

APPENDIX E



NOTICE OF DECISION

LICENSING SUB-COMMITTEE – 15 JUNE 2017

LICENSING ACT 2003: SUPERDEALS (FOOD AND WINE), 4 CAMBERWELL CHURCH STREET, LONDON SE5 8QU

1. That the council's licensing sub-committee, having considered an application made under Section 51 of the Licensing Act 2003 by the council's trading standards service for the review of the premises licence issued in respect of the premises known as Superdeals (Food and Wine), 4 Camberwell Church Street, London SE5 8QU and having had regard to all other relevant representations has decided it necessary for the promotion of the licensing objectives to:

Revoke the licence

- 2 **Reasons for the Decision.**

The reasons for this decision are as follows:

The licensing sub-committee heard from the Trading Standards Officer, the applicant for the review. 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.

Conditions on the licence were then checked for compliance and numerous breaches were identified, namely: condition 289 (CCTV footage was being retained 20 days and not the required 31 days), condition 293 (no evidence of staff training), condition 334 (no evidence of an age identification scheme), condition 340 (no refusals book), conditions 341, 342, 343, 344 and 347 (concerning notices), condition 100 (no designated premises supervisor - DPS). The seller was asked about the named individuals on the licence and advised that he had never met the DPS ("the absent premises licence holder") in the 15 months that he had worked at the shop. He said he only dealt with the premises licence holder who had another shop, in Lambeth. The officer spoke with that premises licence holder on the telephone who advised that his joint premise licence holder and DPS was on holiday. When challenged that the seller had not see the joint licence holder in 15 months, the premises licence holder said that he was at the Cash and Carry. Both were advised it was a further breach of the premise licence conditions to continue to supply alcohol when there was no DPS. Trading Standards have never been able to speak to the absent premises licence holder, despite numerous attempts to do so.

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 sell 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 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.

The prices of the super strength beers were noted. Special Brew and Skol Super (both 8% ABV) were priced at £1.50 this being 35 pence above the duty price. Karpackie (9% ABV) was priced at £1.20. Trading standards advised that the duty and VAT price for this brand in 2016-2017 was £1.29. This was a breach of condition 491 (alcoholic drinks to be sold above the duty plus VAT price)

Officers later met with the seller who was the only person present. He presented officers with two refused sales logs. The first log showed a list of entries relating to refused sales for about once a month, the last entry dated 5 September 2016. The second log showed one entry dated “6-2-2017”, some 31 days after the date of the visit. The 2nd seller was reminded again about the condition for there to be a DPS and that in the absence of one, alcohol could not be sold.

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 (“the 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.

Whilst the officer was in the shop, the 3rd seller continued selling alcohol to customers. Further warnings were also ignored. Of concern was that the 3rd seller sold a can of Super Brew to a man with obvious alcohol dependency problems. This man put a £5 note on the counter and the 3rd seller gave him £3.00 change. The man thought he had been short changed and aggressively demanded the “correct” change. He was told the price was £2.00. The man was extremely unhappy about this, saying the price was £1.50 in Camberwell and demanded his money note back, threw the can back at the seller and retrieved his £5 note. It is believed that the higher price was being charged for the benefit of Trading Standards who were in the shop and that the real price to customers was still £1.50. The shelf prices for the Skol Super and Special Brew was still £1.50 though these price stickers had been removed when a further visit was made two days later on 12 January.

Super strength beers and ciders are almost exclusively consumed by people who have serious alcohol dependency problems and contain a high number of units of alcohol per can. H.M. Government seeks to use price as part of its strategy to reduce consumption of these super strength beers, and introduced the mandatory condition 491. All the super strength beers were being sold nominally above the duty rate. Suspicious that these drinks were also subject to some form of evaded duty or other illegality, Trading Standards required the premise licence holder to produce his purchase invoices for the super strength beers. Trading standards advised that it is completely unrealistic and unbelievable that such a legally sourced and duty paid beer can be sold by an independent retailer for anything less than at least £2.20. Retailing products, in the case of the Karpackie, 9 pence below the duty price also completely undermines any government public health strategy and of course gives the retailer an unfair commercial advantage over its legitimate competitors. This illegal practice has been identified as a widespread and real problem in Southwark which officers are seeking to address.

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.

On 1 February 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.

On 8 February the 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.

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.

The officer representing Licensing as a responsible authority addressed the Sub-Committee and stressed her concerns of the number and diversity of alleged criminal offences witnessed by Trading Standards officers. Furthermore, the Premises Licence Holder was associated with other premises, both in and outside Southwark where a plethora of breaches of licence conditions and similar criminal acts had occurred.

The Metropolitan Police Service representative advised that advised that when granting an individual/company a premises licence, the Licensing Committee must have trust in that individual/company that they will run the premise well and comply with the operating schedule as agreed when the premises licence was applied for. The conditions are there for the promotion of the licencing objectives. The premises had operated in contravention of these conditions, but also committed acts of criminality. In the circumstances, there is no place for a premises that is operated in such a way, that is putting the public's health at risk and quite likely to have a negative impact on anti-social behaviour and crime and disorder. The police recommended that the licence be revoked.

The Licensing Sub-Committee noted the representations from the Public Health Authority supporting the review and also recommended that the premises licence be revoked. The premises are located in an area where there is a serious problem with alcohol abuse. The premises are close to Kings College Hospital where there are alcohol dependency treatment facilities and premises abusing their licence conditions in the way described, undermined the licensing objectives.

The representative for the licensee of the premises addressed the Sub-Committee. They advised that the Premises Licence Holder shared the obvious concerns that the Sub-Committee would have about the conduct of the premises. His client had been the freeholder to the premises, and premises licence holder since 2005 and a trawl of the premises records showed that there had been no breaches between 2005 and 2010. The recent infractions commenced in January 2017, when there had been a break of the chain of causation as the 1st seller had been granted a licence to occupy the premises on 1 January 2017. Despite this, he chose not to transfer the licence or the DPS to the 1st seller. The representative for the premises licence holder stated that the 1st seller was not in breach of his licence to occupy, so was unable to evict him. He had however, started to take remedial steps, by replacing the DPS, who ultimately would take over the management from the 1st seller. The representative was unable to explain how this would be done and no documentation concerning the licence to occupy was available at the meeting. The representative stated that a period of closure would assist and that the premises licence holder would be agreeable to give an undertaking to resolve the issues.

The licensing sub-committee considered all of the oral and written representations before it and found that the breaches of licence conditions and level of criminality completely unacceptable. The premises licence holder demonstrated he was unwilling to cooperate with authorities in their criminal investigations and quite clearly undeterred by previous enforcement action at premises in Lambeth (between 2008-1014). There had been a catalogue of breaches over a period, by at least 5 different members of staff, all of whom continued to sell alcohol in officer's presence, despite being warned not to. He showed a total disregard to the consequences of selling alcohol responsibly and to adhering to premises licence conditions or promoting licensing objectives. The licensing sub-committee were unanimously of the opinion that the premises licence holder was not capable of running a licensed premises and promoting the licensing objectives and that the premises will continue to operate contrary to the terms and conditions of their premises licence.

Consideration was given to a suspension of the licence and removal of the premises licence holder as DPS, but the Committee felt that in this case this is not option; given that he is the owner of the premises, he therefore will have a controlling factor over a new DPS. If this licensing sub-committee had the jurisdiction, it would have revoked the premises licence holder's personal licence. It is fortunate for him, that this Sub-Committee do not have such power. In the circumstances, the only appropriate and proportionate option is revocation.

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; or
- 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 Legal Services

Date: 15 June 2017