of the Premises Licence on the grounds of the Licensing Objectives:

- Prevention of Crime and Disorder
- Public Safety – We are not considering this objective.

The Review was submitted by Cambridgeshire and Peterborough Trading Standards and was supported by Public Health.

The licence permits the sale of alcohol between 0600hrs and Midnight, Monday through to Sunday. The licence was deemed granted on 10 February 2012.

The Licence Holder and Designated Premises Supervisor is Mr Kanapathipillai Kumaravel Thivakaran.

The following persons were present:

Joe Keegan - Public Health  
Kirsty Draycott – Trading Standards  
Kanapathipillai Kumaravel Thivakaran – Licence Holder  
Sarah Clover - Barrister

and those who had submitted representations.

On 19th June 2019 the business was visited by a joint task force. In a locked office upstairs, fifteen 50 gram pouches of hand rolling tobacco were found. The labelling was not in English.

In support of the Licence Holder, the Sub-Committee heard from:

Sarah Clover, Barrister  
Ema Metcalfe  
Craig Rea  
Ray Johnson

And also were referred to the six letters written in support of the Licence Holder retaining his licence to sell alcohol. All say they have no knowledge of such illicit sales. We have disregarded the alleged test purchase failure.

We have disregarded any references to waste on the premises as being a Public Safety concern due to the lack of supporting information and that it appears that the business waste disposal issues have been addressed in any event.

We have also disregarded the petition presented to us today as it was served beyond the consultation period deadline and we cannot identify which party wishes to use this new information in support of their valid representation.

During our deliberations we were referred to:

- The Statutory Government Guidance
- Our own Statement of Licensing Policy

The Government Guidance at:

Para 11.27

There is certain criminal activity that may arise in connection with licensed premises which should

be treated particularly seriously. These are the use of the licensed premises:

- for the sale or storage of smuggled tobacco and alcohol

amongst other things.

Para 11.28

Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Options available to the Sub-Committee on Review

To:

- Modify the conditions of the licence
- Exclude from the licence a licensable activity
- Remove the Designated Premises Supervisor
- Suspend the licence for a period not exceeding 3 months
- Revoke the licence

Reasoning for our decision:

A small quantity of illicit hand rolling tobacco was found on the premises, although for what use is in dispute.

We note that there were no representations in support of the review from the Police.

There were representations in support of the Licence Holder retaining his licence.

We are not satisfied beyond all reasonable doubt that this tobacco was for sale. Therefore we accept the Licence Holder's explanation.

It is our decision therefore to issue a warning to the Licence Holder to be mindful of his obligations as a DPS relating to due diligence and the storage of non-duty paid tobacco products on the premises.

This hearing has been conducted in accordance to the Human Rights Act.

Any person who is aggrieved by this decision may appeal to Peterborough Magistrates' Court within 21 days of receipt of this notice. There may be a fee to pay.

12.30 pm

Chairman