



NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 24 MAY 2016

LICENSING ACT 2003: BOTTLE & BASKET, 187 WATERLOO ROAD, LONDON SE1 8UX

1. Decision

That the council's licensing sub-committee, having had regard to the application made under Section 51 of the Licensing Act 2003 by the Southwark Council trading standards team for a review of the premises licence issued in respect of the premises known as Bottle & Basket, 187 Waterloo Road, London SE1 8UX and having had regard also to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

Suspend the licence for a period of two weeks and

Modify the conditions of the licence as follows:

That the following additional conditions as agreed by the licensing sub-committee shall apply

1. That the premises shall operate an agecheck 'Challenge 25' policy whereby customers purchasing alcohol who look or appear to be under 25 years of age will be asked for an approved form of proof of age to verify their age. Approved forms shall include a driving licence, passport or a PASS approved proof of age card such as the Proof of Age London (PAL) card.
2. That all staff involved in the sale of alcohol shall attend a recognised training scheme which will include training in the agecheck 'Challenge 25' policy. They must obtain a certificate of competence. A record of their training, including the dates that each member of staff is trained, shall be available for inspection at the premises on request by the council's authorised officers or the police.
3. That Agecheck or 'Challenge 25' signage shall be displayed at entrances to the premises, areas where alcohol is displayed for sale and at points of sale to inform customers that an agecheck 'Challenge 25' policy applies and proof of age may be required
4. That a register of refused sales of alcohol and if applicable, cigarette sales which is clearly marked with details of the premises, address and name of licence holder shall be maintained in order to demonstrate effective operation of the policy. On a monthly basis, the designated premises supervisor shall check the register to ensure it is being properly completed. He/she shall sign and date the register to that effect and, where appropriate, take corrective action if the register is not being completed correctly and in a timely manner. The register shall be available for inspection at the premises on request by the council's authorised officers or the police.

5. That an electronic point of sale (EPOS) system be installed at all tills on the premises and it shall be configured to prompt the operator to check proof of age when an alcoholic product (any other product where the age for purchase is restricted by law) is scanned. The prompt should require the operator to confirm that the purchaser is over 18 (or any other age required by the relevant law for other products) before the next item can be scanned or the transaction completed.
6. That there shall be a personal licence holder on the premises at all times alcohol is available for supply for the purpose of supervising such sales. Authorisation must also be in writing and displayed on the premises adjacent to the display of the licence summary where the police or the council's authorised officers can inspect it.
7. That no beers, lagers or ciders in single cans, bottles or multi-packs with an ABV of more than 6.5% will be displayed, sold or offered for sale from the premises. Signage to this effect shall be clearly displayed at the premises.
8. That all staff working on the premises shall be trained and be fully conversant in the correct operation of the CCTV and be able to demonstrate its operation on immediate effect.
9. That an approved CCTV system shall be installed at the premises that records clear images of both the interior and exterior of the premises. The CCTV installed inside the premise shall be positioned to capture the sale of alcohol and tobacco products. The CCTV system shall have a 31 day recording facility and will be maintained in full working order at all times that the premises in in use under the licence. The CCTV system must be capable of capturing a clear facial image of every person who enters the premises. All CCTV footage shall be kept for a period of 31 days and shall, on request, be made immediately available to the police and/or authorised officers from Southwark Council.
10. That all off-sales of alcohol shall be supplied in closed containers only.

2 **Reasons**

The reasons for this decision are as follows:

The licensing sub-committee heard from the trading standards officer, the applicant for the review who advised on 26 February 2016 trading standards officers and police from the night time economy team carried out a compliance inspection at the premises. Two males were serving behind the counter and when asked whether the owner or DPS were present one of the males advised that he had bought the business (including stock) a week previously for £65,000 and the owner/DPS no longer had anything to do with the business. He later stated that the £65,000 was for stock only and not the sale of the lease. No premises licence had been transferred and he was running the business on a trial basis until the purchase went through.

Checks were made by the trading standards officer confirming that Mr Aydin Ciceki who was held out to be a director of Bottle and Basket UK Ltd was actually not a director of that business. Checks also found that the business operator was in accordance with the Bottle and Basket UK Ltd's 2011 status and was incorrectly registered and in breach of the Food Safety Act.

The trading standards officer also found that the tobacco blunts offered for sale did not comply with The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002. The male stated that they belonged to the previous owner, contradicting what he had said about the purchase of the stock.

Trading standards found that the male did not know about the systems in place to prevent underage sales, including Challenge 25, there were no training records or refusals of sales registers available. On searching the premises, these documents were found disregarded in a plastic bag in the basement. Furthermore, one of the males working in the shop was an "overstayer " and was arrested.

Further still, the premises had made an underage sale in June 2012 to which the business had accepted a simple caution under Section 146 (1) Licensing Act 2003.

The licensing sub-committee heard from the Metropolitan Police Service representative, who supported the review and went on further to provide details of complaints received of anti-social behaviour and street drinking in the immediate vicinity of the premises. The premises had verbally agreed that they would erect signage that they wouldn't sell beers, lagers or ciders above 7% ABV but they failed to do this.

The licensing sub-committee heard from the licensing officer representing the council as a responsible authority, supporting the review. The licensing officer stated that she attended the premises on 19 March 2016 and found that a bottle opener was available behind the counter, which management claimed was for opening soft drinks only. The officer accepted that the management disposed of the bottle opener immediately on request and had since that date, found them to be cooperative. The licensing officer also made reference to the night time economy log and noted that there had been instances of street drinking associated with the premises.

The licensing sub-committee heard from the ward councillor who made representations about the review. He stated that his constituents had complained about the premises being associated with crime and disorder, street drinkers being served and congregating outside the premises and the premises irresponsibly selling high strength beers and ciders. That said, he had received positive comments from some of his constituents who viewed the premises as a local asset.

The licensing sub-committee heard from the legal representative for the premises who said that the four licensing objectives were largely complied with. He stated that the employment of an illegal worker was an irrelevant consideration. The illegal tobacco blunts and food safety registration were breaches of other regulatory regimes and similarly were irrelevant considerations. He added that there had been no repletion of underage sales since 2012. He disputed that sales were made to street drinkers and said that the premises had an important local function.

On 30 March 2016, there had been a change of DPS and the business was in the process of being sold. In the meantime, the premises licence had now been transferred and the transfer of the lease was due to complete in the next few weeks.

The representative stated that they were largely in agreement with all of the conditions proposed by trading standards and the licensing authority but questioned the need for the condition relating to a maximum ABV for beers, lagers and ciders as this could have a negative impact on the business. Similarly, a suspension of the licence could make any purchase of the business unviable.

The licensing sub-committee considered all the written and oral representations before it and deemed that these were serious breaches, including an under age sale in 2012, the breach of other regulatory regimes, the fact that there was no DPS in place for a significant period, meaning sales of alcohol were being sold in breach of the Licensing Act 2003. The representative for the premises stated that the employment of an illegal worker was an irrelevant consideration, despite very recent case law supporting a revocation in such cases (East Lindsey District Council v Abu Hanif (trading as Zara's Restaurant and Takeaway (April 2016))).

The licensing sub-committee also found that there was clear evidence from the responsible authorities that there was street drinking associated with and in the immediate vicinity of the premises. Therefore, it was felt that the condition relating to the maximum ABV for beers, lagers and ciders was necessary and proportionate.

Due to the fact that the lease hasn't yet been transferred and the need for more staff to be trained as personal licence holders, this licensing sub-committee find it necessary and proportionate to suspend the licence for two weeks. This suspension will break the cycle of street drinkers attending the premises ensuring a fresh start for the new owners. Since the premises sells other products other than alcohol this short suspension will have limited effect on the viability of the business.

In reaching this decision the sub-committee had regard to all the relevant considerations and the four licensing objectives and considered that this decision was appropriate and proportionate.

3 **Appeal rights**

This decision is open to appeal by either:

- a) The applicant for the review
- b) The premises licence holder
- c) Any other person who made relevant representations in relation to the application

Such appeal must be commenced by notice of appeal given by the appellant to the justices' clerk for the magistrates' court for the area within the period of 21 days beginning with the day on which the appellant was notified by this licensing authority of the decision.

This decision does not have effect until either:

- a) The end of the period for appealing against this decision
- b) In the event of any notice of appeal being given, until the appeal is disposed of.

Issued by the Constitutional Team on behalf of the Director of Law and Democracy

Date: 24 May 2016



Camberwell Green Magistrates' Court

Code 2576

South London Magistrates' Courts Group

Email: GL-SouthGroupMCEng@hmcts.gsi.gov.uk

Telephone: 020 7805 9860/9851

LB SOUTHWARK V BOTTLE & BASKET

Legal Services

DX 136147 London Bridge 7

Case number: **011601473782**

Orders

The court has heard the matters shown below and made the orders listed.

Date: 14 November 2016

K.T.Griffiths

Justices' Clerk

Matters and orders

011601473782/1

Appeal against a decision of the London Borough of Southwark licensing authority relating to Bottle & Basket on an application for a review of a premises licence under section 52 of the Licensing Act 2003 on the ground that 1. The respondent's decision was against the weight of evidence before it

2. The respondent is a new owner and he is not linked to the problems occurred which the Sub-Committee had considered seriously

3. The respondent failed to give sufficient weight to the evidence of the appellant and the subsequent steps he had taken to address the concerns raised since the premises licence was subject to review

In accordance with Part 1 of Schedule 5 to the Licensing Act 2003.

It is ordered that BY CONSENT IT IS ORDERED THAT:

1. The appeal hearing listed on 14th November 2016 at Camberwell Green Magistrates Court be vacated, save for the effectuation of this Consent Order.

2. All further proceedings in the appeal against London Borough of Southwark Licensing Sub-Committee's decision on 24th May 2016 be stayed upon the terms set out in this Consent Order.

3. The following Conditions be added to the appellant's premises licence:

i. the premises shall operate an agecheck 'Challenge 25' policy whereby customers purchasing alcohol who look or appear to be under 25 years of age will be asked for an approved form of proof of age to verify their age. Approved forms shall include a driving licence, passport or a PASS approved proof of age card such as the Proof of Age London (PAL) card.

ii. All staff involved in the sale of alcohol shall attend a recognised training scheme which will include training in the agecheck 'Challenge 25' policy. They must obtain a certificate of competence. A record of their training, including the dates that each member of staff is trained, shall be available for inspection at the premises on request by the council's authorised officers or the police.

iii. Agecheck or 'Challenge 25' signage shall be displayed at entrances to the premises, areas where alcohol is displayed for sale and at point of sale to inform customers that an agecheck 'challenge 25' policy applies and proof of age may be required.

iv. A register of refused sales of alcohol and if applicable, cigarette sales which is clearly marked with details of the premises, address and name of licence holder shall be maintained in order to demonstrate effective operation of the policy. On a monthly basis, the designated premises supervisor shall check the register to ensure it is being properly completed. He/she shall sign and date the register to that effect and, where appropriate, take corrective action if the register is not being completed correctly and in a timely manner. The register shall be available for inspection at the premises on request by the council's authorised officers or the police.

v. An electronic point of sale (EPOS) system be installed at all tills on the premises and it shall be configured to prompt the operator to check proof of age when an alcoholic product (any other product where the age for purchase is restricted by law) is scanned. The prompt should require the operator to confirm that the purchaser is over 18 (or any other age required by the relevant law for other products) before the next item can be scanned or the transaction completed.

vi. There shall be a personal licence holder on the premises at all times alcohol is available for supply for the purpose of supervising such sales. Authorisation must also be in writing and displayed on the premises adjacent to the display of the licence summary where the police or the council's authorised officers can inspect it.

vii. No beers, lagers or ciders in single cans, bottles or multi-packs with an ABV or more than 6.5% will be displayed, sold or offered for sale from the premises. This condition does not apply to Guinness Foreign (ABV 7.5%), Dragon Stout (ABV 7.5%) and Leffe Blonde (ABV 6.6%) or any other such brands to be displayed, sold or offered for sale from the premises with the prior agreement of Metropolitan Police; such agreement not to be unreasonably withheld.

viii. All staff working on the premises shall be trained and be fully conversant in the correct operation of the CCTV and be able to demonstrate its operation on immediate effect.

ORDER TO CONTINUE:

It is ordered that ix. An approved CCTV system shall be installed at the premises that records clear images of both the interior and exterior of the premises. The CCTV installed inside the premise shall be positioned to capture the sale of alcohol and tobacco products. The CCTV system shall have a 31 day recording facility and will be maintained in full working order at all times that the premises is in use under the licence. The CCTV system must be capable of capturing a clear facial image of every person who enters the premises. All CCTV footage shall be kept for a period of 31 days and shall, on request, be made immediately available to the police and/or authorised officers from Southwark Council.

x. All off-sales of alcohol shall be supplied in closed containers only.

4. Any agreed additional products in relation to condition (vii) to be incorporated onto the premises licence by way of a minor variation.

5. The two week suspension of the premises licence imposed on 24th May 2016 be extinguished.

6. The Appellant does pay a contribution to the Respondent's costs in respect of these proceedings in the sum of £2,000.00, paid directly to the Respondent
