

LICENSING ACT 2003

Sections 51 & 52 Licensing Act 2003

NOTIFICATION OF DECISION FOLLOWING REVIEW OF A PREMISES LICENCE WHERE A VALID APPLICATION FOR REVIEW HAS BEEN MADE

PREMISES: High Wycombe Food and Wine, 180 Desborough Road, High Wycombe, HP11 2QA

To:

The Applicant
Any Persons who made Relevant Representations
The Chief Constable of Thames Valley Police

Take Notice

THAT following a review hearing of the Licensing Sub-Committee

ON Thursday 17th June 2021

BUCKINGHAMSHIRE COUNCIL as the Licensing Authority for the Premises

RESOLVED TO SUSPEND THE PREMISES LICENCE FOR A PERIOD OF SEVEN DAYS

THE SUSPENSION SHALL TAKE EFFECT FROM THE END OF THE PERIOD GIVEN FOR APPEALING AGAINST THIS DECISION OR IF THE DECISION IS APPEALED AGAINST, THE DATE THE APPEAL IS DISPOSED OF.

RESOLVED TO MODIFY THE CONDITIONS OF THE PREMISES LICENCE.

THE PREMISES LICENCE IS MODIFIED TO TAKE EFFECT FROM THE END OF THE SUSPENSION (SEVEN DAYS) WITH THE INSERTION OF ADDITIONAL CONDITION AS SET OUT IN SCHEDULE 3

SCHEDULE 1

(Mandatory Conditions contained on existing Premises Licence)

SCHEDULE 2

(Conditions contained on existing Premises Licence)

SCHEDULE 3

(Conditions necessary to promote the Licensing objectives and imposed in response to a review of the Premises Licence)

Prevention of Crime and Disorder

- The Premises Licence Holder will maintain a register under which staff will record the date and supplier of every item of tobacco stock cross referenced against the receipt of the item purchased.
- Goods will not be accepted by staff unless the receipt displays the pre-printed name, address and contact number and VAT number of the supplier.
- All receipts for purchases of tobacco purchased in the preceding 12 months will be kept at the premises and be available for inspection upon request of an authorised officer so as to be able to identify from where any cigarettes were purchased.
- If boxes are damaged or have previously been opened items of tobacco will not be accepted by staff.
- All staff will be trained in the above procedure and a training record kept which will be available for inspection by an authorised officer.
- No staff are to pay or accept delivery of goods without the written approval of the Premises Licence Holder.

SUSPENSION

The premises licence shall be suspended for seven days. The effect of this suspension is that no retail sale of alcohol activities may be undertaken for the period of the suspension. Should any sale of alcohol be undertaken during the suspension period, this would be a criminal offence under section 136 of the Licensing Act 2003.

Factors taken into consideration by the Panel

The Panel took into account the written and oral representations from Trading Standards together with the oral representations made by the Premises Licence Holder's representative. In particular, the Panel noted the following:

- On 6th December 2019 an officer from Trading Standards made a test purchase of illegal tobacco products from the premises. The price for 6 packets of cigarettes was agreed within the premises and the items were then retrieved from a van parked in the street.
- Officers returned on 19th December 2019 and on searching the same van seized a quantity of illegal tobacco products including 188 packets of cigarettes and 76 pouches (each containing 50 grammes of tobacco). No items were found on the licensed premises.
- Mr Surjan Singh Sethi initially denied selling the cigarettes on 6th December 2019 when interviewed under caution but pleaded guilty to supplying these items, among other charges, at Wycombe Magistrates Court on 17th February 2021.

- Mr Surjan Singh Sethi initially denied ownership of the van despite it being registered in his name. He was also the only person insured to drive the vehicle.
- Mr Surjan Singh Sethi pleaded guilty to a total of 8 charges under the Tobacco and Related Products Regulations 2016, the Standardised Packaging of Tobacco Product Regulations 2015 and the Trades Mark Act 1994 thereby accepting that the tobacco products did not carry written and pictorial health warnings and the packaging was not the correct colour. In addition, 36 packets of cigarettes infringed a registered trade mark. Mr Surjan Singh Sethi was fined £230 for each charge. A total of £1840.
- Trading Standards accept that Mr Jaswinder Singh Sethi was not present on the premises on 19th December 2019 when they visited with a tobacco detection dog and that there is no evidence to link him with Mr Surjan Singh Sethi's illegal activities.
- The review was brought on the basis that Mr Jaswinder Singh Sethi was the premises licence holder when crimes were committed on the premises.
- Mr Surjan Singh Sethi is a partner in the business and has continued to work at the premises since the 19th December 2019.
- Mr Jaswinder Singh Sethi had not appreciated that, as the premises licence holder he has a responsibility to uphold the licensing objective of the Prevention of Crime and Disorder and that he has to take all reasonable steps within his power to ensure that the licensing objectives are upheld.
- Mr Jaswinder Singh Sethi is taking steps to remove Mr Surjan Singh Sethi's involvement within the business both as a partner and working at the premises.

Reasons for the Suspension

The Licensing Panel viewed the fact that criminal offences had been committed from the licensed premises very seriously noting the flagrant breach of the licensing objective of the Prevention of Crime and Disorder. In particular, the premeditated nature of the offences by holding the illegal tobacco away from the premises and the initial denials by Mr Surjan Singh Sethi that he had been the person who sold the illegal products on 6th December 2019 and was the owner of the van were aggravating features. Taking into account paragraphs 11.23 and 11.28 of the Statutory Guidance issued by the Home Office pursuant to Section 182 Licensing Act 2003 and the Wycombe Area Statement of Licensing Policy paragraphs 8.6, the Panel gave serious consideration to the revocation of the premises licence.

The Panel, however, accepted that Mr Jaswinder Singh Sethi had not been aware of the crimes being committed by Mr Surjan Singh Sethi from the premises and noted the fact that there had been no further breaches of the current licence conditions reported since 19th December 2019. The Panel took account of the fact that the premises licence holder was agreeing to a more stringent condition regarding stock control and, on balance, the Panel decided not to revoke the licence, on this occasion.

The Panel noted the condition offered by the premises licence holder:

"Surjan Singh Sethi shall not have any business connections or be present in the premises during licensable activities."

But, taking account of the observations of the Licensing Officer, the Panel did not believe that the first part of the condition in respect of the business connections was enforceable. In addition, the Panel did not believe that such a condition would promote the licensing objective of the Prevention of Crime and Disorder as they observed that Mr Surjan Singh Sethi had

remained actively involved in managing the business since 19th December 2019 and that no further offences had been reported.

The Panel were concerned that Mr Jaswinder Singh Sethi did not appear to appreciate the seriousness of Mr Surjan Singh Sethi's offending behaviour and lacked confidence in his management of the Premises. They felt that, as the premises licence holder, Mr Jaswinder Singh Sethi, took no responsibility for the fact that the offences had been committed on his premises and that he, as the premises licence holder, has a personal duty to uphold the licensing objectives, in this case, the objective of the Prevention of Crime and Disorder. The addition of conditions to the premises licence in isolation did not adequately reflect the seriousness of the breach of the licensing objective of the Prevention of Crime and Disorder.

Taking into account paragraphs 11.23 and "as a means of deterring the [premises licence] holder from allowing problems that gave rise to the review to happen again" the Panel felt that a suspension of the premises licence for seven days was appropriate in this case and was a proportionate response to the promotion of the licensing objectives. In addition, the Panel wished to send a clear message to the premises licence holder and all other licence holders within the authority that undermining the law in this way is a serious matter that will not be tolerated.

Reasons for the Modification of the Licence Conditions

The Panel noted the views of Trading Standards that amendment to the conditions of the premises licence would achieve the objective of promoting the licensing objective of the Prevention of Crime and Disorder and that the premises licence holder agreed to the imposition of such a condition.

The condition was reworded by the Panel to take account of the fact that the objective of the condition was to ensure greater stock control in respect of supply of tobacco products and to ensure that the condition was enforceable. The Panel felt that the reworded condition was appropriate and proportionate to the promotion of the licensing objective of the prevention of crime and disorder.

In reaching their decision the Panel has taken into account the relevant provisions of the Human Rights Act 1998, namely:

- Article 6 – the right to a fair hearing
- Article 8 – respect for private and family life
- Article 1, First Protocol – peaceful enjoyment of possessions.

The Panel considered that, in all the circumstances, the modified conditions were sufficient to promote the licensing objectives of the Prevention of Crime and Disorder and Public Safety.

Any Party aggrieved by the Decision given in this Notice may make a written Appeal within 21 days to the Clerk to the Justices, Wycombe and Beaconsfield Magistrates Court, Milton Keynes Magistrates Court, 301 Silbury Boulevard, Milton Keynes, Buckinghamshire MK9 2AJ.

A handwritten signature in black ink, consisting of a vertical stroke on the left and a horizontal stroke extending to the right, with a small loop at the end.

Clerk to the Licensing Sub-Committee

Date: 23/6/2021