

LICENSING PANEL
16/11/2021 at 9.30 am



Present: Councillor Taylor (Chair)
Councillors Malik, and Wilkinson

Also in Attendance:

Elise Brophy	Licensing Projects and Hearings Officer
Alan Evans	Group Solicitor
Nicola Lord	Principal Licensing Officer
Sian Walter-Browne	Assistant Constitutional Services Officer
Anthony Perkins	Trading Standards
Graham Hopkins	Representing Mr Ahmed
Riaz Ahmed	Premises Owner

1 **ELECTION OF CHAIR**

RESOLVED that Councillor Taylor be elected Chair for the duration of the meeting.

2 **APOLOGIES FOR ABSENCE**

There were no apologies for absence received.

3 **URGENT BUSINESS**

There were no items of urgent business received.

4 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

5 **PUBLIC QUESTION TIME**

There were no public questions received.

6 **ORDER OF PROCEEDINGS**

RESOLVED that the order of proceedings be noted.

7 **REVIEW OF A PREMISES LICENCE FOLLOWING REVIEW NOTICE- SUNNYS NEWS AND OFF LICENCE**

Consideration was given to a report of the Principal Licensing Officer which asked the Panel to review the premises licence in respect of Sunny News & Off Licence, 4 Oxford Street, Oldham, OL9 7SN, following an application for review of those premises made by Oldham Council Trading Standards.

The Panel was informed that on 23rd July 2021, the applicant, Oldham Council Trading Standards, applied for a review of the premises licence for Sunny Off Licence. A copy of the application was attached at Appendix 3. The last date for representations in relation to this application was 20th August 2021.

The review was lodged on the following grounds:
Prevention of Crime & Disorder
Public Safety; and,
Protection of Children from Harm



Trading Standards had found illicit tobacco and single cigarettes being sold on several occasions from the premises following complaints being received, the most recent occasion being the 20th February 2021, dating back to the 8th April 2014. During that period illicit and counterfeit tobacco had been found on six occasions.

Following the seizure of illicit and counterfeit tobacco from the premises on the 8th April 2014, the premises were issued with a letter which was acknowledged and signed by the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS). Since then, illicit and counterfeit tobacco had been found on a further five occasions. On the 31st October 2019 and the 16th January 2021 letters were sent to the premises notifying them of recent complaints, however, no response was received.

Full details of the complaints and visits to the premises were included in the Review Application attached at Appendix 3. As part of the review, Trading Standards were seeking revocation of the premises licence.

The Panel were asked to consider the Authority's Licensing Policy Statement. Their attention was drawn to Section 6 – Crime & Disorder, Section 7 – Public Safety and Section 9 – Protection of Children from Harm. They were also asked to consider the statutory guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003.

The Panel were reminded that the steps available to them were:

- a. To modify the conditions of the licence
- b. To exclude a licensable activity
- c. To remove the designated premises supervisor
- d. To suspend the premises licence for a period not exceeding 3 months; or
- e. To revoke the licence

The steps taken that were appropriate to promote the licensing objectives should be specified. If none of the steps were appropriate and proportionate, no action should be taken.

In arriving at a decision Members must have regard to the relevant provisions of national guidance and the licensing policy statement and reasons must be given for any departure. The decision should be based on the individual merits of the application.

The Panel heard from Anthony Perkins, Trading Standards Officer, who informed them that, following complaints, illegal tobacco had been seized four times since 2014. Warning letters had been issued to Mr Ahmed in 2014 and 2019. Illegal tobacco

had been found under the counter in the shop along with open packets, indicating cigarettes were being sold singly.



Oldham
Council

The concerns of Trading Standards were outlined:-

- Removal of the DPS would not resolve the issues
- Temporary suspension of the licence would not be sufficient – the owner and the DPS had already been warned
- The activity was repeated, despite warnings and seizures
- Two further complaints had been received since this application. A test purchase had been made and there had been no illegal activity on that occasion.

It was clarified that Mr Alam, the owner, had been at the counter when Trading Standards had visited in February 2021 and Mr Ahmed had been present previously.

Mr Hopkins, representing Mr Ahmed, asked for and received clarification of the following:-

- Illegal tobacco – where duty had been evaded and three was non-standard packaging. Some of the packaging had also been counterfeit.
- Had Mr Alam or Mr Ahmed been seen making sales – they had both been present on visits. The visits had not been to make test purchases.
- Had CCTV been checked – it had not as the offence was committed by the person responsible, the business owner and/or the business manager.
- Whose coat were cigarettes found in in January 2020 – the owner of the coat had not been identified. The relevant person was the one responsible for the business.
- When residents had complained, had they produced any physical evidence – the complaints had come through the Council's helpline and had formed the intelligence behind the visits to the shop.
- When was the last test purchase attempted – September 2021

The Panel heard from Mr Hopkins, representing Mr Ahmed. He informed them that Mr Ahmed had run the shop since 1983. Mr Alam, his brother, was not currently working there. The Panel were informed that Mr Ahmed had taken notice of the warnings and proposed a list of conditions as an alternative to the licence being revoked.

He told the Panel that CCTV would cover the counter, and record anything going on. There had been no representations from the police or licensing authority, or from local residents.

Mr Ahmed had been in Pakistan from January to September 2021 and had been there at the time of the Trading Standards visit in 2021. Mr Alam had employed another member of staff in 2020 and 2021 and it was accepted he had not been properly trained or managed.

Both brothers were smokers and the open packets under the counter were for their personal use. There was no evidence that either of them had personally made unlawful sales. The cigarettes in the coat pocket had belonged to a member of staff.

The staff member that had sold the illegal cigarettes had not been properly trained and had mistakenly sold those that were personal property and not intended for sale. Training had now been undertaken and management issues addressed.

The Panel was asked to accept that Mr Ahmed was genuinely sorry and it would not happen again. There would be the additional conditions and ongoing training. The Panel were requested to give Mr Ahmed another chance and not revoke the licence.

Members asked for and received clarification of the following:-

- Who worked in the shop – Mr Ahmed and Mr Alam
- The other employee – had been there for nine months
- Who sold the cigarettes in February 2021 – it was not known who was behind the counter. The owner and/or manager was responsible.
- Other employees – none since Mr Ahmed returned from Pakistan
- Who ran the shop if Mr Ahmed was not there – Mr Alam, who was fully trained
- Complaints 2014 and 2015 – Mr Ahmed was there in 2014 and he had bought the cigarettes for himself. He had been abroad in 2015 and the staff member had not been properly trained. He had not been there in 2017 and now accepted that he needed to be present in the shop.
- The cigarettes found in 2021 – were Mr Alam's and had been in a locker as they were not for sale. The staff member had taken them from this locker. Those in the coat were for the staff member's personal use.
- Future staff – would be fully trained
- CCTV monitoring when Mr Ahmed not present – the staff would need to do this and would be fully trained. It could also be monitored remotely.
- Advice been given in relation to keeping personal cigarettes in the shop – Trading Standards had advised that they should be kept entirely separate and had suggested lockers. A letter had been sent in October 2019 following the second visit.
- Letters received – by Mr Alam, as Mr Ahmed was out of the country.

Mr Perkins and Mr Hopkins summarised their evidence and submissions.

At this point in the proceedings the Panel, in accordance with Regulation 14 (2) of the Licensing Act 2003 (Hearings) Regulation 2005, moved into private session. In reaching a decision the Panel took into account the relevant provisions of National Guidance and the Council Licensing Policy Statement

with reference to the prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.



Oldham
Council

RESOLVED that having regard to the statutory licensing objectives, in particular the prevention of crime and disorder, it is appropriate for the premises licence to be REVOKED.

The Panel gave the following reasons:-

1. Panel were satisfied on balance of probability that the premises had been used for sale or storage of illicit tobacco between 2014 and 2021.
2. The Panel was also satisfied that Mr Ahmed had received warnings and advice on the action he should take to address this.
3. The Panel had regard to the statutory guidance which stated that “the sale or storage of smuggled tobacco is criminal activity, which should be treated particularly seriously”.
4. The Panel was not satisfied that the illegal activity could be adequately addressed by the imposition of additional conditions to the premises licence, as previous advice had not been heeded.

8

**APPLICATION FOR A TEMPORARY EVENT NOTICE-
CHILLZ RESTAURANT, BAR AND LOUNGE, 476-478
OLDHAM ROAD, FAILSWORTH, M35 0FH**

The Panel was notified that this application had been withdrawn.

The meeting started at 9.00 am and ended at 11.30 am