

APPENDIX D

Ghulam Rasool



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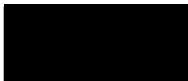
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4th July 2017

Re: Food and Wine 4 Camberwell Church Street SE5 8QU – Appeal against revocation of premises licence

I am the premises licence holder for the above-mentioned retail shop. Please find enclosed an appeal against the decision the Licensing Sub-Committee on the 15th June 2017. I have served a copy on Camberwell Green Magistrates Court. I would be grateful if you would acknowledge service on behalf of the licensing authority.

Yours faithfully



Ghulam Rasool

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**Appeal against Revocation of
Premises Licence: 4 Camberwell Church Street**

Grounds of Appeal

1. This is an appeal against the decision of the Licensing Sub-Committee of the London Borough of Southwark on the 15th June 2017 to revoke the premises licence relating to premises located at Food and Wine 4 Camberwell Church Street SE5 8QU Licence No: 826929.

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2. The premises known as Food and Wine 4 Camberwell Church Street SE5 8QU was granted on 9th April 2008. The licence permits the following licensable activities:

| | |
|---------------------------------------|---|
| Licence type: | Premises |
| Date granted: | April 09 2008 |
| Opening hours: | Monday 24hrs. Tuesday 24hrs. Wednesday 24hrs. Thursday 24hrs. Friday 24hrs. Saturday 24hrs. Sunday 24hrs. |
| Granted licensable activities: | Sale by retail of alcohol to be consumed off premises Monday 24hrs. Tuesday 24hrs. Wednesday 24hrs. Thursday 24hrs. Friday 24hrs. Saturday 24hrs. Sunday 24hrs. |

3. The Appellant has held a licence at the premises continuously since 2008. In nearly a decade of stewardship the appellant has seen few infractions of the licence conditions at the relevant premises. The Respondent relies upon events which have arisen this year since a newly arrived personal licence holder made a putative application to take over responsibility for the premises. The application by the Personal Licence holder was not entertained by either the Local Authority or the appellant.

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Burden of Proof

The Magistrates Court sitting as Licensing justices are required to conduct a re-hearing of the facts whilst considering relevant licensing law. The proper approach to the burden of proof in licensing appeals was set out in ***Kaivanpor v Director of Public Prosecutions (2015) [2015] EWHC 4127 (Admin)*** by Wilkie J who says,

***“looking at the two statutory schemes, it is clear that they reflect the same dichotomy between on the one hand those who apply for a licence, and on the other hand where once they have a licence, the circumstances in which that licence may be revoked or suspended or not renewed. There is a clear and principled dichotomy between the application stage where the onus of proof is sensibly, properly and clearly on the applicant to satisfy the statutory requirements. Once that person has a licence then the schemes, again sensibly and on the basis of proper principle, require the licensing authority which wishes to revoke or suspend a licence or not renew the licence to be satisfied of certain matters. The burden is therefore on the licensing body to establish to its satisfaction that those changes of circumstance or prohibited circumstances have arisen; it is not for the licence holder endlessly to prove that they continue to be a fit and proper person or a person of good repute.*”**

4. The appellant respectfully submits that the decision of the Licensing Sub-Committee was wrong in law in that they failed to give adequate consideration to the appellant's lengthy and proper stewardship of the licenced premises situated at 4 Camberwell Church Street.
5. At the meeting of the Licensing Sub-Committee on the 15th June 2017 the Respondent sought to rely upon the to the following points:
 - i) The Respondent admitted that the breaches of the licence conditions at the premises first arose on the 6/1/2017 as set out on page 1 of the Notice of decision where the Respondent says

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On Friday 6 January 2017, Trading Standards carried out a test purchase using a person who was under the legal age to purchase alcohol. At 20.15 the youth was observed entering the shop and took a bottle of Stella lager to the counter, gave the man behind the till a £5 note and received change of £3.70 having been charged £1.30. Nothing was said to him and the shop was not busy. The officer observing the youth bought a can of Special Brew for £1.50. After this, a trading standards officer attended the premises. The same man ("the seller") who had made the sales was still behind the counter and was a personal licence holder, accepted he should have checked the age of the youth.

- ii) Four days later on the 10th January 2017 officers representing the Respondent returned to the premise as set out on Page 2 of the Notice of decision where the Respondent says,

"On 10 January 2017 at 13:50 a further visit was conducted by Trading Standards and Licensing officers. The only person in the shop was a man who did not hold a personal licence, had a limited command of English and did not know the basic requirements about the sale of alcohol ("the 2nd seller"). He was told he could not sell alcohol as it would breach the premise licence. He said the seller from 6 January (Mohamed Awais Khan) was his boss and that he was at the Cash and Carry. One of the officers spoke the seller who said that the DPS would come to the shop in the next hour in order to speak to the officers. Whilst that conversation took place the 2nd seller continued to sell alcohol to customers. A breach of condition 336 therefore took place.

- iii) Later the same day (10th January 2017 at 22:35pm) officers representing the Respondent returned to the premises for third visit in a less than a week. The Respondent's notice of decision at page 2 says

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“Trading standards returned later that day (10 January) at 22:35. Trading standards made a test purchase where a can of Karpackie beer was bought for £1.20. This seller (lithe 3rd seller”) said he did not have any forms of identification on him to substantiate that name but he did not have a personal licence and was alone in the shop. He stated his boss was the 1st seller and that he had never heard of the premises licence holder or the absent licence holder. He was not aware of any age checks (condition 100) or any refusals book (condition 336). The officer advised that he was in breach of the licence and alcohol could not be sold.

- iv) Officers representing the Respondent returned to the premises two days later on the 12th January 2017. As set out at page 3 of the Respondents notice of decision,

“Trading Standards returned on 12 January 2017 and a further purchase was made and yet again £1.20 was the amount charged. In view of this and the test purchase two days before, 261-cans (130.5 litres) of Karpackie were seized from the shop. Condition 491 was breached again. The man behind the counter (“the 4th seller) was unable to give an address and did not produce any identification to substantiate his name. He said he did not work there but was the only person working in the shop. Conditions 336 and 100 were therefore breached again. Despite warnings not to, he continued to sell alcohol. He later said he worked for the boss who was the premises licence holder. The 4th seller left the shop unmanned. A few minutes later the 1st seller arrived at the shop. The seizure was explained to him and was asked for contact details for the DPS and absent licence holder, but advised he said he did not have it.

6. On the 28th January 2017 the Personal Licence holder Awais Khan was interviewed in respect of the alleged breaches of the licence conditions. Subsequent to that interview the following alleged breaches of the licence conditions were recorded:

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7. On the On 1st February 2017 the Respondent returned to the premises as set out at page 3 of the notice of decision where the Respondent says,

“Trading Standards visited the shop when the 1st seller supplied an invoice dated 14 January 2017, being 2 days after the seizure of Karpackie, showing a purchase price for super strength beers to be barely above the duty price. Kestrel Super (8% ABV) was purchased at £1.00 per can. The name of the seller is not stated, rendering such an apparent invoice untraceable.

8. On the 8th February 2017 the Respondent interviewed the Appellant. For the benefit of the Licensing Committee the Respondent summarised the Record of Taped Interview in the following terms,

“On the On 8 February Premises Licence Holder was interviewed under caution, during which he confirmed that he was the sole owner of the business and that he had stopped selling alcohol since 1 February, despite test purchases being made on 1 and 4 February.

9. The officer's report to the Licensing Sub-Committee failed to particularise the statement under caution made by the Appellant in the same interview in which he said,

“I make this statement of my own free will. I understand that I do not have to say anything, but that it may harm my defence if I do not mention when questioned, something which I later rely on in court. This statement may be given in evidence.

- 1. I purchased the premises at 4 Camberwell Church Street in 2002, prior to the Licensing Act 2003 coming into force. My name appears on the***

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premises licence under the grandfather rights scheme. I made no application under the Licensing Act 2003.

- 2. I do not understand how Mr Imran can be listed as a joint premises licence holder as he has no interest in the lease or freehold title of the premises.***
- 3. As both my name and Mr Imran's name appears on the online version of the licence next to the words 'Designated Premises Supervisor', I genuinely believed we shared responsibility for the licence. Now this misunderstanding has been pointed out to me, I am happy to nominate Mr Mahesh Mahatri as a replacement premises licence holder/designated premises licence holder as appropriate. Regarding Mr Khan's licence infractions, he has only been at the premises for two to three months. I was shocked to discover what had happened and I have taken disciplinary action. I have taken the following steps to ensure that such licence infractions do not recur.***
 - i) I have drafted a licence to occupy (rather than a sublease) with covenants which mirrors the licence conditions.***
 - ii) I have recruited additional personal licence holders who will operate a stock control system preventing the sale of any (un)authorised products. I have included this as a condition of the licence to occupy.'***

10. In their evidence to the Licensing Sub-Committee the officers acting for the Respondents failed to acknowledge the closure of the premises during the period from 22nd February 2017 to 2nd March 2017. On the 22nd February 2017 the Licensing Authority wrote to the Appellant and his erstwhile Premises Licence holder acknowledging receipt of an application to vary the Designated Premises Supervisor for the premises. The premises did not re-open until the 2nd March 2017 following advice from an LBS Licensing Officer Miss Sarah Tahir who said in an email dated the same day,

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“The DPS application has been processed and can be viewed online using our licensing register.

<http://app.southwark.gov.uk/Licensing/LicenseRegister.asp> Licence number 857877

11. On the 26/4/2017 an officer acting for the Respondent returned to the premises. At page 3 of the Respondent notice of decision the Respondent says,

“On 26 April 2017 Trading Standards and Licensing Officers returned to the shop with the Police and made a test purchase of a can of Skol Super alcohol. In the shop was a man (5th seller) who accepted that he did not hold a personal licence though said he had applied to Tower Hamlets for one. An enquiry indicated him to be a failed asylum seeker and he was not permitted to work. Since the 5th seller did not have a Personal Licence he was advised he could not sell alcohol.

12. The Respondent claims that failing to hold a personal licence prohibits that individual from selling alcohol. That statement does to reflect the true statutory regime. In October 2012 the Home Office issued AMENDED GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003 which says at paragraph 4.3

"Any premises at which alcohol is sold or supplied where the requirement for a personal licence holder does apply may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence. However, the requirement that every sale of alcohol must at least be authorised by a personal licence holder does not mean that the licence holder has to attend or oversee each sale; it is sufficient that such sales are authorised. It should be noted that there is no requirement to have a DPS in relation to a Temporary Event Notice (TEN) or club premises certificate, and sales or supplies of alcohol authorised by a TEN or club premises certificate do not need to be authorised by a personal licence holder"

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13. This was supplemented by Revised Guidance issued under section 182 of the Licensing Act 2003 issued by the Home Office in April 2017 - Authorisations or permissions which says at paragraph 1.14

"The 2003 Act provides for four different types of authorisation or permission, as follows:

- Premises licence – to use premises for licensable activities.***
- Club premises certificate – to allow a qualifying club to engage in qualifying club activities as set out in Section 1 of the Act.***
- Temporary event notice – to carry out licensable activities at a temporary event.***
- Personal licence – to sell or authorise the sale of alcohol from premises in respect of which there is a premises licence.***

14. The specific power is to be found at Section 111 of the Licensing Act 2003 - Personal licence which says,

(1) In this Act “personal licence” means a licence which—

(a) is granted by a licensing authority to an individual, and

(b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

15. It is a moot point what form that authorisation should take. A personal licence holder could undertake the authorisation in writing in the following terms but there is no statutory guidance as to the form that the authorisation should take. Appendix A to the grounds of appeal sets out the Form utilised by the appellant for recording the

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authorisation. This may also be given verbally by either the Premises Licence holder, the Designated Premises Supervisor or the Personal Licence holder.

16. In the Appellant's respectful submission the Respondent failed to give adequate consideration to the following points

- i) The statement under caution made by the appellant on the 8/2/2017.
- ii) The efforts made by the new Designated Premises Supervisor to institute a new management regime designed to correct the practices of Mohamed Awais Khan.

17. The officers acting for the Respondent relied upon evidence of eight minor breaches of licence conditions over a five year period by the appellant at an unconnected premises situated in the London Borough of Lambeth. These matters have no bearing upon the stewardship of the Premises Licence at 4 Camberwell Church Street. The quote Wilkie J in ***Kaivanpor v Director of Public Prosecutions (2015) [2015] EWHC 4127 (Admin)*** again,

“it is not for the licence holder endlessly to prove that they continue to be a fit and proper person or a person of good repute”

Notwithstanding that matters in neighbouring licencing authority have no bearing on the current appeal it is worthy of note that none of the alleged breaches warranted action. Furthermore in the officers submission to the Licensing Sub-Committee no further breaches are recorded beyond 2014 for a licence which is currently in operation. It may be appropriate therefore to infer therefore that the neighbouring licensing authority did not regard any of the breaches as so serious that they would warrant either a review or revocation of the premises licence.

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18. The Respondent requested copies of CCTV from the Swann DVR8-3260 8 Chanel Digital Video Recorder Serial No: 024240410140088. They specifically sought footage from the 17th February 2017 as it was claimed that a purchase was made by an officer acting on behalf of the Respondent. The alleged breach is denied and the Respondent is asked to admit that the alleged breach did not occur and that as a result the Licensing Sub-Committee were inadvertently misled in regard to the events of the 17th February 2017.